Globalization 101

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Human Rights

Contents

Introduction: The Idea of Human Rights 3
The International Legal Framework 3
Charter of the United Nations 3
Universal Declaration of Human Rights 5
Civil and Political Rights 7
Economic, Social, and Cultural Rights 7
The International Bill of Rights 9
International Covenant on Civil and Political Rights 11
The Extension of Human Rights beyond the International Bill of Rights 13
Monitoring and Enforcement 14
UN Architecture 15
The Rise of Non-Governmental Organizations (NGOs) and Global Civil Society 17
Perspectives on Rights 20
Human Rights vs. Natural Rights 20
Negative vs. Positive Rights 21
Rights vs. Aspirations vs. Duties 23
Three Generations of Rights 24
Human Rights and Violence 25
Torture and Inhuman Treatment 26
The Geneva Conventions 27
United Nations Efforts To Secure Freedom from Torture 28
Non-Derogability and State Sanctions: Unlawful Combatants? 30
Non-Refoulement: Extraordinary Renditions and Outsourcing Torture 33
Genocide 36
Criminalizing Genocide in International Law 37
Courts and Justice in International Law: The Post-World War II Military Tribunals 39
The Persistence of Genocide and Subsequent UN Tribunals 41
The International Criminal Court (ICC) 44
The Problem of Humanitarian Intervention 48
Peacekeeping in Bosnia 48
Intervention in Kosovo 50
Humanitarian Intervention in Perspective 51
Human Rights and Groups 53
Women's Rights 53
Reproductive Rights and Sexual Autonomy 54
Trafficking in Persons 56

Children's Rights 58
Child Labor 60
Child Soldiers 62
Juvenile Justice 64
Indigenous Rights 65
Individual Rights or Group Rights? 67
Land and Environment 68
Cultural Rights 69
Self-Determination 71
Glossary 73
Works Cited 81

Introduction: The Idea of Human Rights

The era of globalization is also the era of the individual. Revolutionary innovations in technology and telecommunications have empowered the individual, for better or worse, to exercise a previously unthinkable degree of self-expression. The same age that has seen the advent of the threat of global terror networks is also the one that has given birth to YouTube.

This focus on the individual is part of a broader trend that has been underway for centuries and has only intensified since the end of the Second World War. One of its most important manifestations in the twentieth – and now twenty-first – century has been the development of a conceptual and legal framework for human rights as well as a new dimension of civil society dedicated to ensuring that these rights are protected.

Human rights recognize the dignity inherent in every person as a human being, regardless of his or her particular nationality, race, ethnicity, religion, gender, sexuality, class or any other group affiliation or characteristic. As a result, they assert the moral and legal primacy of the individual over other entities that have "rights," such as the family and the state.

This Brief will examine the history of human rights and survey some of the key debates about how these rights should be applied in current real-world situations. Two areas of special focus will be human rights and violence (***genocide*** and torture) and human rights and groups (children, women, ***indigenous*** peoples).

Several of the issues raised in the Brief will touch on topics covered in other issue briefs and news analyses on the Globalization101.org website. Cross-references to these resources will be provided throughout the Brief.

The International Legal Framework

While there are many possible perspectives – political, moral, philosophical – with which a discussion of human rights can begin, the legal is perhaps the most useful from a practical standpoint. The modern structure of human rights first emerged in the aftermath to World War II, when the countries of the world united to build a framework for international cooperation that would prevent the horrors of the past from ever recurring.

For more on international law more generally, consult the "Is International Law Really 'Law?'" section of the "International Law and Organizations" Issue Brief (http://www.globalization101.org/index.php?file=issue&pass1=subs&id=233).

Charter of the United Nations

Picture: United Nations (New York), Source: http://www.un.org/av/photo/

In 1945, leaders from around the globe convened in San Francisco to establish the ***United Nations (UN).***[1] The UN was designed to be an improved version of the defunct ***League of Nations***, an association of states founded in the wake of World War I that had proven ineffective in preventing another catastrophic global conflict.

The ***Charter of the United Nations***, which laid out the mission and structure of the body, notably contained an important reference to human rights as one of the guiding principles of this new collective endeavor. The second statement in the preamble reaffirms "faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small."[2]

Chapter 10, Article 68 of the Charter outlined provisions for the eventual creation of a Commission on Human Rights through the UN's Economic and Social Council. The clause gives the Commission somewhat unique status among the UN's many constituent branches, for it "is one of the very few bodies to draw its authority directly from the Charter of the United Nations."[3]

[1] Bailey.
[2] "Charter."
[3] Bailey.

Universal Declaration of Human Rights

The first step in implementing the new directives on human rights was to articulate a vision for these rights that all the members of the United Nations could embrace. Eleanor Roosevelt, former First Lady and widow of Franklin Delano Roosevelt, lead the working group that would put together this document. It took two full years, 81 meetings, 168 amendments, and nearly 1,400 votes for the document to be accepted.

On December 10, 1948, the UN General Assembly (comprised of 58 member states at the time) accepted the ***Universal Declaration of Human Rights*** without objection, with eight countries—including all six communist countries associated with the Soviet Union, South Africa, and Saudi Arabia – abstaining (48-0-8).[1] (For more on the how the debate over human rights was influenced by the emerging Cold War between the United States and Soviet Union, see "Negative vs. Positive Rights".)

http://carmelites.info/citoc/citoc/octdec2004/un.general%20assembly%20hall_72.jpg

The Universal Declaration is primarily a statement of principle, a foundation upon which the legal framework for practical protections of the agreed upon rights could be constructed. Above all, the Declaration was conceived as "a common statement of mutual aspirations – a shared vision of a more equitable and just world."[2]

The achievement of consensus among the diverse array of UN member states was almost as important as the substance of the document itself. The members of the working group and the UN ***General Assembly*** strove to accommodate the sometimes competing and conflicting claims of all the world's cultures, ideologies, religions, and political interests, and to balance the different needs and capacities of both developed and developing countries.[3] In the end, most agree that the Declaration managed to achieve this delicate balance, despite the claims of subsequent critics that the institutional processes underpinning its drafting and acceptance were largely driven by the Western powers that dominated the UN at the time of its founding (see "Human Rights and Culture").

The Universal Declaration can be divided into five thematic sections: a ***preamble***; a definition of the basis and extent of all human rights (Articles 1-2); an outline of civil and political rights (Articles 3-21); an outline of economic, social, and cultural rights (Articles 22-27); and a conclusion that broadly describes the background conditions necessary for the exercise of the specified rights (Articles 28-30).

THE COMPLETE PREAMBLE

The preamble—a truly landmark statement about what human rights mean, where they come from, and what purposes they serve—is the cornerstone of all modern human rights law. It is presented here in its

[1] "United Nations Priority;" Bailey.
[2] "United Nations Priority."
[3] ibid.

entirety:

> Whereas 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,
>
> Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,
>
> Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,
>
> Whereas it is essential to promote the development of friendly relations between nations,
>
> Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,
>
> Whereas Member States have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,
>
> Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge,
>
> **Now, Therefore THE GENERAL ASSEMBLY proclaims THIS UNIVERSAL DECLARATION OF HUMAN RIGHTS** as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.[4]

Introductory Articles

Article 1 clarifies the basis of all human rights, which rests on the premise that "all human beings are born free and equal in dignity and rights." As human beings, "endowed with reason and conscience," all people are entitled to the same standard of protection of respect, not only by governments but also by their fellow men and women. Each individual should "act towards one another in a spirit of brotherhood."[5]

[4] "Universal Declaration."
[5] ibid.

This article introduces the central concept of human dignity from which all human rights are derived. It is also remarkable for stressing the universal nature of these rights.

Article 2 asserts the complete universality of human rights, "without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status." In addition, rights are not conferred on individuals "on the basis of the political, ***jurisdictional*** or international status of the country or territory to which a person belongs."[6]

This provision is important because previous conceptions held that rights emanated from ***sovereign*** governments or rules and were often ultimately traced back to a form of divine sanction (see "Human Rights vs. Natural Rights" below). The Universal Declaration severed rights from the question of citizenship, opening the door to a new kind of personal identity rooted in global citizenship. This modern identity would serve as a complement, if not substitute, for membership in a particular nation-state. It also ensured that protection would be extended to stateless peoples, such as refugees, or those who were oppressed within existing states (see "Perspectives on Rights" below).

Civil and Political Rights

Articles 3-21 of the Universal Declaration list, in brief form, the civil and political rights to which all people are entitled. Many of these rights will sound familiar, as they have much in common with the constitutions of many advanced democracies, such as the United States and France (see "Human Rights vs. Natural Rights" below).

Rights articulated in these sections include: the right to life, liberty and security (Article 3); freedom from ***slavery***, ***torture*** and "inhuman or degrading treatment or punishment" (Article 4-5); the right to equal protection from discrimination and due process of law (Articles 6-8, 10-11); freedom from "arbitrary arrest, detention or exile" (Article 9); freedom from "arbitrary interference with his privacy, family, home or correspondence" (Article 12); freedom of movement and of ***asylum*** in the face of persecution (Articles 13-14); the right to marry as one chooses and have a family (Article 16); the right to own property (Article 17); freedom of thought, conscience, religion, expression and association (Article 18-20); and the right to belong to a nationality, to engage in political participation and to enjoy equal access to public services (Articles 15, 21).[7]

A number of these rights – including the freedom from torture and political rights – will be discussed at length in the sections that follow.

Economic, Social, and Cultural Rights

Articles 22-27 specify the economic, social and cultural rights that belong to all individuals above and beyond the basic political freedoms described above. While many U.S. citizens often do not think of the protections that fall in these areas as "rights," strictly defined, many other countries in the world do, particularly countries with more socialized forms of government such as those in Western Europe.

Article 22 presents the rationale that justifies the inclusion of these rights in the Universal Declaration; it is quoted here in its entirety:

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[6] ibid.
[7] ibid.

> Everyone, as a member of society, has the right to social security and is entitled to realization, through national efforts and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.[8]

This provision is remarkable in several respects. First, it holds that economic, social and cultural rights help create the background conditions necessary for the realization of human dignity, which Article 1 had established as the foundation for all human rights. The clause makes explicit what is implicit in the notion of human rights: that one must enjoy a measure of peace, health, and security in one's environment as a precondition for being able to exercise one's private rights.

Second, it calls not only for national action to secure these rights but also for "international co-operation." This means that national governments have a responsibility to help other countries meet these human rights obligations in addition to meeting their own. It is therefore no longer acceptable for countries to know that violations are occurring elsewhere and not take any action. Whether this "co-operation" takes the form of more passive measures, such as technical assistance, or more active measures such as intervention is a complex question, some of the ramifications of which will be explored later in this brief (see "The Problem of Humanitarian Intervention" below).

Third, Article 22 recognizes that countries have different capacities, in terms of political "organization and resources," to achieve the economic, social and cultural objectives specified in the Universal Declaration. It is important that each nation make all reasonable efforts within these constraints to fulfill its obligations to its people and the international community.

The rest of the enumerated rights in this section guarantee: the right to employment, non-discrimination in pay, a decent wage or supplemental income to ensure "for himself and his family an existence worthy of human dignity," and unionization (Article 23); the right to rest and leisure (Article 24); the right to a standard of living that includes the determinants of physical well-being, such as "food, clothing, housing and medical care and necessary social services" as well as forms of social insurance that protect an individual in the case of "unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control" (Article 25); the right to education and "full development of the human personality" (Article 26); and the right to "participate in the cultural life of the community" and benefit from scientific and technological advances (Article 27).[9]

These rights involve complex questions in terms of how they should be interpreted and implemented. What does it mean, for instance, that one has the right to "full development of the human personality?" What constitutes "an existence worthy of human dignity?" Because these standards essentially bring the entire realm of social and economic policy into the domain of human rights, some believe they make the very notion of "rights" problematic, possibly eroding or weakening the imperative rigorously to enforce all human rights (see "Rights vs. Duties vs. Aspirations" below).

[8] ibid.
[9] ibid.

The International Bill of Rights

The Universal Declaration was a consensus statement of principle but did not have legally binding force from the perspective of international law. The abstract set of principles articulated in the Declaration would have to be translated into more detailed ***conventions*** for member states to adopt and then use to fashion enforceable national legislation.

It took eighteen years of debate to determine how this translation should be achieved. A split emerged during the process of drafting the follow-up to the Universal Declaration because some countries maintained a different view about the nature of economic, political and cultural rights. It was therefore decided in 1952, based on a motion from India and Lebanon with support from Belgium and the United States, that two conventions would be drafted instead of one.[1]

In 1966, the drafts of two conventions were approved: the ***International Covenant on Civil and Political Rights (ICCPR)*** and the ***International Covenant on Economic, Social, and Cultural Rights (ICESCR)***. Both agreements entered into force for the states that ***ratified*** them in 1976.[2] Collectively, these two Covenants along with the Universal Declaration became known as the ***International Bill of Rights***.

The ICESCR will be covered in less detail in this Brief (see section on "Rights vs. Duties vs. Aspirations" below).[3] The full text of the document can be found here: http://www.unhchr.ch/html/menu3/b/a_cescr.htm.

The Status of Human Rights in International Law

It is important to understand that the Universal Declaration is itself more a commonly agreed vision than a binding legal document. It was designed to provide the foundation for future conventions that would further define human rights within a legal context. These conventions are essentially multilateral ***treaties***, agreements made by a number of countries in which they voluntarily accept certain standards that then become enforceable in international law. It is important to note that not all states agree to the conventions passed by international legislators.

Conventions are common instruments in international affairs and are used when nations want to formalize relations and mutual obligations amongst one another. Once a country has signed and ***ratified*** a convention, it then adopts national laws that are legally binding within that particular state to implement the obligations in the convention. After ratification, some countries allow for immediate incorporation into national law; others (such as the United States) have a two-step process, in which ratification is followed by implementing legislation.

States are able to *adapt* international commitments to the conditions of their local environment (even as they *adopt* principles that have an agreed upon meaning in the international community) in a fashion similar to the way federalized bodies like the European Union handle the localization of multilateral commitments, as "***subsidiarity.***"[4] The ramifications of the localization process—and potential conflicts between the demands of local cultures and international norms – will be considered later in this Brief

[1] Robertson 29; "25 Questions & Answers" 7.
[2] "United Nations Priority."
[3] As of July 21, 2009, 160 countries are parties to the agreement. The United States remains one country that has not ratified the convention, though it did sign the ICESCR in 1977.
[4] Carozza.

(see "Indigenous Rights" below).

The International Bill of Rights is so central to the purpose and operations of the United Nations that it has "become almost an extension of the UN Charter." The Universal Declaration, as well as its conventions and ***protocols***, is often referenced in debates held in the UN and in resolutions passed by the General Assembly and other UN bodies. As a result, many have come to believe that the International Bill of Rights, or at least many of the rights contained therein, have become part of ***customary international law***, or ***jus cogens*** (literally, "compelling law").[5]

Recognizing a law as *jus cogens* confers on it a special status that is meant to supersede all other forms of international law. No other treaties or international agreements, regardless of the will of individual states, can preempt or contradict *jus cogens* under any circumstances. In other words, "Unlike treaties, which only bind a country once it has accepted the treaty obligations, all countries in the world are bound, whatever their particular view may be. A country cannot repudiate international customary law, as it can a treaty obligation."[6]

In 2002, for example, the U.S. was able to withdraw voluntarily from the ***Anti-Ballistic Missile Treaty*** it had signed with Russia in 1972 without formal repercussions because this was merely a treaty between two nations.[7] It would be far more objectionable – many would argue impossible –for the U.S. to withdraw from the Convention on Torture, since *prohibition of torture* is generally accepted as *jus cogens.*

The very notion of *jus cogens* is a powerful challenge to the sovereignty of states, and therefore many states have resisted accepting its validity. On the other hand, some contend that "contemporary society is bound together by the acceptance of fundamental principles constituting the rule of law, and that international law is an inseparable concomitant of an international public order."[8]

In other words, *jus cogens* helps ensure a peaceful and stable world by providing an eternal, immutable standard against which all actions may be judged; if human rights are universally accepted and contribute to this purpose, perhaps they should be granted special recognition in this way. The reach of *jus cogens* remains a subject of debate, as does the open question of whether the UN's version of human rights merits such designation.

For more on treaties and customary law, see the "What Are the Sources of International Law?" section of the "International Law and Organizations" Issue Brief (http://www.globalization101.org/index.php?file=issue&pass1=subs&id=234).

[5] Bailey; "Human Rights Fundamentals;" "Jus Cogens." There is a technical difference between customary law and *jus cogens*, but that is beyond the scope of this discussion.
[6] Bailey.
[7] Marcus.
[8] O'Connell 244-5.

International Covenant on Civil and Political Rights

This section will cover some of the aspects in which the ICCPR differs or represents an evolution from the corresponding sections of the Universal Declaration, and will give some very brief examples. (The full text of the document can be found here: http://www.unhchr.ch/html/menu3/b/a_ccpr.htm.)

The preamble largely repeats the language of the Universal Declaration itself, repeating that the rights presented in the document are "equal and inalienable" (for more on inalienability, see box below on "Key Properties of Human Rights").

Article 1 inserts a right not contained in the Declaration, the right of "all peoples" to ***self-determination*** and to "determine their political status and freely pursue their economic, social and cultural development."

The people of East Timor provide one case in which the right to self-determination was successfully invoked. This small country, representing part of an island in the Pacific Ocean between Indonesia and Australia, has a checkered history of colonial occupation. The territory was under Portuguese control for hundreds of years until 1975. Its independence was short-lived as it was soon invaded by its larger neighbor Indonesia and brutally occupied until the late 1990s. In 1999, calls for self-determination from the residents of East Timor resulted in a UN-sponsored election. The vote was overwhelming for independence, but Indonesian authorities violently resisted.

It was not until 2002 that East Timor finally achieved full independence and became a member of the United Nations, a transition that was overseen and supported by the ***UN Transitional Administration in East Timor***.[1]

(For the impact of this on self-determination of minorities and indigenous peoples, see "Self-Determination" below).

Picture: United Nations Police in East Timor, Source: http://www.un.org/av/photo/

Article 4 specifies which rights in the ICCPR are ***non-derogable*** (see box on "Key Properties of Human Rights" below). These include the right to life and freedom from genocide (Article 6); freedom from torture (Article 7); freedom from slavery and forced labor (Article 8); universal recognition of all individuals as persons under the law (Article 16); and freedom of thought, conscience and religion (Article 18).[2]

Article 6 extends the protection of human life to a mass scale, explicitly prohibiting genocide (see the section on "Genocide" below). This clause also addresses the death penalty. While the ICCPR skirts the issue of the death penalty and does not protect individuals against legally imposed death penalties for "the most serious crimes," a subsequent protocol to the convention allowed countries to do so if they wished. This omission from the ICCPR reflects the fact that many industrial countries, including the United

[1] "International Covenant on Civil and Political Rights;" Smith, "East Timor."
[2] Also covered are the right not to be imprisoned solely for violation of a contract (Article 11) and a prohibition against *ex post facto* criminalization of any act (Article 15).

States, continue to allow the death penalty. According to Amnesty International, in 2007 alone, 1,252 people were executed in 24 countries. Leading states for the use of the death penalty include Iran and China.

Article 8 adds compulsory labor to the Declaration's prohibition of slavery; Article 20 covers wartime ***propaganda***, which was widely used by the Nazis in World War II, and crimes resulting from "national, racial or religious hatred" (what we would now consider "***hate crimes***"); Article 24 establishes the groundwork for special protections concerning the rights of children, which include freedom from discrimination and the right to have a nationality; and Article 27 begins to address the rights of minority cultures (see "Indigenous Rights" below).[3]

To date, 167 nations are parties to the ICCPR. It is worth mentioning that the United States, though it signed the convention in 1977, did not ratify it until 1992.[4] When the U.S. did ratify the agreement, it noted its reservations about the definition of torture in relation to its practice of legalized state execution and about the treatment of minors in its criminal justice system.[5]

Key Properties of Human Rights
Two properties of human rights merit special attention from a legal perspective.

