# 1 Introduction: human rights in international relations

Human rights are widely considered to be those fundamental moral rights of the person that are necessary for a life with human dignity. Human rights are thus means to a greater social end, and it is the legal system that tells us at any given point in time which rights are considered most fundamental in society. Even if human rights are thought to be inalienable, a moral attribute of persons that public authorities should not contravene, rights still have to be identified – that is, constructed – by human beings and codified in the legal system.[1] While human rights have a long history in theory and even in spasmodic practice, it was the American and French revolutions of the eighteenth century that sought to create national polities based on broadly shared human rights. Despite the rhetoric of universality, however, human rights remained essentially a national matter, to be accepted or not, until 1945 when they were recognized in global international law.

This book is about the evolution and status of human rights in international relations at the start of the twenty-first century. Thus this extended essay is about the effort to liberalize international relations – to make international relations conform to the liberal prescription for the good society. In the classical liberal view, the good society is based on respect for the equality and autonomy of individuals, which is assured through the recognition and application of the fundamental legal rights of the person. In this book liberalism is a synonym for attention to personal rights. But in international relations it has been widely believed that the state, not the individual, is the basic unit. And the core principle has been said to be state sovereignty and non-interference in the domestic affairs of states. In this book realism is a synonym for attention to state interests – foremost among which is security – and state power. The subject of international human rights thus projects liberalism into a

[1] Jack Donnelly, "The Social Construction of International Human Rights," in Tim Dunne and Nicholas J. Wheeler, eds., *Human Rights in Global Politics* (Cambridge: Cambridge University Press, 1999), 71–102.

realist world – a world dominated for several centuries by states and their collective interests.[2]

To paraphrase Charles Dickens, human rights in modern international relations represents both the best of times and the worst of times.[3] During the half-century after World War II, truly revolutionary developments occurred in the legal theory and diplomatic practice of internationally recognized human rights. Human rights language was written into the United Nations Charter, which was not the case with the Covenant of the League of Nations. Member states of the United Nations negotiated an international bill of rights, which was then supplemented by other treaties and declarations codifying that human beings had certain fundamental legal rights that were to be respected. By the first decade of the twenty-first century more than 160 states (United Nations membership was 193 in 2016) had formally adhered to the International Covenant on Civil and Political Rights and the companion International Covenant on Economic, Social, and Cultural Rights. Some regional developments were even more impressive. The Council of Europe (made up of forty-seven states in 2016) manifested not only a regional convention on civil and political rights, widely accepted in that region, but also an international court to adjudicate disputes arising under that treaty. The Western Hemisphere was also characterized by a regional treaty on human rights and a supranational court to give binding judgments. The 1949 Geneva Conventions were formally accepted by all states; they enshrined the view that certain personal protections were to be respected even by parties engaged in armed conflict. In the fall of 1993 the UN General Assembly approved the creation of a High Commissioner for Human Rights. In the mid-1990s the UN Security Council created international criminal courts to try individuals for violations of the laws of war, genocide, and crimes against humanity in the former Yugoslavia and Rwanda, thus rejuvenating international criminal responsibility after the Nuremberg and Tokyo trials of the 1940s. In the summer of 1998 a diplomatic conference in Rome approved the statute for a standing international criminal court with jurisdiction similar to the two *ad hoc* courts. In 2005 a United Nations summit meeting affirmed the principle of the responsibility to protect (R2P). Henceforth, while sovereign states had the primary responsibility for protecting human rights in their jurisdictions,

[2] For an excellent discussion of varieties of liberalism and realism, see Michael W. Doyle, *Ways of War and Peace* (New York: Norton, 1997), especially 41–48 and 205–213.

[3] Lynn Miller, *World Order: Power and Values in International Politics*, 3rd edn. (Boulder: Westview, 1994), ch. 1.



if states proved unwilling or unable to prevent gross violations, outside parties had the responsibility to become involved.

Other developments also indicated the central point that human rights was no longer a matter necessarily or always within state domestic jurisdiction. In principle, states were to answer to the international community for their treatment of individuals. International relations regularly entailed not only subjects like war and trade, but also human rights. Human rights had been internationalized, and at least some attention to internationally recognized rights had become routinized. International relations involved aspects of governance in the sense of public management of policy questions.[4] Attention to human rights was part of this international governance. Concerns about the equal value, freedom, and welfare of individuals had long affected many national constitutions and much domestic public policy. From 1945 those same concerns about individual autonomy and respect and welfare also began to affect international relations in important ways – regardless of whether the distribution of power was bipolar, multipolar, or unipolar.[5]

The other side of the coin, however, merits summary attention as well. Perhaps no other situation captures so well the inhumanity that occurs in the world as the famine in China between 1958 and 1962, induced by Mao's regime, that claimed approximately 30 million lives.[6] Not only did the international community not respond, but also many outsiders even denied that a catastrophe of major proportion was occurring or had occurred. If one judges events by number of human lives lost, Mao's famine made him a greater mass murderer than either Hitler or Stalin. The twentieth century, with its record of mass murder and mass misery, was plainly not a good era for the practice of liberal values in many ways. It has been estimated that some 35 million persons were killed in armed conflict during the twentieth century; but perhaps 150–170 million persons were killed by their own governments through political murder or mass misery that could have been ameliorated.[7] The journalist David Rieff was quite perceptive when he wrote that

[4] James N. Rosenau and Ernst-Otto Czempiel, eds., *Governance Without Government: Order and Change in World Politics* (Cambridge: Cambridge University Press, 1992).

[5] Lea Brilmayer, *American Hegemony: Political Morality in a One-Superpower World* (New Haven: Yale University Press, 1994).

[6] For an introduction, see Andrew Wedeman, "China: The Famine of the 1960s," in David P. Forsythe, ed., *Encyclopedia of Human Rights* (New York: Oxford University Press, 2009), vol. I, 321–328. See further Jasper Becker, *Hungry Ghosts: China's Secret Famine* (London: J. Murray, 1996).

[7] R. J. Rummel, *Death by Government* (Somerset, NJ: Transaction Publishers, 1996).

the twentieth century, by comparison to those that came before, had the best norms and the worst realities.[8]

Even after the collapse of European communism and the demise of communist economics in other places like China and Vietnam, a number of persons embraced the traditional view that international relations remained a dangerous game, and that those who wanted decisive international action for human rights were naively optimistic.[9] The historian Samuel Moyn considered the push for international human rights one more utopian project akin to the panaceas of communism and national liberation from colonialism.[10] In the post-Cold War world, the rise of Islamic jihadists – or militant Islamists if one prefers – seemed to confirm this dark view of the perpetual human condition. Thus the end of the Cold War did not mean the demise of "realists" who argued that pursuit of human rights in international relations had to take a back seat to the self-interested pursuits of the territorial state. It was ironic but nevertheless true that democratic realists like Henry Kissinger, however much they might be philosophical liberals at home in their support for democracy and human rights, were prepared to sacrifice foreign rights and foreign democracy to advance the interests of their state. Democratic societies surely had a collective right to defend themselves. The rub came in whether a democratic society should sacrifice the human rights of others to advance its own security and prosperity. Even commentators sympathetic to universal human rights agreed that anarchical international relations, without central government, meant that it was not easy to interject human rights considerations into the small policy space left over from intense national competition.[11]

This book, focusing on human rights in international relations since World War II, will present an analysis of competing liberal and realist perspectives. It will also chart the enormous gap between legal theory and political behavior, as public authorities both endorsed human rights standards and systematically violated – or failed to correct violations of – the newly emergent norms. The following pages will explain why legal and diplomatic progress transpired, analyzing both moral and expediential influences. It will also outline major sources of

[8] *A Bed for the Night: Humanitarianism in Crisis* (New York: Simon & Schuster, 2002), 70.
[9] E.g., John Mearsheimer, "Disorder Restored," in Graham Allison and Gregory Treverton, eds., *Rethinking America's Security: Beyond Cold War to New World Order* (New York: Norton, 1992), 213–237.
[10] Samuel Moyn, *The Last Utopia: Human Rights in History* (Cambridge, MA: Belknap for Harvard University Press, 2010).
[11] Stanley Hoffmann, *Duties Beyond Borders: On the Limits and Possibilities of Ethical International Politics* (Syracuse: Syracuse University Press, 1981).



opposition to the consolidation of the legal-diplomatic revolution. The analysis will hence trace the successes and failures of international action for human rights, with the latter being frequently more visible than the former. Along the way we will pay attention to critiques of liberalism other than realism, such as some versions of feminism and Marxism.