The first is the concept of rights as "***inalienable***." Inalienable means that something cannot be transferred or assigned to another.[6] In practice, this means that you cannot cede your rights even if you wish to do so. One example where this is relevant involves forced labor and slavery. Imagine a family of six living in rural Thailand that is desperately poor. The family contains three boys and a girl, and the parents have difficulty providing for so many children. Seeing few other choices, the parents decide to sell their daughter for a fixed sum of money, and the girl agrees to go. She is then transported to the capital of Bangkok and set up in the sex trade, thereby incurring a large debt to her "employers." She is then forced to work as a prostitute for insignificant wages that barely allow her to survive, let alone start paying off her debt. Even if the girl and her family have voluntarily agreed to this form of bonded labor—essentially slavery —they are not permitted to do so according to international law.

The second is the concept of "***derogability***." Derogation is the act by which a law or right is eliminated by a subsequent law that "limits its scope or impairs its utility and force."[7] There may be certain circumstances in which the state feels it necessary to curtail certain individual rights for the greater good. Certain rights, such as the right to free expression, which is guaranteed in Article 19 of the ICCPR, are derogable. This right can be regulated to the extent that it can be demonstrated to serve vital public interests, such as public safety. In the U.S., for example, it is not permitted for a person to yell "Fire!" in a crowded theater when he or she knows that there is indeed no fire. This famous example was cited by U.S. Supreme Court Justice Oliver Wendell Holmes in the case Schenck v. United States (1919). The case involved the use of free speech in wartime and determined that free speech could be limited when "words are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent."[8]

Certain rights are designated as non-derogable, meaning they cannot be ignored under any

[3] "International Covenant on Civil and Political Rights."
[4] "International Covenant on Civil and Political Rights" United Nations Treaty Collection.
[5] "Declarations and Reservations."
[6] "Inalienable."
[7] "Derogation."
[8] "Schenck v. United States."

circumstances. Hitler made arguments that the elimination of certain "undesirable" elements of society, including Jews, homosexuals, and Gypsies, was necessary to safeguard the national security of Germany. He used this contention to assert the sovereignty of the state and commit genocide against those groups. The ICCPR makes it clear that certain rights, such as the right to life and freedom from genocide, are absolutely non-derogable. The limits of derogability are a subject of continuing debate and discussion, as in the case of torturing of terror suspects during wartime (see "Torture and Inhuman Treatment" below).

In a sense, inalienability and non-derogability are two sides of the same coin: certain rights cannot be given away, just as certain rights cannot be taken away. Such rights are completely secure and guaranteed for every human being.

To learn more about international law, please visit http://www.globalization101.org/issue/intlaw/.

The Extension of Human Rights beyond the International Bill of Rights

The reach of human rights extends far beyond the scope of the International Bill of Rights, thanks to a large number of rights-specific conventions. There are too many to cover in great detail, but a number will be discussed at greater length through the brief.

Some of the more important core international conventions dealing with human rights include the Convention on the Prevention and Punishment of the Crime of Genocide (1948, 1951);[1] the International Convention on the Elimination of All Forms of Racial Discrimination (1965, 1969); the Convention on the Elimination of All Forms of Discrimination Against Women (1979, 1981); the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (1984, 1987); the Convention on the Rights of the Child (1990); and the Rome Statute of the International Criminal Court (1998, 2002).

In additional, there have been a number of notable regional human rights agreements. These include the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950, 1953); the American Convention on Human Rights (1969, 1978); the African Charter on Human and Peoples' Rights (1982, 1986); and the Arab Charter on Human Rights (1994). These regional conventions have also been supplemented by a host of more rights-specific agreements addressing such topics as torture and disappearance of persons, rights of women and children, rights of indigenous peoples, and rights of the disabled among others.

For full texts, see the following links:
Convention on Genocide: http://www.unhchr.ch/html/menu3/b/p_genoci.htm
Convention on Racial Discrimination: http://www.unhchr.ch/html/menu3/b/d_icerd.htm
Convention on Discrimination Against Women: http://www.unhchr.ch/html/menu3/b/e1cedaw.htm
Convention Against Torture: http://www.unhchr.ch/html/menu3/b/h_cat39.htm
Convention on the Rights of the Child: http://www.unhchr.ch/html/menu3/b/k2crc.htm
European Convention for the Protection of Human Rights and Fundamental Freedoms: http://conventions.coe.int/treaty/en/Treaties/Html/005.htm
American Convention on Human Rights: http://www.cidh.org/Basicos/basic3.htm
African Charter on Human and Peoples' Rights: http://www.achpr.org/english/_info/charter_en.html
Arab Charter on Human Rights: http://www1.umn.edu/humanrts/instree/arabcharter.html

[1] All dates refer to (a) date of adoption and (b) date of entry into force.

Monitoring and Enforcement

A variety of agencies in both the public sector and civil society have sprung up over the last sixty years to ensure that the human rights protected by international agreements are properly implemented and enforced. These range from the various arms of the United Nations (see "UN Architecture" below) to the U.S. State Department's Bureau of Democracy, Bureau of Human Rights and Bureau of Labor to large transnational NGOs such as Amnesty International and Human Rights Watch (see "The Rise of Non-Governmental Organizations (NGOs) and Global Civil Society" below).

In general, it is assumed that states will (a) either prosecute offenders who commit human rights violations within their territory themselves, or (b) promptly ***extradite*** suspects to the state that has primary ***jurisdiction*** over the case for prosecution. Even within the international human rights regime, deference is still given to states out of respect for their sovereignty.[1]

International authorities, such as the United Nations or the recently created ***International Criminal Court (ICC)*** (see "The International Criminal Court" below), generally intervene only in cases in which the state with jurisdiction cannot or refuses to prosecute.[2] As a principle, "Coercive international enforcement is extraordinarily contentious and without much ***legal precedent.***"[3]

For more on enforcement of international law and the importance of state sovereignty, see the "How Is International Law Enforced?" and "The Issue of Sovereignty" sections of the "International Law and Organizations" Issue Brief (http://www.globalization101.org/issue_sub/intlaw/intlawInternationalLaw/enforcement_international_law; and http://www.globalization101.org/issue_sub/intlaw/issuesovereignty/).

[1] Marks and Clapham 231.
[2] ibid.
[3] Donnelly 104.

UN Architecture

A complex architecture has arisen in the United Nations to deal with human rights issues. Some parts of this architecture were established by the UN Charter, such as the ***Commission on Human Rights***, which was recently replaced by the ***Human Rights Council***. The ***Human Rights Committee***, the ***Economic and Social Council (ECOSOC)*** and General Assembly also have significant responsibilities related to human rights.

Other agencies within the UN are charged with monitoring implementation of the core human rights treaties (described in the previous section), including the Committee on Economic, Social and Cultural Rights; the Committee on the Elimination of Racial Discrimination; the Committee on the Elimination of Discrimination Against Women; the Committee Against Torture; the Committee on the Rights of the Child; and the Committee on Migrant Workers.[1]

In 1993, the ***Office of the High Commissioner for Human Rights (OHCHR)*** was created to oversee and coordinate the activities of all the UN agencies that work on human rights. The High Commissioner serves as an Under-Secretary General of the UN, directly under the ***Secretary General***, and is thus a very high-ranking official. The current occupant of the post is Navanethem (Navi) Pillay of South Africa (as of September 1, 2008).[2]

The UN's reach also extends to a number of ***international criminal tribunals*** that deal with the prosecution of genocide, ***crimes against humanity***, ***war crimes*** and related offenses. These include the ***International Criminal Court*** and the more locally oriented ***International Criminal Tribunals for Former Yugoslavia and Rwanda*** (see "Peacekeeping in Bosnia" and the box "Rwandan Genocide: Hutu vs. Tutsi" below).

For more on the architecture of the UN, see the "United Nations System" section of the "International Law and Organizations" Issue Brief (http://www.globalization101.org/issue_sub/intlaw/intOrganization/UN).

What is the Difference Between the Commission on Human Rights, the Human Rights Council, and the Human Rights Committee?

These three UN bodies all have similar titles but distinct functions:

The ***Human Rights Committee*** was established to monitor compliance of the ICCPR in states that are party to the agreement (have ratified and adopted the ICCPR in their domestic law). It consists of 18 "independent experts who are persons of high moral character and recognized competence in the field of human rights." Participating governments are required to file reports every five years that detail the state of civil and political rights in their countries, and the Committee meets three times a year to review these reports and issue recommendations based on their findings to the UN General Assembly.[3]

The ***Commission on Human Rights*** was established by the UN Charter in 1946 with the idea that it would consist of representatives from various UN member states. Over the next fifty years, it was instrumental in bringing attention to human rights violations around the world. Over time, however, membership of the Commission came to be viewed as a "mere commodity," something to be negotiated over within regional blocks—each of which had a fixed number of representatives—in exchange for

[1] "Introduction to the Human Rights Committee."
[2] Sanchez.
[3] "Introduction to the Human Rights Committee."

influence.

According to Mexico's ambassador to the UN, Enrique Berruga, "*A spot on the whaling commission would be traded for one on human rights as if countries were swapping 'a bag of peanuts for a Rolls Royce*.'"[4] In the 1990s and 2000s, notorious human rights violators, such as Cuba, China, Sudan, Zimbabwe, and Libya, had secured spots on the Commission, and used their positions to block UN action against their own abusive practices.[5]

In 2006, then-UN Secretary General Kofi Annan spearheaded an effort to replace the Commission with a new ***Human Rights Council***, which would have stricter scrutiny over which countries attained membership. Unfortunately, the first year of the Council was not promising, leading the *Washington Post* editorial page to call it "far *worse* than its predecessor" and "a travesty."

Human rights advocates have pushed for action on pressing human rights violations in Darfur (Sudan) and Uzbekistan, among other places. But the Council—which still includes offenders such as China, Cuba, Sri Lanka, and Saudi Arabia—has refused to act, instead focusing on Israeli abuses in Lebanon. Some blame the disproportionate influence of the Organization of the Islamic Conference for this failure.[6]

For its part, the United States did not immediately seek membership on the new Council in 2006, arguing that membership criteria are still not sufficient to enable it to be effective. This was remarkable because it was the first time the U.S. had chosen not to participate in the UN's main human rights body since its inception in 1946 (the U.S. was voted off for a year in 2001). However, U.S President Barack Obama reversed course, and in 2009 joined the 47 member council. Upon joining, U.S. diplomats "*pledged to work constructively with other council members on behalf of the word's persecuted and abused people*."[7]

[4] Sanchez.
[5] ibid.
[6] "Reform Run Amok."
[7] "US Takes Seat on UN Human Rights Council."

The Rise of Non-Governmental Organizations (NGOs) and Global Civil Society

One of the most significant areas in which the continuing elaboration and widening scope of human rights has intersected with increasing levels of globalization is the realm of global civil society. ***Non-governmental organizations*** perform important work in a variety of fields, but monitoring and advocacy of human rights protection is one of the more important functions they perform.

For a sense of the scope of this field, see this list compiled by the University of Minnesota's Human Rights Library: http://www1.umn.edu/humanrts/links/ngolinks.html.

These organizations are not affiliated with any government, but they often deal with the same public policy issues that governments do, only from a different angle. In one sense, they help to bridge the gap between individuals and the larger political, economic and social forces to which they are subject.

Three Global Human Rights NGOs in Focus
Three of the oldest, largest, and most effective human rights NGOs are the following:

The International Committee of the Red Cross (ICRC)

The ***International Committee of the Red Cross*** has been operation since 1863, and its own history is intertwined with that of humanitarian law from its earliest conception. A young banker from Geneva named Henry Dunant was on his way to meet Emperor Napoleon III of France when he passed through the town of Solferino, in northern Italy, and observed the deplorable conditions that the wounded soldiers from the ongoing War of Italian Unification were suffering from. He came up with the idea that there should be "some international principle, sanctioned by a convention and inviolate in character, which, once agreed upon and ratified, might constitute the basis for societies for the relief of the wounded in the different European countries."[1]

Dunant founded the ICRC, and his writings spurred a flurry of international activity that eventually produced the first ***Geneva Convention***, which is essentially the first document of international humanitarian law. Subsequent Geneva Conventions—there are four in total—would create an internationally accepted framework for the treatment of soldiers in war, whether as active in the field, as enemy prisoners, or as a wounded soldier (see "The Geneva Conventions" below). These were the first treaties to recognize the notion of universal rights that applied to all individuals regardless of nationality.[2]

The mission of the ICRC is to monitor the enforcement of the Geneva Conventions, by "visiting prisoners, organizing relief operations, re-uniting separated families and similar humanitarian conflicts." While the Geneva Conventions only apply to international conflicts, the ICRC performs similar services in areas of internal conflict as well, in a manner consistent with the spirit of the Conventions.[3]

It has been active in nearly every major conflict of the twentieth century, including both World Wars. The ICRC plays a unique and vital role in international affairs as a respected and objective mediator. It operates in ways and in places where national governments would be unwelcome or ineffective. In 2007,

[1] "From the Battle of Solferino;" "Henry Dunant."
[2] "From the Battle of Solferino;" "What Are the Origins."
[3] "ICRC's Mandate and Mission."

for example, the ICRC interceded on behalf of prisoners of the Revolutionary Armed Forces (FARC) of Colombia and secured their release.[4]

It also spawned a sister organization, the ***International Federation of Red Cross and Red Crescent Societies***, in 1919 to promote humanitarian values on national level. National Red Cross societies advance these values by helping with disaster preparation, providing emergency relief assistance, and by working to improve health and community care.

Today, the Federation is active in 185 countries, including many parts of the Muslim world, through its Red Crescent societies.[5]

Amnesty International (AI) and Human Rights Watch (HRW)

Amnesty International and ***Human Rights Watch*** are two of the best known and well-regarded NGOs dealing with human rights. Both organizations perform a variety of activities focused on documenting and publicizing human rights violations around the world, as well as helping to coordinate grassroots community activism.

Amnesty International, founded in 1961, devotes much of its work to the protection of the freedoms of conscience and expression and freedom from discrimination. It has also has given major attention to prisoners of conscience, torture and the death penalty.

It sends experts into the field in more than 80 countries to "talk with victims, observe trials and interview local officials and human rights activists."

In addition, its staff monitors local media reports, conduct research, issue findings in a variety of forms, and organize advocacy campaigns through letter-writing campaigns, public demonstrations, and government lobbying to end human rights abuses.[6]

Amnesty International was also a recipient of the 1977 Nobel Peace Prize.

Since 1978, Human Rights Watch, the largest human rights organization based in the U.S., has strove to fulfill a similar mission. HRW conducts investigations into alleged human rights violations, publishes its findings to "embarrass abusive governments in the eyes of their citizens and the world…then meets with government officials to urge changes in policy and practice."

Although HRW's staff, comprises of 150 professionals, academics, and experts, its strength lies in its partnerships with local human rights groups, further extending its reach to the ground level and across the globe.[7]

In recent years, HRW has waged campaigns to eliminate the use of child soldiers in countries such as Burma, Burundi, Lebanon, Nepal, Sierra Leone, Sri Lanka, Sudan, and Uganda; to ban the use of landmines around the world (156 countries are party to the 1997 Mine Ban Treaty; in recent activity since 2005, Algeria, the Democratic Republic of the Congo, Guinea-Bissau, and Nigeria have decommissioned

[4] "Colombia."
[5] "Who We Are."
[6] "About AI."
[7] "About HRW."

their entire arsenals of antipersonnel mines); and to bring former Chilean dictator Augusto Pinochet to justice, among many others (see "Child Soldiers" below).[8]

In addition to the major international NGOs, there are many thousands of local NGOs dedicated to serving the needs of particular communities. Taken together, this massive network of individuals, who have empowered themselves to ensure the protection of human rights for all mankind, constitute a new layer of global civil society that largely didn't exist even forty years ago. The story of this civil society is increasingly becoming the human face of international activism in the twenty-first century.

For more on non-governmental organizations, see the "Non-Governmental Organizations" section of the "International Law and Organizations" Issue Brief (http://www.globalization101.org/issue_sub/intlaw/variousActorsInternationalLaw/NGOs).

[8] "States Parties" International Campaign to Ban Landmines.

Perspectives on Rights

So far, this Brief has discussed the idea of "human rights" without giving consideration to what a "right" actually means or entails. The purpose of the following section will be to present a few frameworks within which rights can be understood. Disagreements about the nature of rights can often translate into disputes about which rights are most important or whether human rights are even necessary at all.

Human Rights vs. Natural Rights

The modern conception of rights can be traced back to ***Enlightenment*** political philosophy and the movement, primarily in England, France, and the United States, to establish limited forms of representative government that would respect the freedom of individual citizens.

John Locke, in his *Second Treatise on Government* (1690), described a "state of nature" prior to the creation of society in which individuals fended for themselves and looked after their own interests. In this state, each person possessed a set of ***natural rights***, including the rights to life, liberty and property. According to Locke, when individuals came together in social groups, the main purpose of their union was to secure these rights more effectively. Consequently, they ceded to the governments they established "only the right to enforce these natural rights and not the rights themselves."[1]

Locke's philosophy, known as ***classical liberalism***, helped foster a new way of thinking about individuals, governments, and the rights that link the two. Previously, heads of state claimed to rule by ***divine right***, tracing their authority through genealogy to the ultimate source to some divine being. This was as true for Roman emperors as it was Chinese and Japanese emperors. The theory of divine right was most forcefully asserted during the Renaissance by monarchs across Europe, most notoriously James I of England (1566-1625) and Louis XIV of France (1638-1715).

Locke's principles were adopted by the founding fathers of the United States in the ***Declaration of Independence (1776)***, which stated:

> We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. —That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed….[2]

The echoes of Locke are unmistakable in the language of the Declaration of Independence. Similarly, the language used both by Locke and by the Founding Fathers clearly foreshadows the creation of a document like the Universal Declaration. These principles were further expounded and enshrined in the ***U.S. Constitution (1787)*** and ***Bill of Rights (1789)***.

The English attained their own Bill of Rights following the Glorious Revolution of 1688, just as the French did with the Declaration of the Rights of Man and the Citizen that was drafted after the French Revolution

[1] "Human Rights: Historical Development."
[2] "Declaration of Independence."

in 1789. The Declaration of the Rights of Man and the Citizen famously reformulated Locke's three fundamental freedoms—life, liberty and property—as liberty, equality and ***fraternity***. The differences between the Anglo-American and continental legal, political and social traditions may be neatly summed up by this seemingly minor difference in language (see subsection on "Three Generations of Rights" below).

The doctrine of natural rights, which deals with civil and political rights exclusively, established the rights of citizenry in a nationalized context. The innovation of human rights in the twentieth century extended the idea of individual rights to include all human beings, regardless of citizenship or state affiliation. Human rights helped reconstitute individual identity and freedom as something transcending national borders. As the atrocities of the World Wars made clear, there were times when the state became the citizen's greatest enemy and outside protection was his or her best and only hope.

Negative vs. Positive Rights

The division in the International Bill of Rights between the two Covenants, which cover civil and political rights separately from economic, social, and cultural rights, hints at a more fundamental difference between these two sets of rights and raises questions about the nature of rights themselves.

The first set is essentially a group of negative *prohibitions*, a list of ways in which individual liberty cannot be restricted or impeded; the second set lays out a group of positive *prescriptions* as to what actions should and must be taken to allow for the free exercise of that individual liberty.