The long-term vision that emerges from the pages that follow is open-ended. The future of human rights depends on agency in context: nothing is set in stone. We should keep in mind that contemporary international relations is characterized by much turbulence, with ample evidence of contradictory findings and trends.[12] Nevertheless, for pragmatic liberals such as the author who regard international human rights as good and proper, but whose application must be matched to contextual realities thus leading to difficult policy choices, the twenty-first century holds both dangers to, and promise for, human rights. I am guarded about a liberal world order in the long term.[13] I believe that the future of human rights in international relations is not predetermined by structural (meaning fundamental or systemic) factors but depends on choice by humans. In the light of what social scientists call the agent–structure problematique, I believe that agents have some freedom of choice even while structures cannot be discounted. Racism remains strong, but Nelson Mandela showed that individuals could make progress toward a multi-racial and rights-protective polity.

In addressing this subject, one has to admit that the topic of human rights in international relations is too big and complex for one macro-thesis – aside from the general argument that human action for or against human rights will determine. Four smaller themes, however, permeate the pages that follow. The first is that some international concern with human rights is here to stay. The second is that one should appreciate human rights as important and pervasive soft law, not just the occasional hard law of court pronouncements. The third is that private parties merit extensive attention, not just public authorities. The fourth is that the notion of state sovereignty is undergoing fundamental change, the "final" form of which is difficult to discern. But, as never before, to be "sovereign" entails the duty to protect human rights. At least this is the endorsed principle.

[12] James N. Rosenau, *Turbulence in World Politics: A Theory of Change and Continuity* (Princeton: Princeton University Press, 1990).
[13] Max Singer and Aaron Wildavsky, *The Real World Order: Zones of Peace, Zones of Turmoil*, 2nd edn. (Chatham, NJ: Chatham House Publishers, 1996).

## Human rights as end of history?

There is no reasonable prospect of a return to the international relations of, say, the early nineteenth century. As mentioned above, and as will be shown in some detail in Chapters 2 and 3, human rights standards and basic diplomatic practices have been institutionalized in international relations.[14] The first and most simple explanation for this is that there are now so many treaties, declarations, and agencies dealing with internationally recognized human rights that especially the last fifty years of international interactions cannot be undone. But there are deeper and more interesting explanations, some accepted, some debated.

Second and relatedly, western power has made a difference. Liberal democracies still constitute the most important coalition in international relations. The affluent liberal democracies which comprise the core of the Organization for Economic Cooperation and Development (OECD) constitute not only a caucus or interest group. These states also exercise considerable military, economic, and diplomatic power. They constitute the current motor to a process that has been going on for several centuries: the westernization of international relations.[15] In general, these states and the non-governmental actors based within them have been introducing human rights into world affairs, especially since 1945. The globalization of the western version of liberalism has been going on for some time, especially when one understands that globalization pertains to social as well as economic issues.

If the Axis powers had won World War II or if the communist alliance had won the Cold War, international relations would be different than it is today – and much less supportive of human rights. In broader retrospective, if conservative Islamic actors had proved dominant over the past four centuries and not western ones, human rights would not have fared so well. I do not mean that each liberal democracy has been genuinely supportive of every human rights issue that arose in international relations. Clearly that was not the case. France and the United States, the two western states most prone to present themselves to the rest of the world as a universal model for human rights, have compiled a quite mixed record on the practice of human rights in international relations. France actively supported various repressive regimes within its former African colonies, even in the 1990s after the demise of

[14] David P. Forsythe, "The United Nations and Human Rights at Fifty: An Incremental but Incomplete Revolution," *Global Governance*, 1, 3 (September 1995), 297–318.

[15] Theodore H. Von Laue, *The World Revolution of Westernization: The Twentieth Century in Global Perspective* (New York: Oxford University Press, 1987).



Soviet-led communism. During the Algerian war of 1954–1962 it operated a torture bureau as part of its military structure. The United States, to put it kindly, did not always interest itself in various individual freedoms in Central America during much of the Cold War. In places like Guatemala, Nicaragua, and El Salvador Washington was indirectly responsible for many political killings and other forms of repression. It is quite clear that during the Cold War, the democratic West, to protect its own human rights, supported the denial of many human rights in many parts of the world many times. It has proved all too possible for liberal democracies at home to manifest less than liberal foreign policies abroad.