In a famous lecture delivered at Oxford University in 1958, titled ***"Two Concepts of Liberty,"*** the political philosopher Isaiah Berlin clarified this distinction, which he framed in terms of positive and negative liberty.[3] If negative liberty is concerned with the freedom to pursue one's interests according to one's own free will and without "interference from external bodies," then positive liberty takes up the "degree to which individuals or groups" are able to "act autonomously" in the first place. In other words, what are the conditions under which individuals shape their understandings of their own free will?[4] What gives individuals a positive idea about how they should act, rather than negative limitations on how they may not act?

Isaiah Berlin
http://www.fundacionbases.org/cms/images/stories/i_berlin.jpg

Civil and political rights are concerned with negative liberty, while economic, social and cultural rights are grounded in positive liberty; hence the need for two Conventions. There was some disagreement about the relative importance of these two conceptions during the debates over the Universal Declaration and its Conventions. While the U.S. had adopted a welfare state model under the ***New Deal*** reforms of President Franklin Delano Roosevelt, economic and social rights were not part of the American political tradition in the same way they had been for many continental European governments (or the increasingly powerful Soviet Union, for that matter).

[3] It is commonly accepted that liberty, freedom, and rights are, to a large extent, interchangeable.
[4] "Positive and Negative Liberty."

The brewing ***Cold War*** between the U.S. and the Soviet Union eventually spilled over into the arena of human rights.[5] The Soviets gave a high place to the collective over the individual. This meant priority for positive liberty, which they believed empowered the state to take sweeping action to provide for the well-being and "self-realization" of its citizens, sometimes at the expense of individual civil and political rights, such as the right to political participation.[6]

Many in the West, however, viewed the Soviet position skeptically as a veiled attempt to return to the excesses of authoritarianism that the United Nations system of governance was designed to prevent. Great injustices have often been committed for the benefit of the collective good. Berlin and others were wary of "the way in which the apparently noble ideal of freedom as self-mastery or self-realization had been twisted and distorted by the totalitarian dictators of the twentieth century."[7]

In the end, the Soviet bloc abstained from approving the Universal Declaration. An understanding on human rights between the Soviet Union and the West was finally reached in the ***Helsinki Accords*** of 1975, though disputes about the limitations of government authority in cracking down on human rights continued to linger until the Soviet Union's collapse in 1991.[8]

Ultimately, it remains an open question whether the positive and negative forms of liberty are two aspects of a common conception of rights or two distinct types of rights that are closely related without being identical.

To read Isaiah Berlin's lecture, see: http://www.hss.bond.edu.au/phil12-205/Berlin%20Liberty2.pdf.

[5] Henkin.
[6] "Positive and Negative Liberty."
[7] ibid.
[8] "Helsinki Accords."

Rights vs. Aspirations vs. Duties

It is worth examining the common conception in the Anglo-American tradition that rights are solely a form of personal entitlement. Many in Asia and the former Soviet Union, for example, argue that rights are equally an entitlement and a duty. Individuals have a reciprocal obligation to *respect* the rights of others if they *expect* to have their own rights respected in turn.

Take, for example, the right to religious expression. This right ensures that members of religious minorities are protected from interference in the exercise of their religious freedom; at the same time, it means that they must display the same tolerance when it comes to other religious practices that may differ from their own. In taking advantage of one's own freedoms, one accepts an obligation to respect the freedoms of others. Only in this way can the rights of all be protected and a measure of social harmony be achieved.

Systems of social organization that give equal priority to both the community and the individual tend to emphasize the dual nature of rights as both freedoms and duties. Society as a whole can only thrive when everyone fulfills his or her obligations to their fellow citizens. Under this view, the ability to exercise rights must first be earned by respecting them in others.[1] This principle is enshrined in Article 29 of the Universal Declaration, which states, in its first clause, that "Everyone has duties to the community in which alone the free and full development of his personality is possible."[2]

In addition to being both privileges and duties, some "rights" are more properly understood as aspirations, that is, expressions of a common goal rather than strictly delimited, legally enforceable, rights. The rights contained in the ICESCR—including employment rights (Articles 6-8); ***social security*** (Article 9); family rights, including those of mothers and children (Article 10); food and health (Articles 11-12); education (Articles 13-14), and rights of cultural life (Article 15)—are aspirations regarding the ideal standard of living (economic, social and cultural) that every society should strive to achieve.[3]

To take one example: it would be difficult to hold a country accountable for providing adequately for the health of all its citizens; rather, in signing a convention like the ICESCR, states pledge to work to realize such goals over time and to the best of their abilities. Articles 2 and 4 of the ICESCR specify the aspirational nature of the obligation states undertake in ratifying this particular convention. It is unreasonable to expect governments to meet these standards immediately because such obligations are so complex.

Instead, provision is made for the ***progressive realization*** of aspirational rights: "Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures."[4] Thus, governments are expected to keep these goals in mind and to make consistent, gradual progress in turning them into reality.

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[1] Henkin.
[2] ibid.; "Universal Declaration."
[3] "International Covenant on Economic, Social and Cultural Rights."
[4] ibid.

Three Generations of Rights

A final framework worth mentioning was developed by Karel Vasak, a French jurist, in his 1977 article, "Human Rights: A Thirty-Year Struggle: The Sustained Efforts to Give Force of Law to the Universal Declaration of Human Rights."[1]

Vasak proposed that human rights should be viewed in three levels, corresponding to the values of the French Revolution: liberty, equality and ***fraternity***. As countries advance both economically and politically, they graduate from focusing on first generation civil and political rights (outlined in the ICCPR and equivalent to the ideal of liberty), to second generation economic, social and cultural rights (outlined in the ICESCR and equivalent to the ideal of equality), and then to third generation rights of ***solidarity*** (not a separate category in the International Bill of Rights but equivalent to the ideal of fraternity).[2]

Solidarity rights are the most advanced and hard to define. These rights engage directly with the problems faced by populations in the age of globalization and include the rights to culture (especially for indigenous peoples), development, and environmental protection. While first and second generation rights are addressed at a national level – even though they apply to all individuals – third generation rights are truly transnational. They address issues of global concern: preservation of the diversity of the world's cultural heritage, environmental issues that affect multiple nations such as climate change, and global development in an era dominated by international trade.

The current initiatives embodied in the World Social Forum and its regional counterparts are good examples of this move towards global rights. These forums bring together civil society groups fighting for a large variety of causes (such as those having to do with the environment, racism, feminism, religion, disarmament, economic development, etc.). This represents a new perspective on globalization where the global community comes together to work out their problems outside of national borders and governments.

It will be useful to keep the idea of ***three generations of rights*** in mind as you read the rest of this Brief. The three generations framework is a little like the idea of the ***development ladder*** that economist Jeffrey Sachs has described: as countries develop (economically, socially and politically) and climb from rung to rung, they mature in terms of the types of rights they are working to guarantee.

The most basic societies begin with the most basic conception of rights, the negative civil and political rights that limit the legitimate scope of government and establish fundamental freedoms that enable individual expression. With these rights assured, citizens and governments together can work to implement a social system that ensures a decent standard of living for all of a nation's people. Once this has been achieved, or at least substantial progress made, then more complex issues that affect long-term growth and development can be tackled.

A Critical Approach to the Three Generations Framework

Although the three generations framework is a valuable conceptual tool for thinking about rights, it is worth questioning some of its assumptions. Does the notion of a progression of rights and the metaphor of age it is based on make sense? Do second generation rights create the background conditions necessary for the exercise of first generation rights, as certain sections of the International Bill of Rights

[1] Vasak.
[2] "Human Rights: Defining Human Rights."

suggest, or is it the other way around? Should second and third generation rights be viewed as simultaneous? Does one generation take precedence over another, or are all equally important? Should second and third generation rights even be considered rights, or are they something fundamentally different?

The three generations framework contains within it room for many of the key debates about the nature of rights. It also encourages us to take a critical approach in challenging our own assumptions about rights as we begin to think about some of the real-world problems involved in the application of human rights in the sections ahead.

Human Rights and Violence

Human rights, at the most basic level, seek to protect an individual's right to life. Such protections range from the basic freedom from physical harm to highly complex forms of welfare assurance that encompass health, education, and the environment.

The very idea of human rights, as opposed to natural rights, emerged as a response to historical events that threatened the very right to exist for millions of vulnerable people. The horrors of the ***Holocaust*** led the people of the world to reassert the value of every human life and to create the international legal framework that ensured such atrocities would never occur again.

The practice of ***multilateral*** cooperation in matters involving violence had been well-established since the nineteenth century. A series of traditions and international agreements evolved to address the treatment of prisoners and soldiers on the battlefield. What was new about the genocides of the twentieth century was that they were perpetrated against noncombatant civilians who were largely defenseless.

Often, these extreme acts of violence were committed by governments against the very citizens whose rights those governments were meant to safeguard. International values and standards about the humane treatment of people in times of war needed to be extended to apply universally in all circumstances. It was clear that the rights of citizenship and strictly national enforcement mechanisms were no longer sufficient.

At first, the set of issues clustering around the topic of human rights and violence might not seem as controversial as some of the other issues this Brief will discuss later on. After all, who would object to the notion that governments and private citizens alike should not be allowed to kill or torture people? While such principles may seem to be clear cut in theory, they can become far more complicated when brought to bear on real-world situations. We will now turn to some of these debates.

Torture and Inhuman Treatment

International prohibitions against torture and inhuman treatment are some of the oldest humanitarian laws in existence. Even with a long and distinguished history of international agreements on this subject, torture remains a problem in the majority of the world. Amnesty International estimates that torture occurred in 140 countries between the years of 1997 and 2001.[1] Over the past several years, torture has become an increasingly contentious issue within the United States. Questions concerning what does and does not constitute torture have arisen to the forefront of the American political scene. New questions concerning what constitutes torture, whether torture is an appropriate interrogation tool and when various forms of interrogation techniques can and cannot be legally used has captured the attention of the world at large.

[1] "Study Guides: Torture."

The Geneva Conventions

The first of the Geneva Conventions were negotiated and accepted in the nineteenth century to establish basic standards for the humane conduct of war. The first Geneva Convention, adopted in 1864 and in concert with the founding of the International Committee for the Red Cross, "provided for the neutrality of ambulance and military hospitals, the non-belligerent status of persons who aid the wounded, and sick soldiers of any nationality, the return of prisoners to their country if they are incapable of serving, and the adoption of a white flag with a red cross as the symbol of neutrality."[2]

Subsequent Geneva Conventions drew upon The Hague Conventions that addressed the use of inhumane forms of weaponry, such as gases that cause death by ***asphyxiation*** and expanding bullets in 1899, and poison gas and certain methods of biological warfare in 1925 following World War I.[3]

The end of the Second World War led to the updating of the four primary conventions, which deal with the wounded and sick on land (Convention I); the wounded, sick, and shipwrecked on sea (Convention II); treatment of prisoners of war (Convention III); and protection of civilians in wartime (Convention IV). An additional protocol that entered into force in 1977 brought civil conflicts within the scope of the Geneva Conventions.[4]

For the purposes of this Brief, the important thing to note about the Geneva Conventions is the strict prohibition against torture. Convention I outlaws torture against those who are not actively participating in a military conflict, including soldiers who have surrendered the sick and the wounded.[5] Convention II reiterates these protections with regard to those involved in maritime warfare.[6] Convention III deals with prisoners of war, and bans physical and mental torture for the purposes of information collection or punishment.[7] Convention IV makes clear that civilians are protected as well as soldiers from inhumane treatment and torture.[8]

Taken together, these Conventions established that certain activities or forms of treatment violated fundamental notions of human dignity, even in the most extreme of situations: armed conflict. Nations accepted the Conventions and the restrictions they imposed because these ensured their own people would be humanely treated by the enemy. Further international agreements would extend the reach of protection of human dignity beyond the battlefield.

For the full texts of the Geneva Conventions, see: http://www.icrc.org/ihl.nsf/WebCONVFULL!OpenView

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[2] "Politics and Economy: The Geneva Conventions."
[3] "Brief History."
[4] ibid.; "Politics and Economy: The Geneva Conventions."
[5] "Convention (I)."
[6] "Convention (II)."
[7] "Convention (III)."
[8] "Convention (IV)."

United Nations Efforts To Secure Freedom from Torture

A dedicated ***Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*** was completed in 1984 and entered into force in 1987.[1] Article 1 of the Convention against Torture defines torture, inhuman or degrading treatment in the following way:

> An act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent of or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.[2]

This definition is extremely broad, and the nature and limits of behavior covered by this language has been much debated. The key properties of torture, however, are clearly presented: (a) the infliction of severe pain or suffering, (b) the presence of an intention to torture, (c) a purpose to extract information or a confession or to punish, and (d) some form of authorization by officials in power.

The codification of human rights within the United Nations is constantly evolving. The Convention established a UN Committee on Torture and appointed a ***Special Rapporteur*** on Torture to coordinate the UN's efforts and to investigate individual complaints through country visits and annual reports.[3] It should be noted that torture is also discussed in the International Bill of Rights in Article 5 of the Universal Declaration of Human Rights (UDHR) and Article 7 of the International Covenant on Civil and Political Rights (ICCPR).

The ban on torture encompasses four separate human rights. The first is the right to be protected from torture, whether carried out by states or private individuals, by all legal, administrative and judicial means available (Convention Against Torture, Articles 2 and 4).[4]

The second is the right to have those accused of torture prosecuted, wherever they may be (Convention Against Torture 5, 6, and 8). This is a good example of the blurred line between a right and duty, because the *right* to prosecution enjoyed by *individuals* also imposes an *obligation* on all *states* either to extradite suspects to the proper jurisdiction or to prosecute them themselves.[5]

The third is the right of a person to not "be expelled, returned or extradited to another state" if there is suspicion that that person might be subject to torture, inhuman or degrading treatment (Convention Against Torture, Article 3). This principle of ***non-refoulement*** will be examined more closely later in this section (see "Non-Refoulement: Extraordinary Renditions and Outsourcing Torture" below).[6]

The fourth is the "right of victims to obtain redress, fair compensation, including rehabilitation and the right of victims to make a complaint, to have it impartially investigated, and to be protected from retaliation for

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[1] "Convention Against Torture."
[2] ibid.
[3] "Special Rapporteur."
[4] "Study Guides: Torture."
[5] ibid.
[6] ibid.

making complaints." Forms of compensation can include financial awards, medical care, and other measures to restore a victim's "dignity and reputation" in both the private and public spheres.[7]

[7] ibid.

Non-Derogability and State Sanctions: Unlawful Combatants?

Article 4 of the ICCPR designated certain rights as non-derogable, and torture was included in this group, meaning that states are not permitted to restrict this right for any purpose. The Convention against Torture reiterates this in Article 1 when it dismisses "lawful sanction" as a justification for torture and in Article 2 where it states, "No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture."[1]

U.S. violations of this provision came to light in dramatic fashion in 2004 when pictures emerged of prisoners being tortured at the U.S.-operated detention facility of ***Abu Ghraib*** in Iraq. Many blamed the shocking developments on the Bush administration's post-September 11th reinterpretation of the Geneva Conventions, which essentially held that terrorist enemies of the United States should not be protected under international law because of their status as "***unlawful combatants***" in the global War on Terror.[2] Similar accusations against the Bush administration arose in response to the questioning and treatment of suspected terrorists held at the Guantanamo Bay detention center.

Part of the foundation for this argument rests on the question of whether suspected terrorists associated with al-Qaeda or operating in Iraq merited the status of "***lawful combatant***." Lawful combatants are those who "at a minimum conduct their operations in accordance with the laws of war."[3] The laws of war have been internationally established by tradition and by international agreements such as the Geneva Conventions and the ***Hague Conventions*** of 1907.[4] Individuals engaged in conflict who adhere to the laws of war must be treated as prisoners-of-war and enjoy the rights afforded by the Geneva Conventions. It was argued that terrorists, "by repudiating the most basic requirements of the laws of war – first and foremost the prohibition on deliberately attacking civilians…put themselves beyond Geneva's protections."[5]

The origins of this policy go back to 2002 when lawyers in the Justice Department and Office of White House Counsel argued that the Geneva Conventions could be disregarded to protect the United States from imminent terrorist attacks based on the authority of the president as commander-in-chief of the armed forces.[6]

Prisoners affiliated with the al-Qaeda terror network and Taliban of Afghanistan had been transferred to the U.S. military base at ***Guantanamo Bay***, Cuba – a "legal twilight zone" viewed by some administration officials as "the legal equivalent of outer space" – for interrogation by ***Central Intelligence Agency (CIA)*** operatives and U.S. military intelligence personnel. It was hoped these prisoners could be persuaded to provide information about future terrorist threats to the United States.[7] In the words of then-White House Counsel Alberto Gonzales,

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[1] "Convention Against Torture."
[2] Barry et al.
[3] Rivkin Jr. and Casey.
[4] "The Hague Convention, 1899-1954."
[5] Rivkin Jr. and Casey.
[6] Priest and Smith.
[7] Barry et al.

Picture: CIA Headquarters, Virginia

> The war on terrorism is a new kind of war…The nature of the new war places a —high premium on other factors, such as the ability to quickly obtain information from captured terrorists and their sponsors in order to avoid further atrocities against American civilians…In my judgment, this new paradigm renders obsolete Geneva's strict limitations on questioning of enemy prisoners and renders quaint some of its provisions.[8]

New guidelines were drawn up at the Department of Justice that detailed the techniques interrogators were permitted to use to procure information under certain limited circumstances. Some of these techniques could be characterized as torture. They could only be considered acceptable under a very narrow view of what constitutes torture under international law, a view that was opposed by many of the military's most experienced lawyers, who felt it to be a violation of a fifty-year tradition of adherence to the Geneva Conventions. A "72-point matrix for stress and duress" instructed officials in which techniques could be used in which situations.[9]

According to a Justice Department memo, as long as techniques were not "equivalent in intensity to the pain accompanying serious physical injury, such as organ failure, impairment of bodily function, or even death" and did not result in "significant psychological harm of significant duration, e.g. lasting for months or even years," many questionable practices could be used. Justice Department officials suggested that soldiers engaging in these practices might be able to claim they were carrying out "superior orders" to avoid prosecution.[10]

Senior military officials sharply criticized the Bush administration's position, arguing, "There is a calculated effort to create an atmosphere of legal ambiguity about how the conventions should be interpreted and applied." This ambiguity allowed techniques that the Red Cross has designated "tantamount to torture" to become entrenched over the course of several years and eventually spread to the now infamous prison of Abu Ghraib.[11]

Advocates of human rights were appalled when the history of the Bush administration's so-called "torture memos" were revealed. The "superior orders" defense proposed by the Justice Department memos was uncomfortably similar to the "I was just obeying orders" plea offered by Nazi war criminals at the

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[8] Barry et al.
[9] Priest and Smith; Barry et al.
[10] Priest and Smith.
[11] Barry et al.

Nuremberg trials after World War II. The suggested justifications for torture expressly contradict the principles stated in Article 1 of the Convention Against Torture, which the United States ratified in 1994.[12]

Though the Bush administration retreated from the policies of 2002-2004 regarding torture and the Geneva Conventions, the arguments made in the "torture memos" raise important questions about the nature of rights in an increasingly globalized world. President Obama, upon taking office in January of 2009, signed an executive order to close Guantanamo Bay. Obama said, "he was issuing the order to close the facility in order to 'restore the standards of due process and the core constitutional values that have made this country great even in the midst of war, even in dealing with terrorism.'"[13] Unfortunately, more than two years later, the controversial prison is still open and Obama's ban on holding new trials there has been reversed.[14]

Do changing conditions of international security, such as the renewed threat of global terrorism, mean that we should change our conception of the limits of human rights? Is the current framework, which was developed to apply to and be administered by the nation-states of the twentieth century, still appropriate for the twenty-first century? Should terrorists not affiliated with any state be classified as "unlawful combatants?" Should torture be a completely non-derogable right, or should exceptions be made? If so, what should the scope of these exceptions be? The debate on these questions will continue for many years to come.

[12] "Status of Ratification of the Convention Against Torture."
[13] Henry et al.
[14] "Barack Obama Restarts Guantánamo Trials."

Non-Refoulement: Extraordinary Renditions and Outsourcing Torture

The principle of ***non-refoulement***, found in Article 3 of the Convention against Torture, states that governments must not only refrain from torturing individuals themselves but also refuse to turn people over to other countries in which there is a reasonable suspicion they will be tortured.

In the last few years, questions have been raised about whether certain practices employed by the American CIA violate this principle. One such practice, extraordinary renditions, entails "secretly spiriting away suspects to other countries without due process," often based on little evidence other than the suspicion of terrorist activity.[1]

In a ***rendition***, an individual can be snatched off a street corner, sometimes in broad daylight in their home town, by men in black hoods, loaded on a plane, and transported to a foreign country where he or she is jailed and interrogated for months at a time. The frequency of renditions by the CIA increased rapidly in the days and years following 9/11 as terrorist suspects and members of al-Qaeda were picked up and fed into a "global 'ghost' prison system."[2]

Some, such as then-CIA Director George Tenet, claimed the practice of renditions produced valuable information that "shattered terrorist cells and networks, thwarted terrorist plans, and in some cases even prevented attacks from occurring." Once the interrogations were complete, some prisoners were simply flown home and released, while others were brought to ***Guantanamo Bay***, which came to become a "'dumping ground' for CIA mistakes."[3] It was here that questionable tactics the CIA had used were adopted by military personnel and eventually made their way over to Iraq.[4]

Many argued that the network of secret CIA prisons, which stretched from Eastern Europe to the Middle East and Afghanistan, violated both the letter and the spirit of the Convention Against Torture. When the CIA did not interrogate prisoners in their own custody, they often turned them over to countries where there was legitimate reason to believe they would be tortured. U.S. government officials claim they no longer render prisoners to governments suspected of conducting torture, such as Syria, but "such scruples are being ignored when it comes to rendering suspects to allies like Egypt and Jordan, even though some officials do not believe 'assurances' from these nations that they were not mistreating prisoners."[5]

The Harrowing Story of Khaled El-Masri

Khaled El-Masri, a German citizen of Lebanese ancestry, was kidnapped by local authorities in December 2003 while on vacation in Macedonia because his name resembled that of one of the hijackers involved in the September 11 terrorist attacks. Macedonian police turned El-Masri over to the CIA after more than twenty days of captivity, and, handcuffed and blindfolded, he was transferred by secret flight to a CIA prison in Afghanistan. El-Masri was jailed in deplorable conditions without charge

[1] Hirsh et al.
[2] ibid.
[3] Priest.
[4] Hirsh et al.
[5] ibid.

and was denied any form of legal representation. He claims that he was physically abused by interrogators during this time and had no contact with his family.[6]

When the CIA realized that the suspicion surrounding El-Masri's terrorist ties was baseless, they informed him that he would be released but that "he would not receive any documents or papers confirming his ordeal." American officials "would never admit they had taken him prisoner" and warned him that no one would believe his story if he tried to go public. El-Masri was flown to Albania and then allowed to return to Germany, without any compensation or apology for what he had suffered.[7]

The ***American Civil Liberties Union (ACLU)*** filed a lawsuit against Tenet and the U.S. government in 2006, but the suit was dismissed by several courts on the grounds that "allowing the case to proceed would jeopardize state secrets." El-Masri is considering an appeal to the U.S. Supreme Court.[8] Ultimately, the Supreme Court refused to hear the case.[9] El-Masri's plight has become a symbolic cause for those who oppose the American policy of extraordinary renditions.

Youtube Clip: http://www.youtube.com/watch?v=mBZBA-uMreU

The practice of extraordinary renditions raises more questions about the limits of the protection against torture. Should renditions be permitted if they do produce valuable intelligence that saves lives? Should we believe government claims that interrogations under such conditions are effective? Are there any circumstances under which *refoulement* should be allowed? How troubling are the secrecy and lack of transparency surrounding this process? Is invoking the need to safeguard "state secrets" sufficient justification for reinterpreting a state's commitments under the International Bill of Rights and the Convention against Torture?

The guarantee of *non-refoulement* is a good example of the complexity of many human rights. It is both an individual right and a government duty, an obligation for governments not to torture and to take active steps to ensure that no one in their custody is ever put into a situation where torture is likely to occur. According to International Law, negligence or passing off responsibility to other governments is not a valid excuse when it comes to torture.

The Ticking-Time Bomb Scenario: Jack Bauer and the Influence of '24'

A suspected terrorist, visibly roughed up, sits in front of a television monitor, unable to move because bound to a chair. On the screen, he watches video footage of his family, held hostage by masked men with machine guns. His interrogator warns that if he does not reveal the location of a nuclear bomb threatening Los Angeles, his wife and children will be murdered. Still refusing to talk, he cries out in horror as one of his sons is shot and falls over. He cracks and finally divulges details about the bomb. As he is escorted from the room, the monitor flickers to reveal that the entire scene has been faked and the suspect's family remains unharmed. The interrogators got the information they wanted, but was their deception ethical? Did it constitute a form of psychological torture that is illegal under international law?[10]

The scene just described occurred not in real life but on the popular American television program '24.' Over the course of its six seasons, '24' has depicted practices that could be characterized as torture in

[6] Priest.
[7] ibid.
[8] "Extraordinary Rendition: El-Masri v. Tenet."
[9] Greenhouse.
[10] Mayer.

sixty-seven occasions, far more than any other show. Critics accuse the show of "glamorizing" torture; the show's producers argue that they do not condone torture, except in the extreme circumstances in which there stories are set.[11]

These circumstances are known as the "ticking time bomb" scenario: it is known that a real threat exists, there is a finite amount of time before the damage is done, and authorities have someone in their custody that they are confident has information that could save the day. Those who support the limited use of torture often point to precisely this scenario as the one case in which extreme measures would be justified in order to protect the public good.

But many are concerned about the increasing acceptance of torture in the popular media and its affects on the American psyche, and '24' is the poster boy for this post-September 11 phenomenon. Nonprofit groups such as Human Rights First and the Parents Television Council estimate that the number of times torture was shown on television jumped from 102 between 1996 and 2001 to 624 from 2002 to 2005.[12]

Military leaders are worried about the influence of '24' on its personnel. U.S. Army Brigadier General Patrick Finnegan, dean of the U.S. Military Academy at West Point, recently requested a meeting with the show's producers to ask them to stop or at least change the way they present torture. Finnegan and others lamented the "toxic effect" the show was having on some soldiers, including many serving in Iraq, for whom DVD's of television programs and movies "can sometimes substitute for or trump military training, and transmit a dark message to soldiers." The star of '24,' a character named Jack Bauer is viewed by fans as a patriotic hero, whose tactics, while gruesome, usually achieve the desired results.[13]

Experienced interrogators insist that torture is not an effective method of acquiring information. Joe Navarro, a Federal Bureau of Investigation official who has conducted thousands of interrogations, suggests that torturing suspected terrorists just does not work, "These are very determined people, and they won't turn just because you pull a fingernail out…They almost welcome torture…They expect it. They *want* to be martyred."[14] The group that met with the show's producers encouraged them, if they insisted on continuing to display torture, to at least make it realistic and acknowledge the risks involved. These include duration (it can take weeks or months to "break" a suspect), reliability (suspects often provide false information to escape further harm), and mortality (victims of torture may die in the process).[15]

Given these qualifications, it is natural to wonder how realistic the ticking time bomb scenario truly is. Would this highly specific set of conditions justify torture? Is the increased acceptance of such techniques in the media having a negative effect on viewers? Do these negative effects extend to military personnel engaged in real-life interrogation situations? Is this problem significant enough to demand the attention of government regulators?

[11] ibid.
[12] Miller.
[13] Mayer.
[14] ibid.
[15] Miller.

Genocide

If torture violates the right to protection from physical harm on the individual level, then ***genocide*** extends this principle to a mass scale. Genocide is defined by the ***Convention on the Prevention and Punishment of Genocide*** (1948, 1951) as:

> Any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:
>
> - Killing members of the group;
> - Causing serious bodily or mental harm to members of the 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.[1]

Genocides have occurred throughout human history, but they did not become a matter of pressing international concern until after World War II, when the full details of the Holocaust were revealed. Tens of millions of people were systematically massacred, using the full resources of the modern nation-state and the latest technology to make the executions more efficient.

What distinguishes genocide as a unique crime is the intent to destroy a group of people based on their identity as a particular group. It is fundamentally different from the killing that occurs in war, which, as detailed in the previous section on torture, usually involves standing armies and is governed by longstanding rules and traditions (see "Non-Derogability and State Sanction: Unlawful Combatants?" above). To a certain extent, war, terrible as it is, has been sanctioned by the international community as a tool of foreign policy that is acceptable under certain circumstances. War is regarded as "politics conducted by other means."[2]

The scope of war's legitimacy—in a range of situations, from being a response to unwarranted aggression to ***preemptive war***—is peripheral to this Brief. What is relevant here is that the unprecedented violence of the first half of the twentieth century taught the world a lesson. The international community determined that certain forms of killing—those rooted in a desire to exterminate an entire population—were abhorrent to the newly recognized notions of basic human dignity expressed in the UN Charter and International Bill of Rights.

For an authoritative history of genocide in the twentieth-century, see Samantha Powers' *A Problem from Hell: America and the Age of Genocide* (2002).

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[1] "Convention on the Prevention and Punishment of the Crime of Genocide."
[2] de Waal.

Criminalizing Genocide in International Law

The idea of genocide as a distinct crime did not have any currency before World War II. The term was introduced by a Polish-Jewish jurist named *Raphael Lemkin* who emigrated from Poland to the United States when Germany invaded at the beginning of World War II. At the time, he was working to have crimes that would later be designated as genocide criminalized under international law. It was in his 1944 book, *Axis Rule in Occupied Europe*, that he coined the word genocide, defining it as "…a coordinated plan of different actions aiming at the destruction of essential foundations of the life of national groups, with an aim of annihilating the groups themselves."[1]

After the war, Lemkin was instrumental in making sure that genocide was among the list of offenses for which Nazi officials were prosecuted (see "Courts and Justice in International Law: The Post-World War II Military Tribunals" below), but genocide had not yet been legally declared a crime under international law. Lemkin actively lobbied for several years until the Convention on the Prevention and Punishment of the Crime of Genocide was adopted by the UN in 1948. For the next ten years, he passionately devoted himself to persuading as many countries as possible to ratify the Convention and pass national legislations implementing its principles.[2]

The Genocide Convention declared genocide an "odious scourge" from which mankind must be "liberate[d]." It officially criminalized genocide in all its forms: the act itself, conspiracy or attempts to commit genocide, incitement to encourage genocide, or complicity in genocidal acts. Importantly, Article 4 made clear that any individual could be held liable for the crime of genocide, whether they were acting in a public or private capacity.[3] Thus, no one would be safe from prosecution and no excuses could be advanced to justify this terrible act.

Genocide vs. War Crimes vs. Crimes Against Humanity
The concept of genocide can be confusing because it often seems to overlap with two other types of crimes that have a special place in international law: ***war crimes*** and ***crimes against humanity***.

A war crime is generally understood to be a violation of the ***laws and customs of war***, as established by the Geneva and Hague Conventions and other international traditions. Over time, our understanding of what constitutes a war crime has evolved as international courts and ***tribunals*** have issued rulings and established precedents to that effect.

Some examples of war crimes include: "Wanton destruction of cities, towns or villages, or devastation not justified by military necessity; attack, or bombardment, by whatever means, of undefended towns, villages, dwellings, or buildings; seizure of, destruction or willful [*sic*] damage done to institutions dedicated to religion, charity and education, the arts and sciences, historic monuments and works of art and science; plunder of public or private property."[4]

A crime against humanity is thought to be a crime "committed in armed conflict but directed against a civilian population." Crimes against humanity can include slavery, deportation, certain kinds of incarceration, and "persecutions on political, racial and religious grounds." The distinction between war

[1] "Coining a Word and Championing a Cause."
[2] ibid.
[3] "Convention on the Prevention and Punishment of the Crime of Genocide;" Marks and Clapham 228-230.
[4] Kafala.

crimes and crimes against humanity is subtle and not entirely fixed.

The crime of "mass systematic rape," for example, was upgraded from a war crime to a crime against humanity in a 2001 ruling by an international court sitting in the Hague, Netherlands.[5] Both types of crimes are regarding as extremely serious and are subject to prosecution by UN-authorized international tribunals.

Genocide shares characteristics with both war crimes and crimes against humanity, but is considered the most egregious crime of all. It goes beyond the crimes of war and constitutes an attack against the very existence of people.

[5] ibid.

Courts and Justice in International Law: The Post-World War II Military Tribunals

In the wake of World War II, the victorious Allied powers – notably the U.S., Great Britain, Soviet Union and France—established and authorized an ***International Military Tribunal*** to prosecute high-ranking Nazi officials for war crimes and crimes against humanity, among other alleged offenses.

The jurisdiction afforded to the Tribunal was somewhat unique because it covered "offenses [that] had no particular geographical location."[1] These offenses were crimes against human dignity as well as crimes against specific individuals. It represented a concrete recognition that a violations of human rights had occurred that were equally as important, if not more important, than other well-defined transgressions against the laws of war. Eventually, 19 other nations joined in supporting the authorization of the Tribunal.

The trials that followed, known as the ***Nuremberg trials*** after the German city in which they were held, considered the charges against 24 Nazi leaders. It took 216 court sessions over a one year period for verdicts to be reached. In the end, three defendants were acquitted, three were imprisoned with 10-20 year sentences, three were given life prison sentences, twelve were condemned to be hanged, and two were exempted from prosecution (one had committed suicide, the other was deemed mentally unfit for trial).[2]

The defendants made two arguments against the charges. First, they claimed that only states, and not individuals, could be held responsible for the types of crimes of which they had been accused.[3] The court's rejection of this argument set a landmark precedent, establishing that rights could be discussed and enforced on the level of the individual regardless of the involvement of states, and that state authority could not be used to shield individuals from criminal accountability.

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[1] "Nurnberg Trials."
[2] ibid.
[3] ibid.

The second argument challenged the very basis of the charges, asserting that several of the offenses should not be considered crimes since they were criminalized in law (through the various UN conventions described in this Brief) only after they had been committed, i.e. ***ex post facto*** (literally, "after the fact").[4] The court's rejection of this argument, broadly speaking, hinged on the idea that these crimes had already been implicitly covered under preexisting international law and bolstered the claims of human rights advocates that such rights should be considered settled international law, or *jus cogens*.

Similar trials were held in Tokyo, known as the ***Tokyo trials***, for suspected Japanese war criminals under the jurisdiction of the ***International Military Tribunal for the Far East***. All 25 defendants were convicted, and seven were condemned to death by hanging.[5] The Nuremberg and Tokyo tribunals provided a model for how war crimes, crimes against humanity, and eventually genocide could be prosecuted under international law.

[4] ibid.
[5] "War Crime: The Nuremberg and Tokyo Trials."

The Persistence of Genocide and Subsequent UN Tribunals

Unfortunately, recognizing genocide as a crime under international law was not sufficient to prevent future genocides from occurring. There have been a number of genocides since the end of World War II.

The Cambodian Genocide and the Khmer Rouge

Between 1975 and 1979, 1.7 million Cambodians (21 percent of the population) were murdered by the dictator *Pol Pot* and his *Khmer Rouge* party as he tried to turn the country into a totalitarian communist state modeled on China.[1]

The violence was directed against native Cambodians, in an attempt to enforce the rigid new system of political and social organization, and against ethnic minorities, including Chinese, Vietnamese and Thai.

The Cambodian genocide came at the height of the Cold War, when U.S. involvement in Vietnam and opposition to the Soviet Union meant that the administrations of Presidents Gerald Ford and Jimmy Carter aligned the U.S. with China and its ally, the Khmer Rouge. In 1979, the neighboring government of communist Vietnam invaded Cambodia and deposed Pol Pot, thereby stopping the genocide.

Nonetheless, the U.S. led an international movement to support Khmer ***guerillas*** in their fight against the Vietnamese occupiers and to isolate Cambodia.[2]

It took nearly 20 years for serious negotiations to make progress on establishing a tribunal to prosecute accused Khmer Rouge war criminals. The Cambodian government wanted to jointly administer the tribunal with the UN. But UN officials, including Secretary General Kofi Annan, worried that the Cambodians could not "guarantee the necessary standards of independence, impartiality and objectivity" necessary to legitimize the tribunal and allow for its effective operation in

Picture: Pol Pot

[1] "The Cambodian Genocide Program."
[2] "Cambodia 1975: The Genocide;" Kiernan.

the search for justice. They were also troubled by the insistence that "Cambodian national law would prevail over the court."[3]

In 2006, an agreement was finally reached for a UN-sponsored trial to commence. Many felt the tribunal was necessary but too late in coming. Pol Pot had already died in 1998, as had several other senior Khmer Rouge officials, therefore preventing the execution of justice that would have helped heal the country.[4]

Nonetheless, in July 2010, Khmer Rouge commander, Kaing Guek Eav was found guilty of war crimes and crimes against humanity and was sentenced to 35 years in prison. He was the first of five senior leaders to face trial.

Although the belated agreement for a trial is welcome, Cambodia offers an example of how geopolitical interests often trump humanitarian ones and of the dangers of waiting too long for mobilizing the machinery of international law in the service of justice.

The Rwandan Genocide: Hutu vs. Tutsi
The African country of Rwanda became a colony of Belgium in 1916. The population of Rwanda consisted of two main ethnic groups, the minority Tutsis (about 15 percent of the population) and the majority Hutus (about 85percent). The Belgian authorities favored the Tutsis and empowered them to assist with the administration of the colony, essentially creating a class system that was formalized by the issuing of ethnic identity cards in 1926.

In 1959, the Hutus rebelled and over 150,000 Tutsi refugees fled to neighboring Burundi. Belgium was forced to grant Rwanda independence in 1961-1962, but ethnic tensions continued to intensify as the new Hutu rulers consolidated their power. Violence between the two groups dragged on for the next 25 years.[5]

The international community pressed Rwanda's

Picture: Young boy in Rwanda who lost his family in a massacre, source: http://www.un.org/av/photo/

[3] Barrow.
[4] Hinton
[5] "Rwanda: A Historical Chronology."

Hutu leader, General Juvenal Habyarimana, to open the government to the participation of multiple political parties. In the early 1990s, the Rwandan Patriotic Front (RPF), a group comprised of Tutsi exiles, invaded Rwanda and opened hostilities with government forces. The government's army responded by training and equipping a civilian militia, known as the *interahamwe* (literally, "those who stand together").

The UN attempted to bring the two sides together to negotiate a peace settlement, but Rwanda was thrown into chaos when a plane carrying Habyarimana was shot down and the general himself was killed.