But a larger point remains valid. Dominant international norms and central international organizations reflect to a large extent the values of the most powerful members of the international community. The OECD coalition has been the most powerful, and particularly in terms of basic norms and diplomatic practices, OECD states, along with certain other actors, have made a liberal imprint on international relations. At least in this one sense, and for limited purposes, it is correct to view international relations sometimes as a clash of civilizations.[16] For all their domestic imperfections and imperialistic foreign policies, the liberal democracies have advanced the notion of the equal autonomy of and respect for the individual. History does not move in straight lines, but certain ideas do advance. Should an authoritarian China come to dominate international relations, the place of human rights in world affairs would change.

However, the economic and military increase in China's power and the concomitant decline in US economic clout and military effect raise troubling questions about the long-term future of human rights – if China remains authoritarian and if the United States does not make needed adjustments to its power base. Other troubling factors can also be briefly noted – e.g., repressive trends in Russia, the growing power of authoritarian Iran, Pakistan's inability to suppress illiberal Islamist movements, India's colonial experience and hence its distaste for western-inspired review of national policies (not to mention its highly repressive control of Kashmir), and so on. In short, the westernization of international relations may come to an end by 2050 if not before.[17]

Third, there is a more intriguing but debatable explanation for the staying power of human rights in world affairs, beyond these first two and

[16] Samuel P. Huntington, "The Clash of Civilizations," *Foreign Affairs*, 72, 3 (Summer 1993), 22–49; Huntington, *The Clash of Civilizations and the Remaking of World Order* (New York: Simon & Schuster, 1996).

[17] See especially Stephen Hopgood, *The Endtimes of Human Rights* (Ithaca and London: Cornell University Press, 2013). He considers state-sponsored human rights efforts to be a form of Western cultural imperialism. Recall also Moyn, *The Last Utopia*.

related factors: the weight of international institutions (meaning the cumulative weight of international law and organizations), and the political influence of powerful states. This third factor pertains to political theory and personal values. Francis Fukuyama argued that all persons have a drive to be respected, and that the ultimate form of personal respect finds satisfaction in the idea of human rights.[18] Stated differently, Fukuyama argued that the process of history drives persons toward acknowledgment of human rights, since the *ideal* of human rights (rather than its imperfect practice) constitutes the most perfect form of contribution to human dignity.

In this Hegelian interpretation of purposeful or teleological world history, at least intellectual history, liberal democracies have been instrumental to the institutionalization of human rights less because of their military and economic power, and more because they have adopted an ideology of human respect that cannot be improved upon. Or, liberal democracies exert influence for human rights because they reflect an appealing way to legitimate power. Liberal democracies stipulate that power must be exercised in conformity with, primarily, individual civil and political rights. Other states, such as Sukarno's Indonesia or Khomeini's Iran, may temporarily achieve popular goals such as economic growth or conformity with fundamentalist religious principles. But in the long run they suffer a crisis of legitimacy, because they have an inferior way of trying to justify their power. In Fukuyama's view, accepting human rights is the best way to legitimate power. Thus human rights becomes a hegemonic idea with staying power because of its theoretical or ideational supremacy. We have the "end of history" and have seen the "last political man" because the formal-legal triumph of human rights cannot be improved upon as a legitimating ideal. Never mind for now that human practice fails to fully implement the theoretical ideal.

Some have seen a smug self-satisfaction and triumphalism in Fukuyama's argument – which was presented after the demise of European communism. They are inclined to argue that in particular the US model of human rights is overly individualistic, causing great damage to a sense of community and perhaps even to order. This view is sometimes

[18] Francis Fukuyama, *The End of History and the Last Man* (New York: The Free Press, 1992). Fukuyama has not changed his views, except to say that if medical psychology could change the nature of man, his theory would have to be revisited. See Fukuyama, "Second Thoughts: The Last Man in a Bottle," *The National Interest*, 56 (Summer 1999). But see his "At the 'End of History' Still Stands Democracy," *Wall Street Journal* (June 6, 2014), www.wsj.com/articles/at-the-end-of-history-still-stands-democracy-1402080661, arguing that there are indeed competing sources of political legitimacy, but liberal democracy based on human rights should triumph in the long run.