Over the next 100 days, the *interahamwe* and government forces slaughtered 800,000 people, the vast majority of them ethnic Tutsis. UN peacekeepers, which had been sent to Rwanda to monitor the situation, lacked a mandate to intervene in the conflict and were unable to stop the carnage. The violence was not halted until the RPF succeeded in overtaking the capital.[6]

In 1995, the UN established an ***International Criminal Tribunal for Rwanda*** based in Arusha, Tanzania. Since 1997, the Tribunal has completed 59 cases of which 37 people were convicted, one person was arrested for false testimony, and eight people were acquitted; 13 cases are being appealed. There have been several convictions on the charge of genocide, including one of a prime minister.

One of the achievements of the tribunal has been the important precedent it set regarding the prosecution of rape as an element of genocidal activity.[7] Although the international community failed to intervene yet again while genocide was actually being committed, the Rwanda Tribunal has largely succeeded in introducing a measure of timely justice for these terrible crimes.

[6] ibid.; "Rwanda: How the Genocide Happened."
[7] "Achievements of the ICTR."

The International Criminal Court (ICC)

All of the tribunals discussed so far have been temporary and *ad hoc*, meaning they were constituted to prosecute a specific set of crimes, occurring within a specific geographical territory and a specific timeframe. As genocides continued to occur in the postwar period, a movement developed to found a permanent, standing court that could try cases involving war crimes, crimes against humanity, and genocides committed anywhere in the world at any time. The ***Rome Statute of the International Criminal Court*** was adopted by the United Nations in July of 1998 and entered into force in July of 2002.[1] The Court is located in The Hague, Netherlands. As of October 2010, 114 countries have ratified the statute.[2]

The ICC, like many of its predecessor tribunals, seeks to prosecute individuals rather than states. Its jurisdiction is both broad and limited. It is broad in the sense that it can take cases from any country in the world, but it is limited by the principle of ***complementarity***.[3] This principle holds that the ICC "can only act in cases where states are unwilling or unable to do so."

Thus, the ICC is designed to respect state sovereignty in situations where states are willing to act responsibly to fulfill their obligations to international justice. States that are party to the Statute and accept the standing of the Court can refer cases to the ICC for investigation, as can the UN ***Security Council***. ICC prosecutors can initiate their own investigations when approached by victims or NGOs, as long as the principle of complementarity is respected. The ICC is also limited in that it can only review crimes that have been committed subsequent to its establishment in July 2002.[4]

A few countries, most notably the US, voted against the Rome Statute and have not supported the creation of the ICC (the others being China, Iraq, Libya, Yemen, Qatar, and Israel). The Bush administration worried that "the ICC may exercise its jurisdiction to conduct politically motivated investigations and prosecutions of U.S. military and political officials and personnel." The U.S. has aggressively tried to secure exemptions from prosecution for American citizens, both in the UN Security Council and on a bilateral basis with other countries through bilateral immunity agreements (BIAs), also-called "***impunity agreements***." Many advocates of human rights fear that this policy will produce a "two-tiered rule of law for the most serious international crimes: one that applies to U.S. nationals; another that applies to the rest of the world's citizens."[5]

Supporters of the ICC argue that the U.S. has little to fear. As a general principle, any cases brought against the U.S. would face strict scrutiny before reaching the Court, and the U.S. judicial system would have an opportunity to prosecute the case first if it merited legal action. American citizens who might be accused of the types of crimes covered by the ICC's mandate would already be subject to prosecution in the countries in which those crimes had been committed, regardless of the existence of the ICC. The main contribution of the Rome Statute is that it allows countries to "exercis[e] their sovereign right to allow an international court to prosecute certain crimes committed on their territory rather than conducting these trials themselves." Opponents of the Court continue to maintain that politically motivated prosecutions

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[1] "Rome Statute."
[2] "Rome Statute of the International Criminal Court."
[3] "International Criminal Court: Basic Fact Sheet."
[4] "International Justice;" "International Criminal Court: Basic Fact Sheet."
[5] "International Criminal Court: Basic Fact Sheet."

against the U.S. would be inevitable, and that provisions for due process are insufficient to meet American legal standards.[6]

To date, the Obama administration has seemed fairly open to ratifying the Rome Statue, yet it has not taken any significant steps towards that end.[7] The U.S may be preparing to shift away from the stance they held concerning the ICC under the Bush Administration. In 2009, U.S. Ambassador Susan Rice, in a Security Council hearing, reportedly said that the ICC "looks to become an important and credible instrument for trying to hold accountable the senior leadership responsible for atrocities committed in the Congo, Uganda and Darfur."[8] Recognition from U.S diplomats concerning the credibility of the ICC represents a fairly dramatic shift away from the previous administration's stance on the court.

Thus far, the ICC has received 8,733 communications to investigate alleged crimes since 2002 in 140 countries. As of June 2011, seven investigations were ongoing under the Court's oversight: in the Central African Republic,[9] Uganda, the Democratic Republic of Congo, Darfur (Sudan), the Republic of Kenya, the Libyan Arab Jamahiriya, and the Republic of Côte d'Ivoire. Two cases involving Venezuela and the U.S. presence in Iraq had been dismissed, and five others remained under consideration.[10]

Picture: Displaced person camp in Darfur

To date, "Uganda, the Democratic Republic of the Congo and the Central African Republic – have referred situations occurring on their territories to the Court." Additionally, the United Nation's Security Council referred the circumstances in Darfur, Sudan – a non-State Party, to the ICC.[11] These statistics suggest that the ICC has been careful in interpreting its mandate as a "court of last resort."

For more on the crisis in Darfur, consult the "Darfur: A Case Study" news analysis, which can be found at: http://www.globalization101.org/index.php?file=news1&id=82

The United Nations, in conjunction with the government of Sierra Leone, established the Special Court for Sierra Leone, to try those who bore "greatest responsibility for serious violations of international humanitarian law and Sierra Leonean law committed in the territory of Sierra Leone since 30 November 1996." In total, thirteen indictments were presented by officers for the court. To date, "The trials of three

[6] "The United States and the International Criminal Court."
[7] "Myths and Facts About the International Criminal Court."
[8] Kilgannon.
[9] International Criminal Court
[10] Hanson.
[11] "Situations and Cases."

former leaders of the Armed Forces Revolutionary Council (AFRC) and of two members of the Civil Defence Forces (CDF) have been completed, including appeals." Three former leaders of the Revolutionary United Front (RUF) were sentenced to 25-52 years for war crimes and crimes against humanity. Additionally, former Liberian President Charles Taylor is currently sitting trial at The Hague and facing similar accusations.[12]

For more on the aforementioned court hearings, view the Special Court for Sierra Leone's website at http://www.sc-sl.org/HOME/tabid/53/Default.aspx.

The International Criminal Court vs. the International Court of Justice (ICJ)

The ***International Criminal Court***, as the previous section elaborated, is the standing judicial body dedicated to investigating and prosecuting war crimes, crimes against humanity and genocide. Its function is to protect certain fundamental human rights. It both protects and prosecutes individuals, not states.

The ***International Court of Justice*** is the international judicial body responsible for adjudicating disputes between states on questions of international law. It was established in Article 33 of the UN Charter to work towards the peaceful resolution of conflicts that might have resulted in hostilities in the past. It has a variety of methods open to it, including "negotiation, enquiry, mediation, conciliation, ***arbitration***, judicial settlement, and resort to regional agencies or arrangements."[13] The Court conducts hearings and trials, known as ***contentious cases***, and issues advisory opinions, in what are known are ***advisory proceedings***.[14]

One example of the type of case the ICJ hears involved a territorial dispute between Israel and Palestine. Israel had constructed a wall in the contested West Bank territory in order to protect itself from suicide bomb attacks. Palestinian authorities objected that construction of the wall violated international law, and the ICJ agreed. The Court held in an advisory opinion that the wall was "tantamount to annexation" and "impeded the Palestinian right to self-determination," which is found in the ICCPR among other places. ICJ decisions are non-binding, and Israel vowed not to accept the ruling in 2004; Israel's allies, the U.S. and the United Kingdom joined with it in questioning the jurisdiction of the ICJ over the situation.[15]

For full documentation on this case, consult the ICJ: http://www.icj-cij.org/docket/index.php?p1=3&p2=4&code=mwp&case=131&k=5a.

This case illustrates the complexities of trying to enforce international law. There will always be countries that challenge the legitimacy and authority of bodies like the ICJ, but the ICJ and other institutions like it are the best frameworks the international community has developed so far for peacefully resolving disputes across borders.

The role of courts and tribunals in enforcing international law remains an area of fierce contention. Some wonder whether the function of these bodies is ***deterrence*** or ***retribution***. Is the goal of prosecuting individuals in the ICC or more specialized tribunals to punish these people for the specific crimes they have committed, or to send a broader message in hopes that imposing "exemplary punishments on selected individuals" will decrease the chances that the crimes they have committed will be repeated in

[12] "About the Special Court for Sierra Leone."
[13] "The Court: History."
[14] "Cases."
[15] "UN Rules Against Israeli Barrier."

the future?[16] Genocide continues to be a threat in many countries, even with the increased media attention given to crises like the one in Darfur. In the next section, we will turn to the vexed question of how countries decide to intervene to stop genocide before it happens.

[16] Marks and Clapham 225.

The Problem of Humanitarian Intervention

Courts of international law represent one way in which the international community has decided to limit the sovereignty of states. Certain crimes must be prosecuted, whether states like it or not; if national governments shirk this responsibility, mechanisms are in place to supersede state authority. In some cases, advocates of human rights and humanitarian concerns believe broader and more substantial interventions are justified.

One such instance occurs when genocide is in progress and can either be prevented or stopped. The relevant problem becomes: under what circumstances can the priority of state sovereignty be ignored in the interests of humanity? Humanitarian intervention has been defined by Robert Keohane and J.L. Holzgrefe as:

> The threat or use of force across state borders by a state (or group of states) aimed at preventing or ending widespread and grave violations of the fundamental human rights of individuals other than its own, without the permission of the state within whose territory force is applied.

The key points here are: it involves the use of force; it occurs without permission; and its purpose it to prevent "widespread and grave" violations of human rights on the scale of genocide.[1]

Intervention thus constitutes a serious challenge to the authority of a sovereign nation and requires an equally serious justification. Where competing interests are at stake – such as the general reluctance to engage in unprovoked military activity and the imperative to protect human rights – one must be sacrificed.[2] Sometimes violations of individual freedom and human dignity are so objectionable that the presumptions in favor of sovereignty and against the use of force are eroded.

Some argue that sovereignty is not a prerogative automatically conferred on all states. Human rights should be the priority because they are "intrinsic," while sovereignty is merely "instrumental," meaning it is only a means to the end of ensuring that human dignity is respected.[3] According to one version of this argument, "In the nineteenth century, full sovereign rights were extended only to states that met minimum standards of 'civilization'…[now it seems that] human rights—or, more precisely, avoidance of genocide—is emerging as something like a new standard of civilization."[4]

Just as one can argue that individual rights double as duties, that is, that they require reciprocal respect for the rights of others before they can be exercised, so too could one claim that sovereignty entails duties as well as right for all states (see "Rights vs. Duties vs. Aspirations" above). If states cannot protect the most basic human right—the right to life—then they are not entitled to invoke the mantle of sovereignty in their defense against the compelling interest of the international community to deal with genocide.

Peacekeeping in Bosnia

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[1] Barsa.
[2] Peterson.
[3] Peterson; Terry.
[4] Donnelly 250.

As the Soviet Union collapsed in the 1989-1991 period, countries were under its control for generations struggled to reclaim their independent identities. Yugoslavia faced a particularly difficult challenge because its integrity as a country was questionable: it functioned as an unstable collection of different and often fractious ethnic groups, including Serbs, Croats, and Bosnian Muslims. The country dissolved into a number of competing parts. The newly independent countries of Serbia and Croatia fought for territory and influence in the land that separated them, Bosnia-Herzegovina, initiating a brutal war that raged for much of the first half of the 1990s.

In early 1992, the United Nations established in a ***peacekeeping*** force, the UN Protection Force (UNPROFOR), to provide security for the streams of ***humanitarian aid*** that were flowing into Bosnia from the international community. UNPROFOR's mission was to remain "passive and impartial," and to "find a middle way between traditional peacekeeping missions that 'sustain' a peaceful environment and large-scale enforcement operations that use active military force to 'create' such an environment."[5]

At the time the UN became involved, the question of genocide was not a major issue, yet it was hard for peacekeepers to ignore the atrocities that were occurring once they were on the ground. Skeptics of UN involvement believed that the West, specifically the members of the ***North Atlantic Treaty Organization (NATO)***, had been galvanized to action out of guilt, "to assuage Western consciences about the barbarity taking place in a 'European' war."[6] They also cited the increased presence of media in the war zone, and the so-called "***CNN effect***" by which public opinion was shaped by the shocking images seen on television.[7]

Picture: Croatian refugees housed by UNPROFOR, Source: http://www.un.org/av/photo

The task of the protective force was complicated by the fact that there was no peace to police.[8] On the contrary, some believe that the UN presence may have exacerbated the conflict, because "the well-intentioned international effort keeps Bosnian society functioning at a level that is just tolerable enough to keep any of the belligerents from negotiating seriously for peace."[9] The UN tried to take a more active role by establishing "safe zones" under international protection in the capital of Sarajevo, Goradze, Srebrenica, and a few other locations. But Serbian forces overran the safe zone at Srebrenica in 1995, massacring more than 7,500 Muslim men and boys in what many have called "worst atrocity in Europe

[5] Hillen III.
[6] ibid., Carey.
[7] de Waal.
[8] Hillen III.
[9] ibid.

since World War II."[10] Even the presence of UN forces could not prevent this terrible act of violence from occurring.

The ***Srebrenica massacre*** changed the international community's relation to the Bosnia War, and NATO responded by initiating more aggressive military air strikes against Serbian forces around Sarajevo. Hostilities began to wind down at the end of 1995, partially because Serbian leaders had accomplished many of their goals of "***ethnic cleansing***" and because Croatian forces had begun to gain to momentum in a counter-assault.[11]

The ***UN International Criminal Tribunal for the Former Yugoslavia***, which was established in 1993 in the middle of the war, was charged with investigating and prosecuting war crimes and other crimes that had occurred during the conflict. Serbian President Slobodan Milosevic, who had orchestrated many of the war's atrocities, was indicted but died in prison while his trial was still in progress.[12] Over 160 people have been indicted by the tribunal thus far and proceedings are ongoing for an additional 35 people. One of the suspected war criminals, Goran Hadžić, remains at large and has been charged *in absentia* (literally, "in his absence").[13]

The crisis in Bosnia provides an example of a case where the international community attempted to stop wartime violations of human rights in a manner somewhere in between strict peacekeeping and full-blown military intervention. UN efforts in Bosnia were not entirely effective in meeting this objective, partially because they were too late in recognizing the true nature of what was happening and partially because sufficient resources were not devoted to the task. These lessons would be applied just a few years later in Kosovo.

Intervention in Kosovo

Kosovo was a province of Yugoslavia that traditionally enjoyed a limited form of autonomy during the period of communist domination. The province was located in Serbian territory, but its population consisted of an overwhelming majority of ethnic Albanians (about 1.8 million) from neighboring Albania. In 1989, the Serbian-led government of Yugoslavia terminated Kosovo's autonomy, sparking a resistance movement known as the Kosovo Liberation Army (KLA). After the cessation of hostilities in Bosnia, the conflict in Kosovo intensified, resulting in hundreds of thousands of refugees leaving the province. The UN Security Council passed a series of resolutions—numbers 1160, 1199, and 1203—addressing the unfolding situation in Kosovo, but UN-sponsored peace negotiations in Rambouillet, France collapsed in March of 1999.[14]

Under ***Chapter VII***, Article 42 of the UN Charter, the provision often cited as justification for humanitarian intervention, the UN Security Council can authorize the use of force when such actions are "necessary to maintain or restore international peace and security."[15] The Security Council sought to invoke this provision to take a more active role in Kosovo, but Russia and China vetoed the authorization of force. As a result, NATO decided to intervene without UN sanction and launched a campaign of air strikes against Serbian forces. The action was decisive and successful, and led to the withdrawal of Serbian troops from

[10] "Ratko Mladic Is Still At Large."
[11] de Waal.
[12] "General Information;" Simons.
[13] "Key Figures of ICTY Cases."
[14] Terry; Dietrich
[15] "Charter of the United Nations: Chapter VII."

Kosovo.[16] Since 1999, Kosovo has been administered by the United Nations Interim Administrative Mission in Kosovo (UNMIK). "As of June 2011, 76 of 192 United Nations member states have recognized Kosovo as an independent state.[17]

Picture: Building devastated in Kosovo, Source: http://www.un.org/av/photo/

Humanitarian Intervention in Perspective

In the case of Kosovo, a humanitarian intervention was effective in preventing a potential genocide from occurring before it happened. It was reasonable to believe, given Serbia's recent history of ***ethnic cleansing***, that Kosovo's ethnic Albanians were at grave risk. But the complexity of the situation must be understood: intervention was blocked by the UN Security Council, and NATO was forced to act ***unilaterally***.

The implicit rationale for NATO activity was that the Security Council had been derelict in its responsibilities. This dereliction did not change the urgency of the situation or make it any less justifiable to intervene; rather, it shifted the responsibility to other willing parties, just as responsibility shifts to the ICC when national governments refuse to prosecute certain crimes that fall under their jurisdiction (see "The International Criminal Court (ICC)" above).

In the end, the mission's success was its own justification. In the eyes of many, this is true for all humanitarian interventions. In the nineteenth century, the British statesman Sir William V. Harcourt argued, "As in the case of revolution, its [intervention's] essence is its illegality and its justification is its success."[18] While this principle may be true, it does not make it any easier for policymakers to judge when intervention is appropriate before undertaking it.

Although the twentieth century saw an increasing number of precedents, such as Congo in 1961 (approved by the UN) and Bangladesh in 1971 (which was roundly condemned) and gradually more

[16] Terry; Dietrich.
[17] "About UNMIK."
[18] de Waal.

widespread acceptance of the notion of humanitarian intervention, most experts believe intervention will remain a rarely employed last resort. Even the success of Kosovo is sobering: "NATO's decision to rely on air strikes rather than ground forces also led many to conclude that major powers remain so intolerant of casualties that humanitarian interventions will remain rare."[19]

Cynics maintain that the primary consideration for countries to intervene will always be the extent to which their own strategic interests are at stake. This explains the reluctance of the West to intervene in African genocides, such as those in Rwanda and Darfur, where few strategic interests are at stake. When the international community wants to intervene, the institutional mechanisms that facilitate interventionist actions through the UN are relatively weak.[20]

The proper scope of humanitarian intervention will remain an important question for the 21st century, as the international community continues to debate proactive ways to prevent the most egregious violations of human rights, particularly in the case of genocide.

Responsibility to Protect (R2P)

An important advancement in the subject of humanitarian intervention is the idea of Responsibility to Protect, or R2P. This principle is outlined in a December 2001 report by the International Commission on Intervention and State Sovereignty (ICISS). After the failure of the international community to successfully intervene in Rwanda, among other places, then UN Secretary General Kofi Annan posed the serious question of how to balance state sovereignty and protection of all peoples from crimes against humanity, such as genocide. The result was the ICISS report, which first mentioned the idea of R2P.

After much debate on the legality and necessity of humanitarian intervention, the commitment to R2P was made at the UN World Summit in 2005. Since then, the current UN Secretary General has continued moving forward in the implementation of R2P. It has three basic pillars:

- "**Pillar One** stresses that States have the primary responsibility to protect their populations from genocide, war crimes, ethnic cleansing, and crimes against humanity.
- **Pillar Two** addresses the commitment of the international community to provide assistance to States in building capacity to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity and to assist those under stress before crises and conflicts break out.
- **Pillar Three** focuses on the responsibility of international community to take timely and decisive action to prevent and halt genocide, ethnic cleansing, war crimes and crimes against humanity when a State fails to protect its populations."[21]

As expected, R2P has a great number of critics as well as proponents. The critics maintain that states will only act only in their own interests, therefore making humanitarian interventions difficult and biased. It remains to be seen how R2P will be implemented and if it can positively affect the future of humanitarian intervention.

[19] Dietrich.
[20] Donnelly 169-170; Falk 178-183.
[21] "An Introduction to the Responsibility to Protect"

Human Rights and Groups

So far, this Brief has focused on human rights that are possessed by every individual, regardless of his or her particular characteristics. This section will consider whether certain groups deserve rights that are unique to them, which provide special protections necessary for these individuals to enjoy a common standard of human dignity. For some groups, such as women and children, the idea of additional group-specific rights has been widely accepted over time; for other groups, such as ***indigenous*** peoples, the status of special group rights is still being debated.

Women's Rights

The UN has had a longstanding commitment to safeguarding the rights of women since the international human rights regime began to emerge in the post-World War II period. Women represent more than half of the world's population and have been systematically repressed for much of ancient, as well as modern, history. Women are ***disempowered*** in many parts of the world, both in the familial, economic, and political spheres, and thus face structural challenges to improving their lots. In many cases, women cannot overcome these obstacles without some form of international assistance. In addition, they face issues unique to their sex, such as those involved in reproduction,

Picture: International Women's Day in Liberia

which demand special group-specific protections.

Women face a number of problems that are related to human rights. For example, women are subject to violence in the home in many parts of the world, including Pakistan, South Africa, Peru and Russia; have been victims of rape "as a weapon of war" in countries as diverse as the Democratic Republic of the Congo, Kosovo and Afghanistan; have been bought, sold, and ***trafficked*** across borders in Ukraine, the Dominican Republic, and Thailand, among other places; have been prevented from effectively participating in the workforce in Guatemala and Mexico; and have suffered from "government-sponsored discrimination that renders them unequal before the law" in Morocco, Jordan, Kuwait and Saudi Arabia.[1]

A number of international conventions have been established to deal with women's rights. These include the ***Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others*** (1949, 1951), the ***Convention Concerning Equal Remuneration for Men and Women Workers for Work of Equal Value*** (1951, 1953), the ***Convention on the Political Rights of Women*** (1952, 1954), the ***Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages*** (1962, 1964), the ***Convention on the Elimination of All Forms of Discrimination Against Women*** (1979), the ***Declaration on the Elimination of Violence Against Women*** (1993), and the ***Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime*** (2003).

Two human rights issues involving women will be discussed below: reproductive rights and human trafficking.

For more on women's issues, see the Brief on "Women and Globalization," which can be found at: http://www.globalization101.org/issue_main/woman /.

For a discussion of violence against women, see the news analysis titled "Violence Against Women – Global War on a Global Issue:" http://www.globalization101.org/news1/Violence_Against_Women.

For full texts of the conventions mentioned above, see the following links:
Convention for the Suppression of the Traffic in Persons: http://www.unhchr.ch/html/menu3/b/33.htm
Convention Concerning Equal Remuneration: http://www.unhchr.ch/html/menu3/b/d_ilo100.htm
Convention on the Political Rights of Women: http://www.unhchr.ch/html/menu3/b/22.htm
Convention on Consent to Marriage: http://www.unhchr.ch/html/menu3/b/63.htm
Convention on the Elimination of All Forms of Discrimination Against Women:
http://www.unhchr.ch/html/menu3/b/e1cedaw.htm
Declaration on the Elimination of Violence Against Women:
http://www.unhchr.ch/huridocda/huridoca.nsf/(Symbol)/A.RES.48.104.En
Protocol to Prevent, Punish and Suppress Trafficking in Persons:
http://www.uncjin.org/Documents/Conventions/dcatoc/final_documents_2/convention_%20traff_eng.pdf

Reproductive Rights and Sexual Autonomy

[1] "Women's Rights."

From the basic guarantees of the right to life and freedom from physical harm, it is not much of a stretch to arrive at the notion that individuals should have "control over what happens to their bodies." As Human Rights Watch points out,

> Millions of women and girls are forced to marry and have sex with men they do not desire. Women are unable to depend on the government to protect them from physical violence in the home…Women in state custody face sexual assault by their jailers. Women are punished for having sex outside of marriage or with a person of their choosing…Husbands and other male family members obstruct or dictate women's access to reproductive health care.[2]

The right of women to maintain control over their bodies is implicitly recognized by human rights protections ranging from the right to health and freedom from discrimination to the right to privacy and freedom from torture.[3] Reproductive rights are a very delicate subject but one that receives a lot of attention in public debates in both developed and developing countries.

In the United States, for example, the issue of ***abortion*** has been one of the hottest areas of contention in the ***culture wars*** and in presidential campaigns. Advocates of a "woman's right to choose" argue that women should have complete control over their bodies, including developing fetuses, and therefore the right to decide if and when to terminate a pregnancy. Although having an abortion can be a devastating and traumatic experience, many believe women should have the option to take this course if they deem it necessary.

Opponents of abortion, who would classify themselves as "pro-life," assert that fetuses should be treated as independent persons even before birth, and that abortion is equivalent to a form of murder – one that should not be permitted in any, or perhaps only the most extreme, circumstances, as when the life of the mother as in imminent danger. They object to the U.S. Supreme Court's 1973 decision in *Roe v. Wade*, which allowed for abortions to continue to be performed.

PBS Video on Roe V Wade: http://www.youtube.com/watch?v=1q5AgCzPIuA.

Female Genital Mutilation (FGM)

In other parts of the world, notably in Africa (in 28 countries) and Middle East, the fight over reproductive rights and sexual autonomy is arguably more extreme. One violation of these rights that has attracted vast amounts of attention is the controversial practice of female genital mutilation, also known as "female circumcision." The World Health Organization estimates that 100-140 million women and girls have suffered this procedure, which involves painful surgeries on the female genitalia "for cultural, religious, or other non-therapeutic reasons."[4]

FGM is performed by a number of different cultures for a number of different reasons. Sometimes the goal is to limit and control female sexual desire, sometimes is it seen as a rite of passages for girls into womanhood. Some cultures point to health grounds, claiming it is for hygiene. In a few Muslim communities, it is tied to an interpretation of Islam. Whatever the justification, FGM is "usually performed by a traditional practitioner with crude instruments and without anesthetic," posing a serious risk to those who undergo the procedure.

In addition to the physical side-effects, the mental and psychological harm can be permanent: it "may

[2] "Women's Rights."
[3] "Human Rights Violations Related to Women's Sexual Autonomy."
[4] "Female Genital Mutilation."

leave a lasting mark on the life and mind of the woman who has undergone it. In the longer term, women may suffer feelings of incompleteness, anxiety and depression."[5]

Does FGM constitute torture or an acceptable cultural practice whose deep-rooted traditions justify its existence? Is it a violation of privacy or a proper exercise of familial authority? These questions are important to ponder in trying to understand the scope of a woman's human rights.

To see a videos about FGM, please watch http://www.youtube.com/watch?v=Gh4fWUVcBN4 (a women discusses her experience after FGM) and http://www.youtube.com/watch?v=TMSQPDd1B2g&feature=player_embedded (please note there is some tribal nudity).

For more on women and health issues, see the "Health" section of the "Women and Globalization" Brief: http://www.globalization101.org/issue_sub/woman/womanhealth/

Trafficking in Persons

Trafficking is a form of human slavery that involves the movement of people from one place to another. The Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, which built on a number of previous international agreements regarding slavery, relates the problem of trafficking to the general human rights framework in its preamble:

> Whereas prostitution and the accompanying evil of the traffic of persons for the purpose of prostitution are incompatible with the dignity and worth of the human person and endanger the welfare of the individual, the family and the community…[6]

As this statement makes clear, trafficking is often associated with sexual slavery. Slavery and ***prostitution*** are horrific features of human society that have continued to survive from ancient to modern times. In the twentieth and twenty-first centuries, the problem of trafficking expanded to previously unknown levels and entered into public awareness to a greater extent than ever before. Unprecedented levels of freedom of movement and innovations in transportation made the threats of human trafficking and prostitution even more viable.

Conflict-ridden countries and those with weak national governments have always been at risk with regard to human rights violations. But now, with the borders between countries becoming increasingly porous due to heavy volumes of international trade and the relatively open migration of large numbers of people from one place to another, trafficking of people is an issue that may well come to dominate international organized crime in the new millennium.

Trafficking is a multi-faceted problem affecting many different types of people, but the U.S. State Department estimates that 80 percent of the 600,000-800,000 persons that are trafficked every year are women and girls.[7] This makes trafficking a particularly pressing problem for advocates of women's rights.

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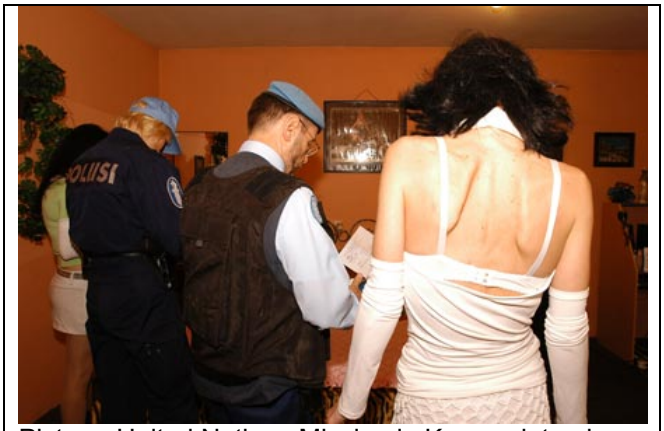
[5] ibid.
[6] "Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others."
[7] "Trafficking in Persons Report: Introduction."

Trafficking usually results in some form of bonded labor, but it can begin in many ways: "Some leave developing countries, seeking to improve their lives through low-skilled jobs in more prosperous countries. Others fall victim to forced or bonded labor in their own countries. Some families give children to related or unrelated adults who promise education and opportunity—but deliver the children into slavery for money."[8]



Picture: United Nations Mission in Kosovo interview possible victims of trafficking, source, United Nations

Bride Selling in China

One example of the way in which trafficking is expanding in the era of globalization involves bride selling in China. Chinese families have long had a traditional preference for male children over female children. With China's massive population – now over 1.3 billion – sons were needed to work and help sustain the family economically, while daughters were often viewed as a burden.[9] The country's "one-child policy" also meant that girls were becoming increasingly scarce, especially in urban areas. In some parts of the country, the ratio of boys to girls was as high as 117 to 110.[10]

This has created a situation in which many Chinese men have difficulty finding a partner for marriage: "Men still feel social pressure to marry, causing some who cannot find marriageable women to try buying brides from other regions of the country, or from border areas with neighboring countries, such as North Korea." Women are either sold or kidnapped to meet this demand, and can then be forced into "marriage, prostitution or concubinage."[11]

This practice violates international conventions on trafficking as well as the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, which states in Article 1 that "no marriage shall be legally entered into without the full and free consent of both parties."[12] China has signed but not ratified the Convention on Consent to Marriage.[13]

[8] ibid.
[9] "China."
[10] "Trafficking in Persons Report: Introduction."
[11] ibid.
[12] "Convention on Consent to Marriage."
[13] "Status of Ratifications, Reservations and Declarations: Convention on Consent to Marriage."

Trafficking is an extremely difficult problem to control, given the coordination required among national governments and law enforcement operations, but one that must be given proper attention. The lives of millions of women and children are at stake.

For more about women and trafficking, see the "Modern Day Slavery" section of the "Women and Globalization" Brief: http://www.globalization101.org/issue_sub/woman/modernwoman/.

See also the news analysis titled "U.S. State Department Report on Trafficking Produces Changes:" http://www.globalization101.org/news1/US_State_Department_Trafficking_Report .

Children's Rights

Children represent another segment of the population that has been singled out by a number of covenants for special protection in international human rights law since children generally lack the maturity and autonomy to defend their own interests and safeguard their own rights. In most cases, responsibility for the interests of children rests with their parents. But, as we have already seen in some cases, such as bonded, families cannot always be relied upon; nor can the state or national governments that should be the child's last line of defense.

The idea of extending dedicated human rights to children is a relatively new one, but its origins can be traced back even before the founding of the United Nations, to the child welfare movement of the early twentieth century.[1] In 1924, the ***Geneva Declaration on the Rights of the Child*** was adopted by the ***League of Nations***. This short document only has five concise provisions. It requires that children be given "the means requisite for…normal development, both materially and spiritually (Article 1); that children be fed, housed, and cared for (Article 2); that children "be the first to receive relief in times of distress" (Article 3); that children be protected from exploitation (Article 4); and that "the child must be brought up in the consciousness that its talents must be devoted to the service of fellow men" (Article 5).[2]

This was followed by the more complex ***UN Declaration of the Rights of the Child*** in 1959. The UN version added rights to a name and nationality (Principle 3), to special education for the disabled and handicapped (Principle 5), to education (Principle 7), and to exemption from work before a minimum age (Principle 9). Another provision with broad application was included, specifying that "the child, for the full and harmonious development of his personality, needs love and understanding. He shall, wherever possible, grow up in the care and under the responsibility of his parents, and, in any case, in an

[1] Marks and Clapham, 19.
[2] "Geneva Declaration of the Rights of the Child."

atmosphere of affection and of moral and material security." It was also made clear that children should, "save in exceptional circumstances," not be separated from their mothers.[3]

The principles outlined in the UN Declaration on the Rights of the Child were formulated in comprehensive fashion into a ***Convention on the Rights of the Child*** (1989, 1990). It is notable that this convention, although drafted at a relatively late stage in the development of human rights, has quickly become the "most widely ratified human rights treaty" of them all. It has been ratified by nearly every state in the world, with Somalia and the United States (both of which have signed, but not ratified the agreement) being two exceptions.[4] The United States did not ratify the Convention due to concerns regarding its federal system of government which was deemed incompatible with certain provisions of the agreement requiring national education policies or other requirements typically handled at the state or local level in the U.S. political system.

This convention is grounded in four key principles that establish a framework for thinking about the human rights of children. First, it reaffirms the principle of non-discrimination (Article 2). Second, it establishes a standard for making any decisions involving children: the top consideration should always be "the best interests of the child," as defined by "public or private social welfare institutions, courts of law, administrative authorities or legislative bodies" (Article 3).

Third, it protects every child's right to life and development, and all the corollary rights those two entail (Article 6).

Fourth, it guarantees children some role, to whatever extent is appropriate, in decisions that are made on their behalf: "State parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child" (Article 12).[5] This latter point stresses the importance of establishing direct channels of communication between children and governments that are unmediated by families or human rights groups.

The Convention also leaves states parties to "fix minimum ages for admission to employment, subject to the right of children to be protected from economic exploitation, hazardous work, or work that is likely to interfere with their education or be harmful to their health or development."[6] International human rights law generally, and the Convention on the Rights of the Child specifically, seek to create a protected space in which children can flourish without threat of violence or oppression.

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[3] "Declaration on the Rights of the Child."
[4] "Path to the Convention."
[5] "Convention on the Rights of the Child;" Marks and Clapham, 20.
[6] Marks and Clapham, 27-28.

Child Labor

Children work for a variety of reasons ranging from economic necessity to cultural and social norms. In certain circumstances, work experience may be beneficial to children or their families, as the work and income can be a positive experience. However, child labor becomes a cause for concern when labor becomes exploitative, hazardous, or interferes with the right of a child to an education. Additionally, the age of the child plays a significant role in the acceptability of work performed.

The ***International Labor Organization (ILO)*** has long been concerned with child labor. As far back as 1921, it adopted Convention 10 which prohibits the employment of children under 14 in any agricultural business. The ILO then adopted various conventions covering specific sectors, but recognized the need to place a blanket restriction on all forms of child labor below a certain age.

As a result, in 1973, ***ILO Convention 138*** was adopted specifying that the minimum age for any employment "shall not be less than the age of completion of compulsory schooling and, in any case, shall not be less than 15 years."[7] Finally, in 1999, the ILO adopted ***Convention 182***, now considered one of its five key conventions, prohibiting the worst forms of child labor for all children under the age of 18. These "worst forms" include slavery, child prostitution, and child pornography, as well as any other work that is likely to harm the health, safety, or morals of children.

Despite the ILO's efforts, approximately 218 million children are engaged in child labor around the world, of which 126 million are believed to be working under hazardous conditions.[8] Many children work in manufacturing, as domestic help, or in services; however, the vast majority of child laborers, 70 percent, work in the agricultural sector.[9]

Cotton Picking in Egypt	The Elimination of Child Labor in Pakistan's Soccer Ball Industry
Over one million children are involved in Egypt's cotton industry; its major cash crop. Their primary job is controlling pests that can ruin cotton plants by manually inspecting and treating the leaves of the cotton plants. Generally, the work is done during the	By the mid-1990s, roughly 75 percent of the soccer balls produced in the world were made in the Sialkot district of Pakistan. The International Labor Organization (ILO) produced a report in 1996 detailing the working conditions in the

[7] ILO Convention 138.
[8] UNICEF Statistics.
[9] "Backgrounder: Child Labor in Agriculture."

summer so it does not interfere with schooling; however, it is grueling and often runs eleven hours per day, every day of the week. Beatings by foremen, extreme heat, and exposure to dangerous pesticides are common as well.[10] In fact, two of the five pesticides regularly used are classified as "highly hazardous."[11]

The result of these working conditions on young children has been significant. Children suffer high rates of injuries and risk being beaten for their work performance. In fact, Human Rights Watch interviewed a child in Egypt who commented on his two foremen, saying, "One of them I hate; the other one I like. The one I hate used to beat and kick me whenever I missed a leaf. The other one beats and kicks me lightly."[12]

The exposure to pesticides can cause acute effects such as dizziness and vomiting as well as disrupting the nervous and endocrine systems of children.[13] The extreme heat of the Egyptian summer also endangers these children, as they often are provided minimal access to water and toilets. Further exacerbating an already untenable situation is the meager pay the children receive for this excruciating work which averages just US$0.81 per day.

Various organizations, such as Human Rights Watch, are working both to raise awareness of this situation and to convince the Egyptian government to meet its obligations under ILO Convention 138 that prohibits Egypt from allowing children below the age of 14 from working.

Sialkot's soccer ball industry and estimated that 7,000 children between the ages of 5 and 14 were involved in the manual production of soccer balls. These children typically worked 8 to 11 hour days and many had never attended school a single day in their lives.[14] This situation clearly violated Pakistan's ILO Convention 138 commitment to prohibit child labor below the age of 14.

As a result of the ILO's report and the publicity that came with world-wide revelation of the conditions in the industry, including introduction in the U.S. Senate by Senator Tom Harkin (Democrat – Iowa) of an amendment aimed at Pakistan that would have prohibited U.S. imports of goods made by child labor, an agreement was reached between the ILO and the Sialkot Chamber of Commerce on February 14, 1997. The goal of the agreement was the elimination of all child labor (defined as children under the age of 14 in this case) in the soccer ball industry in Sialkot, Pakistan.[15]

The agreement created a program designed to replace work with education for the children who were stitching soccer balls. By 2004, the ILO reported that over 10,000 children had received an education as a result of the agreement and an additional 5,000 had received health care coverage.[16]

The most critical development of this agreement was the enabling of families to place their children in schools rather than the soccer ball industry. In part, this resulted from a change in social standards in the Sialkot district that no longer tolerated child labor, but it was also the result of a shift in the economics of the district that enabled the families to forgo the income formerly produced by their children. The long-term impact should be significant as these children will now have educations that can enable them to seek different or more lucrative work once they are older.