presented in the form of the superiority of certain Asian values.[19] Several western observers are also critical of the extent of individual rights found especially in the United States.[20] Some critics argue there is too much western emphasis on civil and political rights, and not enough emphasis on the economic, social, and cultural aspects of human dignity, which after all is the commonly agreed end product. Others argue that Fukuyama's view of human rights is too secular as well as too universal, and thus too demeaning to local cultures and religions that give fundamental meaning to many people.[21] Some observers saw early on a socioeconomic globalization giving rise to a particularistic and fundamentalist backlash that was the antithesis of the triumph of the idea of universal human rights.[22] Even many pragmatic liberals said that human rights is only one means, and not necessarily always the most significant one, for achieving human dignity.[23] There was, for example, considerable attention to the idea of human security, a notion that might or might not be compatible with the human rights discourse.

It seems clear enough that there are various means to try to legitimate power: achieve impressive economic growth (e.g., China), obtain the endorsement of religious authorities (e.g., Iran), restore national power (e.g., Russia), provide stability after disruption (e.g., al-Sisi in Egypt), incorporate familiar traditions from past regimes (e.g., Putin in Russia often emulates the Tzars), and so on. A sense of correctness might evolve from each of these factors.

Still, Fukuyama may be proven correct when he notes that as of the end of the twentieth century liberal democratic state capitalism as grounded in human rights ideas has proved broadly appealing. One sees this appeal in the Arab Spring of 2011 in which broad grassroots activism demanded more democracy and human rights as traditionally

[19] See further among many sources Joanne R. Bauer and Daniel A. Bell, eds., *The East Asian Challenge for Human Rights* (New York: Cambridge University Press, 1999).

[20] Michael Hunt writes of those critics of the USA who worried about its "aggressive and asocial individualism," in *Ideology and US Foreign Policy* (New Haven: Yale University Press, 1987), 44 and *passim*. Rhoda Howard, *Human Rights and the Search for Community* (Boulder: Westview, 1995), believes that the US version of human rights has undermined a sense of community but suggests that Canada's version has not.

[21] Michael J. Perry in *The Idea of Human Rights: Four Inquiries* (New York: Oxford University Press, 1998) argues that religion is a necessary base for human rights.

[22] Benjamin R. Barber, *Jihad v. McWorld* (New York: Ballantyne Publishing Group, 1995).

[23] See further Herbert C. Kelman, "The Conditions, Criteria, and Dialectics of Human Dignity: A Transnational Perspective," *International Studies Quarterly*, 21, 3 (September 1977), 529–552; and Harold K. Jacobson, "The Global System and the Realization of Human Dignity and Justice," *International Studies Quarterly*, 26, 3 (September 1982), 315–332; and see below, especially Chapter 4.

understood (in part because they were seen as leading to more economic opportunity).

Moreover, one has only to compare the number of migrants (including refugees) seeking entrance to OECD states with those seeking to enter various illiberal or repressive states. This is not to say that the OECD states do not present problems of material consumption, ecological overload, democratic deficits, mismanagement of economics and finances, and a host of other problems. The perfect society has yet to manifest itself. Nevertheless, liberal democratic state capitalism is associated with a broadly appealing series of human rights centering on civil and political rights, including a right to private property. Most OECD states other than the USA have added the conception of economic and social human rights to their view of the fundamental entitlements of the individual in society. This OECD model has indeed proved broadly attractive even beyond the western world. Many "have nots" in places like Asia, the Arab world, Africa, etc. do indeed accept the superiority of the idea of respect for human rights, and they are active in organizing groups to pursue that goal. Some non-western elites, too, have endorsed the human rights model in places like Japan and South Korea.

Just as the originally western notion of state sovereignty has been widely accepted, so the once western notion of human rights has found broad acceptance especially during the past fifty years of world history. This stems in part from western military and economic achievements. But it also stems in part from an intellectual or ethical hegemony as outlined by Fukuyama. The *idea* of individual human rights has proved broadly appealing. As Michael Ignatieff has noted, human rights can be seen as a form of "idolatry," of worshiping the human being, and naturally enough this vision has proven attractive to lots of human beings.[24] Even those like Stalin, who denied most human rights in practice, wrote liberal constitutions and organized (controlled) elections so as to pretend to recognize human rights.