[10] "Underage and Unprotected: Child Labor in Egypt's Cotton Fields."
[11] "Backgrounder: Child Labor in Agriculture."
[12] ibid.
[13] "Underage and Unprotected: Child Labor in Egypt's Cotton Fields."
[14] "From Stitching to School: Combating Child Labour in the Soccer Ball Industry in Pakistan."
[15] ibid.
[16] ibid.

Child Soldiers

With the increase in intra-state wars in the 1990s after the end of the ***Cold War***, the use of children as soldiers increased rapidly. It is a global problem with estimates suggesting as many as 300,000 children are being used in 30 conflicts around the world.[17] National militaries and rebel groups alike are using children in armed conflict. In part, this staggering number has been driven by the availability of lightweight arms that are easy to use even by children.

Children are particularly susceptible to manipulation and forced recruitment due to their physical and emotional immaturity. In particularly violent or political conflicts, adults may prove difficult to recruit and to manage, whereas highly impressionable children are more easily molded and forced into service. As a result, armed forces are more likely to target children for recruitment in prolonged conflicts as a way to replenish their ranks.

In many instances, children are abducted from their families off the streets or from their schools. After their abduction, children may be forced to commit atrocities against their own families in an effort to alienate them from society and bind them to their abductors.[18] In some circumstances, children will be forced to use drugs as a means of brain washing them into believing that they must fight for a given cause. Other times, children may join forces to obtain regular access to food or for survival as a result of extreme economic hardship at home. Further, ongoing conflicts may eliminate other alternatives for children by ruining their family farms, closing their schools, or robbing them of their parents.

Once pressed into service, children fill many roles, from serving directly in combat to working as spies, messengers, and cooks, to clearing mines with their bodies or being forced into sexual roles for the personal use of commanders. Girls are particularly susceptible for the latter role, but have also been

[17] "Child Soldiers: A Global Issue." Amnesty International.
[18] "Facts about Child Soldiers."

forced to commit atrocities and can make up as much as one third of the child soldiers pressed into service in some conflicts.[19]

Additionally, some of these children are younger than 10 years old and are forced to participate in unbelievable violence.[20] The atrocities they are encouraged to commit, sometimes through the use of drugs or threats of violence, are often incomprehensible to such young children. The gruesome level of violence they are exposed to often results in severe psychological stress that can prove debilitating throughout their lives even once hostilities have ended.

Because of the horrific consequences for children, international human rights law has sought to prohibit their use as soldiers. The Convention on the Rights of the Child specifically states that state parties "shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities."[21] The Convention further encourages states parties to give priority to older recruits when recruiting children between the ages of 15 and 18. Some states have tried to strengthen these restrictions by adopting the Optional Protocol to the Convention. This protocol extends the obligation to take all measures to prevent those under 18 years of age from taking a direct part in hostilities, while also banning the drafting of anyone under 18 into the armed forces, but allowing voluntary recruitment of 15 to 18 year olds.[22]

The ***African Charter on the Rights and Welfare of the Child*** contains a stronger prohibition, banning the recruitment (voluntary or otherwise) of anyone under 18. Importantly, the International Criminal Court includes the use of children under 15 in hostilities as a war crime that it can prosecute. These overlapping legal requirements on states that have adopted these conventions, charters, and statutes are designed to strengthen the notion of children as a protected class particularly deserving of defense against hostilities and the disruption of their development.

The Child Soldiers Prevention Act of 2008 became effective in 2009. This act requires that the U.S. State Department's Annual Trafficking in Persons report publishes a list of countries that recruit and use child soldiers. In the following fiscal year, those governments that are identified are subject to restrictions on security assistance and commercial licensing of military equipment. Countries identified in 2010 include: Burma, Chad, Democratic Republic of Congo, Somalia, Sudan, and Yemen.[23]

Child Soldiers in Sierra Leone

The devastating eleven year civil war in Sierra Leone wreaked havoc across this West African country of approximately six million people from 1991 to 2002. Throughout the conflict, horrific brutality and unconscionable crimes were committed by forces on all sides of the war. In particular, children were heavily recruited to become 'soldiers' by the Revolutionary United Front (RUF) and the Armed Forces Revolutionary Council (AFRC), the two primary opposition forces, as well as by government forces later in the war.

The various forces recruited child soldiers for many of the reasons outlined above in this issue brief; children are easily indoctrinated, fearless, and have not yet developed a clear sense of what is morally right or wrong. It is unclear how many children ended up fighting in the civil war, but

[19] "Facts About Child Soldiers."
[20] Amnesty International, "Child Soldiers."
[21] "Convention on the Rights of the Child."
[22] Marks and Clapham, 28.
[23] "Trafficking in Persons Report"

during the conflict, one government commander estimated that in one small district alone over 3,000 children were involved in the fighting.[24]

Sadly, many of the children who were pressed into service in Sierra Leone were forced to commit horrific atrocities such as killing their own families and murdering or maiming innocent civilians. Often, commanders would give the children drugs prior to any attacks so that the children would do anything they were ordered to do, no matter how violent. The brainwashing and exposure to violence often became so complete that some of the children were proud of how good they were at killing.

As the civil war came to a close in 2001 and 2002, the fledgling government of Sierra Leone sought United Nations assistance for delivering justice for the innocent victims caught in the civil war. A novel approach was adopted, creating the ***Special Court for Sierra Leone*** that is a hybrid domestic-international court.

This court has been given jurisdiction to try crimes related to the recruitment and use of child soldiers by all parties in the civil war. The Court was also given jurisdiction over the crimes committed by child soldiers themselves – a controversial decision because it could mean the prosecution of children as young as eight.[25] (The discussion of children in criminal justice systems that follows will shed light on the controversy surrounding the prosecution of children.)

The creation of the Special Court for Sierra Leone was an important step in the effort to confront the evil of using children as soldiers. It will help strengthen the norm against this particularly gruesome exploitation of children and may discourage the future use of children in combat situations. Presently, Charles Taylor, the former President of Liberia, is undergoing trail at the Special Court for Sierra Leone (which is located at the Hague) for crimes against humanity and several other charges.

To watch a personal account of child soldiers in Sierra Leone, click here (http://www.guardian.co.uk/world/video/2009/jul/12/liberia-child-soliders).

Juvenile Justice

Concerns regarding juvenile justice center on the rights of children with respect to criminal liability, procedures, and sentences. Specifically, the Convention on the Rights of the Child provides protections for children who are alleged to have violated penal laws. First, state parties are encouraged to implement special criminal justice systems for children, including laws, procedures, and institutions specifically tailored to children. Second, under article 40 of the Convention, these systems are required to take into account a child's age when determining culpability for crimes committed.[26]

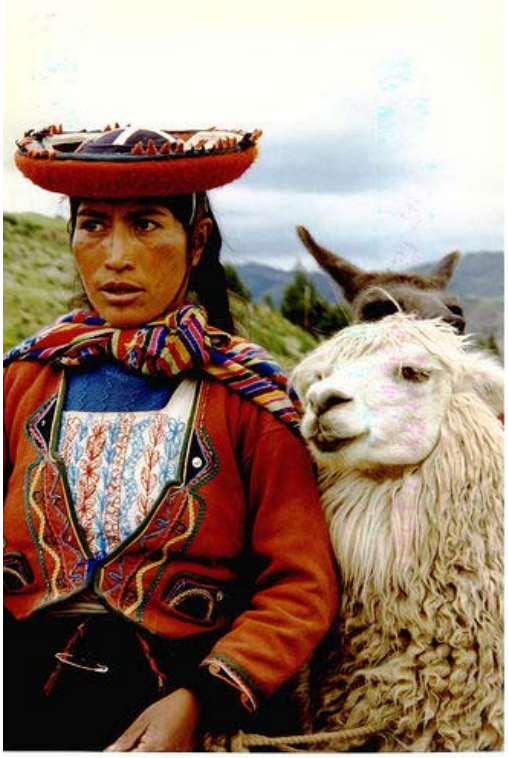
This last point has important ramifications, including the right to be detained separately from adults, the right to privacy in all proceedings, and the right to be imprisoned only as a last resort for the shortest appropriate time. The creation of special juvenile systems must also include standard protections against arbitrary detainment and for fair trials that should be the hallmark of all criminal justice systems.

[24] "Sierra Leone: Sowing Terror; Atrocities against Civilians in Sierra Leone."
[25] Cohn, 1.
[26] "Convention on the Rights of the Child."

Because of the adoption of the Convention, many countries have begun to change their juvenile justice systems to bring them into compliance with the requirements of the convention. This has been particularly true of Latin America, with Brazil leading the way in 1990, and Ecuador, Peru, Mexico, El Salvador, and Nicaragua following over the next few years. Unfortunately, despite the improvements in law in some countries, many others have not followed through on their commitments under the Convention. The actual practice of law, despite what is on the books, sometimes varies widely from the new requirements of their new laws. As a result, much remains to be done to fully protect children exposed to criminal justice systems around the world.

Indigenous Rights

There are between 300 and 500 million ***indigenous*** peoples around the world today. They occupy 20 percent of the land on Earth and "nurture 80 percent of the world's cultural and biological diversity."[1] These peoples can be minorities or majorities in the states in which they currently reside. For instance, the indigenous peoples of the United States (Native American Indians) and Canada (Native Canadian Indians) are small minorities of each state's overall population; however, the indigenous people of Greenland (the Inuit) represent 85 to 90 percent of Greenland's total population.[2]



Traditionally, indigenous peoples have been defined as those who inhabited a land before it was conquered by colonial societies and who consider themselves distinct from the societies currently governing those territories. This definition has distinct implications for the rights of indigenous peoples under international human rights law as will be discussed later in this brief. Regardless, in practice many indigenous peoples remain geographically and culturally separate from mainstream society, rendering state institutions foreign to many indigenous peoples' conceptions of community and societal organization

Click here for a Youtube video about the indigenous people of Guatemala: http://www.youtube.com/watch?v=A6Lc8rXdVF4.

Protecting the rights of indigenous peoples gains particular importance when viewed in the context of their history. The unique legacy of colonial exploitation and destruction fundamentally undermined their

[1] "Study Guide: The Rights of Indigenous Peoples."
[2] Friborg, 2.

group identities and rights. Additionally, colonialism was an external force on these already existing groups that systematically impacted their prospects for autonomy, equality, and dignity.

In fact, despite their wide spread presence around the globe, indigenous peoples have historically suffered significant injustice of varying degrees, from denial of participation in governance to enslavement, torture, and extermination. Indigenous peoples continue to face significant inequality in many areas around the world. Their life expectancy is 10 to 20 years lower than the general population in the Americas and they tend to have less access to health care, education, and economic opportunity.[3] The ongoing, global scale of the threat to indigenous peoples makes current protections of nondiscrimination and freedom of association inadequate.[4]

[3] "Indigenous Peoples: A Backgrounder."
[4] Donnelly, 215.

Individual Rights or Group Rights?

Due to these injustices, international human rights efforts have sought to protect indigenous peoples, particularly in recent years. However, there remains significant disagreement regarding the best method and framework to use to do so. A key question in this discussion is whether identity is defined through individual characteristics or through group membership. The answer to this question helps determine whether group rights (in this case for indigenous groups) are truly necessary or whether the interests of groups are better served by vigorous enforcement of individual human rights.

Picture: Permanent Forum on Indigenous Issues

As such, discussions of indigenous rights necessarily raise important questions regarding the international human rights framework. The classic liberal approach, which remains dominant today, emphasizes individual rights over collective rights. In part, this is driven by the notion that the guarantee of rights for individuals will lead to rights for groups. Human rights flow from the individual to the group rather than the other way around, i.e. identity is defined through individual characteristics, not group membership.

However, despite this traditional focus on individual rights, protections for groups have become increasingly accepted in certain circumstances. For instance, the 1948 ***Convention on the Prevention and Punishment of the Crime of Genocide*** specifically bans violence targeting a national, ethnic, racial, or religious group for destruction. This convention reflects the growing notion that "membership of a minority community entails distinct human rights."[1] Adopted in 1966, the ***Covenant on Civil and Political Rights*** protects minorities' rights to enjoy their own culture, practice their own religion, and use their own language. Additionally, the ***UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities***, adopted in 1992, further extended the norm of granting rights to minorities.

Efforts to provide protections explicitly for indigenous peoples have only recently gained traction. It was not until 1982 that a ***Working Group on Indigenous Peoples*** was formed under the ***United Nations Economic and Social Council***. Although a ***Declaration on the Rights of Indigenous Peoples*** was drafted in 1985, little progress was made until June 29, 2006, when the UN ***Human Rights Council*** adopted the Declaration. However, stiff resistance to the Declaration remains in the General Assembly, primarily by states worried that it could advance the claims of indigenous groups to independence, thereby impacting the territorial boundaries of these states. This will be covered in more depth below.

For the full text of the Draft Declaration on the Rights of Indigenous Peoples, see:
http://www.ohchr.org/english/issues/indigenous/docs/declaration.doc

[1] Marks and Clapham, 45.

Land and Environment

The lives of indigenous peoples are often inextricably linked with their relationship to the environment. Their traditions often demonstrate an attachment to land and a strong responsibility for preserving it for future generations.[1] In fact, many indigenous people have a profoundly spiritual relationship with nature, one that ties the land to their very existence.[2] There is also a strong correlation between areas of high biological diversity and the presence of indigenous peoples in those areas around the world, including the "Biological 17" nations that are home to two-thirds of the world's biological resources.[3]

Because indigenous groups have tended to preserve their lands, there are often abundant resources available on their lands that mainstream society may want to access, such as oil, lumber, and farmable land. These economic pressures can seriously threaten both the environment, but also the indigenous groups who depend on the land for their way of life. Therefore, the protection of this land as well as indigenous rights to preserve their group's land is integral to indigenous survival.

The Amazon River Basin

The Amazon River Basin is a massive rainforest in nine South American countries that is also home to over 300 indigenous groups.[4] The Amazon basin is also one of the richest areas of biological diversity in the world, but one that is being reduced every day by increased settlement and destruction of the forest for agricultural use as well as for the extraction of raw materials such as gold and iron.

This development directly impacts residents of the Amazon, such as the Kayapo, Waiapi, and Yanomami indigenous peoples of Brazil. Millions of acres of their ancestral homelands have been destroyed, and in some cases, such as with the Ashaninka, indigenous peoples have not only lost their land, but been forced into slavery for plantation owners who have taken their lands.[5]

The devastation of parts of the Amazon River Basin not only robs indigenous peoples of their fundamental rights, but it also decimates some of the last great expanses of biological diversity left on the planet. The issue of human rights and environmental protection are inherently linked in this region, providing an even greater

Picture: Amazon River

[1] "Leaflet 10: Indigenous Peoples and the Environment."
[2] Peang-Meth, 106.
[3] ibid.
[4] "Focus: Land Rights in the Amazon River Basin."
[5] ibid.

justification for the recognition of group rights. In response, the indigenous peoples of the Amazon region have organized themselves into the Coordinating Body for the Indigenous Peoples' Organizations of the Amazon Basin and are pressing for their rights to their lands, as well as their rights to participate in decisions affecting their lands.	

Cultural Rights

Indigenous peoples are also an important source of cultural diversity: 4,000 to 5,000 of the world's 6,000 cultures are indigenous.[1] Further, approximately three-quarters of the world's languages are spoken by indigenous peoples. These languages are disappearing rapidly due to the pressures being placed on indigenous peoples.

The forces of globalization are reducing the number of cultures around the world and strengthening ties between those that remain. This process often increases the similarities between cultures while reducing their differences. The promotion of homogenous cultures could pose a serious threat to human survival. Researchers are recognizing that cultural diversity drives changes in civilization, just as biodiversity enables biological evolution.

Importantly, a significant amount of ecological knowledge is accumulated by the indigenous peoples who live in rare and poorly understood ecologies. Their knowledge is held in their language, so with the loss of their language the world loses the intimate knowledge of the plants that could provide future medical treatments or technological advances. In fact, the U.S. ***National Institutes of Health*** concluded that "traditional knowledge is as threatened and is as valuable as biological diversity. Both resources deserve respect and must be conserved."[2]

But, beyond the direct benefits that can be gained for science or industry, the protection of language and culture hold merits in its own right. Indigenous peoples' rights seek to protect this special class of minorities that are particularly vulnerable to the encroachment of the modern state and the wider societies they support. Language and culture are key attributes that define these peoples' identities and therefore deserve special efforts of protection.

Bilingual Education in New Zealand
The Maori are the indigenous peoples of New Zealand who signed a treaty, the Treaty of Waitangi, with the British Crown in 1840 that established British rule throughout New Zealand, but that also recognized certain rights for the native Maoris. Among those rights was the right to preserve the Maori language and culture. However, by the end of World War II, most Maori children were educated only in English so the Maori language was slowly disappearing. To reverse this trend, the Maori lobbied the New Zealand government to establish native-language education programs.

The result was the creation of the Kohanga Reo in 1981, a comprehensive education program for Maori children involving Maori language immersion as well as a complete education in Maori history and culture. The program provides a parallel system of education to the traditional, English-based program

[1] "Leaflet 10: Indigenous Peoples and the Environment."
[2] ibid.

used primarily by New Zealanders of European descent. Now, the Maori system includes primary schools, secondary schools, and even a university. All are funded by the New Zealand government, but curricular decisions are community based and help strengthen both the Maori language, but also Maori ethnic and group identity.[3]

[3] Hornberger, 451.

Self-Determination

The right to ***self-determination***, as asserted in the Covenant on Civil and Political Rights as well as the Covenant on Economic, Social, and Cultural Rights, provides a substantial portion of the intellectual underpinning for the protection of individual human rights.[1] It presents the notion that individuals are guaranteed the right to decide their own paths in life without undue burdens by the state. However, the term "self-determination" also holds more specific meanings, one of which can include the right to independence and sovereignty. The key debate for indigenous rights touches on the latter.

Harking back to the previous discussion of group versus individual rights, group rights have grown out of provisions from the decidedly state-centric and individualistic Covenants on Civil and Political Rights and on Economic, Social, and Cultural Rights. While these covenants primarily dealt with securing individual rights, they also affirmed the right to self-determination to all "peoples." States continue to interpret this clause narrowly, thereby excluding indigenous groups from this right, but the lack of clarity in the covenants regarding the definition of "all peoples" has created a wedge for indigenous groups to use to press for their group rights.[2]

This raises the question of what, precisely, self-determination means. There are four orders of self-determination that experts refer to. The first is characterized by decolonization whereby a people overcome foreign rule to achieve independence within internationally recognized borders, such as happened throughout Africa in the 1960s, or in India when it won its independence from Britain in 1947. The second-order involves the achievement of independence of states or republics within a federal system, such as occurred for the former states of the Soviet Union (Estonia, Lithuania, Belarus, etc.). Third-order self-determination occurs with the struggle for independence by a subunit of a unitary state, such as Kosovo from Bosnia, or Quebec from Canada. These movements for secession from an existing unitary state are often met with fierce resistance by the threatened state and are generally not recognized as legitimate under international law. Finally, the fourth-order would be efforts by indigenous peoples to obtain self-determination.[3]

In addition to these varying units seeking self-determination, each may be striving for varying degrees of independence. For instance, some groups may be pressing for political and civil rights within the broader political structure that already exists. Others may seek greater independence for autonomous action in realms such as education policy and land rights, as well as autonomous political structures, and yet remain under the larger authority of the state. Finally, independent state-hood may be the ultimate desire meaning the group would obtain complete control over certain internationally recognized territory. For an additional discussion of self-determination in this Brief, as applied to East Timor, see "International Covenant on Civil and Political Rights" above.

These degrees of independence lie at the heart of the debate over indigenous rights. Not all indigenous peoples seek the same level of autonomy, while existing states are often extremely concerned about any possibility of indigenous peoples obtaining full independence. One of the prime tenets of international law is that a nation state's national unity and territorial integrity are guaranteed. Therefore, the drive for self-determination that would provide absolute independence is not permitted because it would involve the break-up of an existing state.[4] In such an instance, the claim to self-determination of the indigenous

[1] Falk, 98.
[2] Falk, 134.
[3] Falk, 100.
[4] Peang-Meth, 103.

group would collide with the right of the people in the modern territorial state to self-determination because the indigenous claim could dissolve the larger state. This reasoning is precisely why many states continue to oppose the adoption of the draft Declaration on the Rights of Indigenous Peoples by the UN General Assembly.

However, many indigenous peoples are not actually seeking full independence, in part out of recognition that such a goal is nearly impossible. Rather, what they often seek is to "generate enforceable limits on encroachment by the state and to protect domains of traditional life."[5] In essence, the goal becomes the creation of a relatively autonomous zone within the existing state founded on a relationship of respect for the traditions of the indigenous people within their autonomous region. Under such an arrangement, the state retains its territorial integrity while the indigenous group gains protections for its unique traditions and increased control over its internal affairs.

[5] Falk, 129.

Glossary

Abortion: the termination of a pregnancy by the removal of an embryo or fetus from the uterus.

Abu Ghraib: a prison in Iraq where prisoners were abused and brutalized by U.S. personnel in 2004.

Advisory Proceeding: a proceeding that does not involve any parties, and therefore does not have a plaintiff or defendant. The opinions produced by the Court in such proceedings are advisory in nature, and are intended to provide a statement of what the law is regarding a situation without providing a legally binding remedy to a dispute.

American Civil Liberties Union (ACLU): a non-governmental organization dedicated to preserving individual rights and liberties in the United States through litigation and public policy advocacy.

Anti-Ballistic Missile Treaty: a treaty between the United States and the Soviet Union signed on May 26, 1972 that limited the deployment of anti-ballistic missile systems in each country. These systems were designed to defend against incoming missile-delivered nuclear weapons.

Arbitration: the process by which the parties to a dispute submit their differences to the judgment of an impartial person or group agreed upon by mutual consent.

Asphyxiation: the condition of suffocation or of being deprived of oxygen by choking, smothering, strangulation, or by gas or other poisonous agents.

Asylum: protection and immunity from extradition granted by a government to a political refugee from another country.

Autonomy: independence or freedom.

Bill of Rights: the first ten amendments to the U.S. Constitution that guarantee certain fundamental rights of the people, such as the right to free speech and freedom of religion.

Central Intelligence Agency (CIA): a United States government agency responsible for the collection and analysis of intelligence and information outside the United States.

Chapter VII: the part of the Charter of the United Nations that outlines the enforcement powers of the Security Council. Under Chapter VII, the Security Council has the power to determine the existence of any threat to the peace or act of aggression and to then authorize the use of armed force to restore and maintain international peace and security in the face of the threat or act of aggression.

Charter of the United Nations: the document signed by the original 51 founding countries that created the United Nations. All nations that have subsequently joined the UN have also signed the document. It describes the structure and function of the UN, in a somewhat similar manner as a constitution describes the structure and function of a state.

Classical Liberalism: a doctrine stressing the importance of human rationality, property rights, natural rights, individual freedom, free markets, and limited government.

CNN Effect: the manner by which public opinion is shaped by the images seen on television, specifically referring to war-time coverage.

Cold War: a term used to describe the relationship between the United States and Soviet Union from World War II until 1990 that was characterized by intense political opposition and military rivalry that never developed into a full-scale, armed war.

Complementarity: the principle that the International Criminal Court (ICC) can act only in cases where states are unwilling or unable to prosecute crimes under the ICC's jurisdiction on their own. The idea is to use the ICC only as a last resort when a state will not or cannot act on its own.

Contentious Cases: cases involving disputes between two parties requiring judicial settlement.

Convention: an international agreement between two or more states.

Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: a multilateral treaty under the purview of the United Nations that requires signatory countries to take effective measures to prevent torture within their borders. The Convention was adopted by the UN General Assembly on December 10, 1984 and entered into force on June 26, 1987.

Convention on the Prevention and Punishment of Genocide: a multilateral treaty under the purview of the United Nations that defines and outlaws genocide. Adopted by the UN General Assembly in December 1948 and came into force in January 1951.

Culture War: a conflict between groups with differing ideas, philosophies, and beliefs. The term is sometimes used to refer to conflict between competing social values within the political system.

Customary International Law: rules of law derived from the consistent conduct of states acting out of the belief that law required them to act that way, i.e. persistent and customary practice of states can lead to the consideration of their behavior as creating a legal precedent for future action.

Crimes Against Humanity: crimes committed in armed conflict that are directed against a civilian population (rather than just the opposing military forces). Crimes against humanity are very similar to 'war crimes,' and are often difficult to differentiate from 'war crimes,' but are more narrowly focused attacks against civilian populations.

Declaration of Independence: the document that proclaimed the independence of the American colonies from England, adopted by the Second Continental Congress on July 4, 1776.

Derogability: the act by which a law or right is modified by a subsequent law that limits its scope or impairs its utility and force.

Deterrence: the discouragement of specific actions or attempts to prevent specific behavior.

Development Ladder: term referring to the incremental steps in development each state experiences throughout its development into an industrial state.

Disempowered: to be deprived of power.

Divine Right: the notion that monarchs are endowed with their authority to rule by God, not by the people.

Enlightenment, (The): a philosophical movement in the 18th century that advocated the use of reason and individualism to scrutinize previously accepted traditions; the movement resulted in political, religious, and educational reforms.

Ethnic Cleansing: the systematic elimination of an ethnic group from an area or society by forced migration or genocide.

***Ex post facto*:** Latin term meaning "after the fact." In legal settings, laws passed *after* the commission of a specific action that criminalize that action cannot be used to prosecute that instance of the action because it was not a crime at the time it was committed, i.e. the law was passed *ex post facto*.

Extradite: the act of delivering a fugitive to the authorities of another country pursuant to a preexisting agreement between the countries.

Fraternity: the quality of being brotherly or of having a common purpose. Similar in meaning to 'solidarity.'

General Assembly: the main deliberative body of the United Nations. Each member nation is represented in the assembly and has one vote.

Geneva Conventions: a series of four treaties that provide the international legal standards for the conduct of war. The four conventions cover the treatment of the wounded and sick on land and sea, as well as the treatment of prisoners of war, and the protection of civilians in wartime. See section on "Geneva Conventions" in the Issue Brief for more details.

Genocide: the systematic, planned, and deliberate extermination, attempt to exterminate, or conspiracy to exterminate an entire national, racial, ethnic, or religious group.

Guantanamo Bay: the location of the U.S. Naval base in Cuba where a detention facility was created in 2002 for the detention of unlawful combatants collected by U.S. forces in Afghanistan, Iraq, and other countries.

Guerilla: a member of an irregular armed force (a military force not controlled by a government) that often operates in small units to sabotage, harass, and undermine a stronger force by surprise attacks.

Hague Conventions: international treaties negotiated at The Hague, Netherlands in 1899 and 1907 that were among the first formal codifications of the laws of war.

Hate Crime: a crime motivated by prejudice or intolerance toward a racial, gender, ethnic, religious, or social group.

Helsinki Accords: also known as the Helsinki Final Act of 1975, this is the document that created the Conference on Security and Cooperation in Europe (CSCE). This was an agreement among the United States, Canada, the Soviet Union and most of the countries of Europe. The document recognized the existing boundaries of states at the time, but also included a strong expression of respect for human rights and fundamental freedoms, including the right to self-determination.

Holocaust: the genocide of European Jews and others by the Nazi regime during World War II.

Humanitarian Aid: assistance provided to innocent civilians caught in the middle of a conflict, such as medical assistance, food, and temporary housing.

Impunity Agreements: a term typically used to refer to agreements between the United States and other countries that provide an explicit exemption for all U.S. citizens from International Criminal Court jurisdiction, guaranteeing that the other country will not surrender a U.S. citizen to the Court in the even that he or she is indicted by the Court.

Inalienable: not transferable to another or capable of being repudiated. Inalienable rights are those that are inherent to each person and that cannot be taken away from each individual.

Indigenous: peoples who inhabited a land before it was conquered by colonial societies and who consider themselves distinct from the societies currently governing those territories.

International Bill of Rights: the term used to refer to both the International Covenant on Economic, Social, and Cultural Rights and the International Covenant on Civil and Political Rights when considered together.

International Court of Justice (ICJ): the principle judicial body of the United Nations with responsibility for adjudicating disputes between states on questions of international law. The Court does *not* have jurisdiction over individuals, and individuals have no standing to bring a suit before the ICJ.

International Criminal Court (ICC): a permanent international court created by treaty, with 104 states party to the treaty. The treaty came into force in July, 2002. The Court has jurisdiction over war crimes, crimes against humanity, and genocide involving countries that are party to the treaty and in instances when those countries are unwilling or unable to prosecute an instance of one of those crimes occurring on its territory.

International Criminal Tribunal for Rwanda (ICTR): the international court created under United Nations auspices to prosecute those responsible for the genocide committed in Rwanda in 1994 as well as other offenses against international humanitarian law. The court is international in character due to concerns that Rwanda was incapable for prosecuting these crimes solely under its domestic legal system due to the extreme violence and instability the genocide caused.

International Criminal Tribunal for the Former Yugoslavia (ICTY): the international court created under United Nations auspices to prosecute those responsible for the war crimes that occurred during the conflict in Bosnia, such as ethnic cleansing and the Srebrenica massacre.

International Covenant on Civil and Political Rights (ICCPR): is a legally binding treaty that embodies many of the rights proclaimed in the Universal Declaration of Human Rights. The treaty offers the right of self-determination; right to freely dispose of wealth and resources; right to life; right to pardon in case of death sentence; right not to be subject to torture; right not to be held in slavery; right to liberty and security of person; right to be informed of charges if arrested; right to compensation if unlawfully arrested; right to leave and enter their own country without restrictions; right to be treated equally at court; right to freedom of thought, conscience, and religion; right to freedom of association; right to marry; right to a nationality; and other basic rights. The covenant ensures that these rights should be carried out without discrimination.

International Covenant on Economic, Social, and Cultural Rights (ICESCR): is a legally binding treaty that embodies many of the rights proclaimed in the Universal Declaration of Human Rights. The treaty offers the right of self-determination; right to work; right to favorable and just conditions at work;

right to form trade unions; right to strike; right to protection for mothers after childbirth; right to adequate standard of living; right to physical and mental health; right to education; and other basic cultural and economic rights. The covenant ensures that these rights should be carried out without discrimination.

International Criminal Tribunals: international courts constituted to prosecute war crimes, genocide, and other human rights crimes that are of an international character. The two prime examples of these are the International Criminal Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda. Both were created to deliver justice to the victims of ethnic cleansing, genocide, and war crimes committed by or supported by the governments of each country. Importantly, these types of tribunals are typically created with the help of the United Nations in instances when the national courts are not capable of prosecuting these crimes for whatever reason (lack of capacity, political instability, etc.).

International Military Tribunal: the tribunal created by the victorious allies in the European theater of World War II to try those Nazis deemed responsible for war crimes and crimes against humanity. Often, this tribunal is referred to as the Nuremberg Tribunal, or Nuremberg Trials, for the German town where the tribunal sat.

International Military Tribunal for the Far East: The tribunal created by the victorious allies in the Pacific theater of World War II to try leaders of the Empire of Japan who were responsible for war crimes and crimes against humanity. Often, this tribunal is referred to as the Tokyo Tribunal, or the Tokyo Trials for the capital city of Japan.

Jurisdictional: restricted to the geographic area controlled or otherwise under the authority of a state.

Jus Cogens: a principle of international law that is based on values taken to be fundamental to the international community and that cannot be set aside.

Lawful Combatants: those who act in accordance with the law of war, generally understood to be the Geneva Conventions and Hague Conventions. This designation caries legal protections, provided for under the above conventions, for anyone detained and classified a lawful combatant.

Laws and Customs of War: the standards of conduct of warfare as established by the Geneva and Hague Conventions that limit the type and scope of justifiable actions that may be taken by each side in a war.

League of Nations: an international organization created by the Treaty of Versailles in 1919 to promote world peace and cooperation in the wake of World War I. It was replaced by the United Nations in 1946, an organization with a significantly different structure.

Legal Precedent: a legal decision or form of proceeding that serves as an authoritative rule in future similar cases or situations.

Multilateral: involving more than two countries or parties.

Natural Rights: rights deriving from natural law, a body of law believed to be derived from nature, and therefore to be binding on human actions in addition to law established by human authority.

New Deal: the programs advocated by and created by U.S. President Franklin Delano Roosevelt that were designed to promote economic recovery from the Great Depression as well as social reform.

Non-derogable: refers to rights that cannot be taken away or limited under any circumstances. For instance, the right to live and the right to freedom from genocide are so fundamental that no limit may justly be placed on them.

Non-governmental organization (NGO): an organization not affiliated with any government, but that deals with public policy issues, often in an advocacy role. Often helps link individuals and society to the larger political forces and structures to which they are subject.

Non-refoulement: the principle that governments must not only refrain from torturing individuals themselves but also refuse to turn people over to other countries in which there is a reasonable suspicion they will be tortured (found in Article 3 of the Convention Against Torture).

North Atlantic Treaty Organization (NATO): an alliance of states formed for the purpose of collective defense, principally in response to the perceived threat of the Soviet Union. The alliance continues to exist despite the fall of the Soviet Union, and now exists as a more general collective defense mechanism against any possible threats. It is primarily comprised of the United States and Canada along with most of the countries of the European Union and Turkey.

Nuremberg Trials: the trials of military and political leaders of Nazi Germany for crimes against humanity and war crimes committed during World War II before the International Military Tribunal. See also "International Military Tribunal" above.

Peacekeeping: the attempt to maintain peace and security by the deployment of armed forces to a particular region or country. Generally, such operations are directed under United Nations auspices in post-conflict societies in an effort to reconstruct the state and aid in its transition out of conflict. See "Chapter VII" above for more information.

Preamble: an introductory statement, particularly in formal documents, that explain their purpose.

Preemptive War: an attack or war waged in the face of an imminent, credible attack or invasion, generally pursued to gain a strategic advantage. Such a war may be sanctioned under international law if the threat is imminent, credible, and significant. This is distinct from 'preventive war' which is waged to prevent another country from gaining a strategic advantage, such as the development of weapons of mass destruction prior to an imminent attack. Whether 'preventive war' is sanctioned by international law remains controversial and is generally doubted.

Progressive Realization: the constant improvement of human rights.

Propaganda: information, ideas, or rumors that are spread for the purpose of promoting some cause.

Prostitution: the act or practice of engaging in sexual activities for money.

Protocol: the first draft of a treaty before ratification, or an international agreement of less formal stature than a treaty. The term 'protocol' may also be used to refer to an optional and supplemental agreement to a treaty that states have already signed.
Ratify: to confirm or express consent by formal approval, often through voting.

Rendition (extraordinary rendition): the secret removal of a suspect to another country without due process of law. Often, the suspect is delivered to a country where torture is secretly allowed.

Retribution: a justly deserved punishment or penalty.

Rome Statute of the International Criminal Court: the multilateral treaty that established the International Criminal Court. See "International Criminal Court" above.

Secretary General: the chief administrator of the United Nations. The Secretary General serves for renewable five-year terms after appointment by the General Assembly acting on the nomination of the Security Council. By convention, the Secretary General cannot be a national of one of the five permanent members of the Security Council (Britain, China, France, Russia, and the United States).

Security Council: the division of the United Nations that is responsible for maintaining international peace and security. It is composed of five permanent members, each of which may veto any proposed resolution and ten temporary members that serve two year terms and do not have a veto. The five permanent members are Britain, China, France, Russia, and the United States.

Self-determination: the right of people to form the government of their choosing, without reference to the desires of any other nation.

Slavery: the state of being owned or under the complete control of another person.

Social Security: the provision of economic security and welfare for individuals by the government through programs and direct payments provided by public funds and/or payments collected from employers and employees.

Solidarity: a union of interests or purposes or of fellowship among members of a group. Similar in meaning to 'fraternity.'

Sovereign: autonomous, independent, self-governing state with sole power over its internal affairs.

Special Rapporteur: the title given to individuals designated to work on behalf of international organizations, often the United Nations, who are given specific mandates to investigate, monitor, and recommend actions on a specific human rights issue.

Srebrenica massacre: the massacre of an estimated 8,000 people in the town of Srebrenica by the Serbian Army in July, 1995 during the war in Bosnia.

Subsidiarity: the principle that matters ought to be handled by the lowest or smallest competent authority. In practice this means leaving local issues to be handled by local government while national issues (such as war or national security) should be handled by national government. In the context of the International Criminal Court, the term refers to the principle of allowing a country to prosecute a crime the Court has jurisdiction over unless that country is unwilling or unable to do so, at which point the Court will exercise jurisdiction.

The Enlightenment: see 'Enlightenment, (The)'

Three Generations of Rights: the grouping of rights into three distinct categories, generally in the order in which they are protected during a country's development into an advanced, industrial state. First generation rights are the most basic, fundamental rights and include civil and political rights; those that deal with liberty, freedom of speech, due process of law, etc. Second generation rights are social, economic, and cultural in nature; focusing on access to employment, housing, and health care. Finally, third generation rights encompass a much broader range of "rights," such as the right to a healthy environment, the right to protection of cultural heritage, and the right to social development.

Tokyo Trials: the trials of military and political leaders of the Empire of Japan for crimes against humanity and war crimes committed during World War II before the International Military Tribunal for the Far East. However, the Emperor of Japan was not included in the list of persons indicted. See also "International Military Tribunal for the Far East" above.

Torture: the act of inflicting excruciating physical or mental pain, as punishment or revenge, as a means of getting a confession or information, or for sheer cruelty.

Trafficking: in the context of "human trafficking," it is the illegal recruitment and trade of people to be exploited against their will.

Treaty: a formal, legal agreement between two or more states.

Tribunals: seats or courts of justice; often those that have jurisdiction on behalf of countries such as the Nuremberg Tribunal. See "Nuremberg Trials" for more information.

UN Transitional Administration in East Timor: The United Nations program that administered the territory of East Timor during its transition from occupation by Indonesia to its full independence, running from August 1999 to May 2002.

United Nations: an international organization formed in 1945 after the end of World War II to promote international peace, security, and cooperation. It was created under the terms of the charter signed by 51 founding countries in San Francisco in 1945.

Universal Declaration of Human Rights: the declaration is primarily a statement of principle, a foundation upon which the legal framework for practical protections of the agreed upon rights could be constructed. It is not a legally binding document, but rather serves as a statement of aspirations for all states to achieve a more equitable and just world.

Unilateral: undertaken by or relating to only one side. A unilateral action in international relations is one taken by only one state, not a group of states.

Unlawful Combatants: the classification used by the United States for terrorist enemies that are captured by U.S. forces. This classification does not enjoy the legal protections provided under the Geneva Conventions for the detainment of prisoners of war or other "legal" enemy combatants. (See discussion of "lawful combatant" in the Issue Brief for further information).

U.S. Constitution: the document that provides the fundamental principles and laws that prescribe the structure, functions, and limits of the U.S. government.

War Crimes: violations of the laws and customs of war as codified by the Geneva and Hague Conventions. These crimes include, but are not limited to, the destruction of cities or towns not justified by military necessity, the targeting and killing of civilians, torture, killing a surrendered combatant, willful destruction of religious institutions or educational centers, and the plunder of public or private property.

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