Is Fukuyama guilty of triumphalism, of overstating the appeal of western-style democracy after NATO's victory in the Cold War? It is difficult to fully separate basic political theory from the net results of the practice associated with theory. If all liberal democracies had compiled the practical record of Weimar Germany, or more recently Greece and Argentina, the theory of liberal democracy would be dead today. Probably the greatest challenge to the fundamental ideas of democratic state capitalism (based on human rights) comes from authoritarian capitalism

[24] Michael Ignatieff, *Human Rights as Politics and Idolatry* (Princeton: Princeton University Press, 2001).



along the lines of China or Singapore. While these two states do not overtly reject the fundamental notion of human rights leading to liberal democracy, their practice indicates that their core political theory is really authoritarian capitalism. (In China's case it is certainly not Marxism-Leninism, and never was for Singapore.)

In the past thirty years China has overcome instability and poverty to grow at an annual average of 9–10 percent. It is the most impressive record of sustained national economic growth in history. In approximately the same period Singapore has moved from being a poor colony in the British Empire to surpassing the British in per capita gross national product. This politically illiberal model of national development is appealing to some. Much remains to be seen as to how attractive the Chinese/Singapore model proves. China in particular has much uneven development and many pockets of discontent. It is not at all clear that China can continue to encourage considerable personal freedom in economic matters but deny significant individual freedom in the political system. Moreover, in many authoritarian states beyond China and Singapore there is even more corruption and much less impressive development. One has only to look at Egypt at the time of writing to conclude that authoritarianism can lead to considerable socioeconomic problems and instability.

It is premature to say that Fukuyama is definitely either correct or incorrect regarding the superiority of legitimating ideologies based on civil-political rights. As Chinese foreign minister Chou En-lai supposedly said to Henry Kissinger in the 1970s with regard to an evaluation of the French revolution of 1789 made in the name of the "rights of man," it is too soon to say. If China disintegrates into renewed instability because of bad decisions made by its authoritarian elite, the human rights promises of the French revolution will look more attractive.[25]

It bears stressing that Fukuyama's argument in support of human rights is mostly about political theory and not about democratic practice. One of the points emphasized in this book is that western states, including the USA, can greatly benefit from a more serious consideration of how internationally recognized human rights might improve their societies.[26] Ultra-nationalists like the late US senator Jesse Helms resist

[25] For a short discussion of the power and problems of China with its projected status as the largest economy in the world by 2030, see Gideon Rachman, "American Decline: This Time It's for Real," http://foreignpolicy.com/2011/01/03/think-again-american-decline/.

[26] See further David P. Forsythe, *Global Human Rights and American Exceptionalism* (Lincoln: University of Nebraska, University Professor Distinguished Lecture, 1999); and Forsythe, ed., *The United States and Human Rights: Looking Inward and Outward* (Lincoln: University of Nebraska Press, 1999).

international review of the racist strains and other imperfections in American society, as shown especially in Chapters 4 and 6 of the present volume. A certain intellectual isolationism persists among some US policy makers and voters. They easily accept the notion that because the US Constitution is revered, and because the United States manifests an independent and powerful judicial system, American society has no need of international standards or international review of human rights practices. Their intellectual or cultural isolationism causes them to overlook much pertinent evidence about the utility of international review of democratic violations of human rights.

During the Cold War the Council of Europe was made up of only liberal democracies (excepting Greek and Turkish governments during certain periods). Yet human rights violations by these liberal democracies, under the European Convention on Human Rights, as reviewed by the European Commission on Human Rights and the European Court of Human Rights, were not few. As will be noted in Chapter 5, the case load at the European Court of Human Rights was such that procedures had to be changed to accommodate the large and growing number of cases. Against this background, it is difficult to sustain the view that the US Constitution and Bill of Rights emphasizing the American version of human rights could not benefit from further international review. It is perfectly clear that even well-intentioned democracies violate some human rights, both at home and through their foreign policies.[27] Fukuyama's argument was not that western democracies are perfect or cannot be improved, only that they institutionalize a superior political theory for legitimating power (that they helped transfer to international relations from 1945). This mode of legitimating power is the theory of protecting human rights.

For the immediate future, the international law of human rights exists, for whatever reason. Hence the primary issue about human rights in international relations is not whether we should acknowledge them as fundamental norms. Rather, the primary issue is when and how to implement human rights in particular situations. A central dilemma has always been, and remains, how to guarantee personal rights when the community itself, or its major interests, is threatened. Thus, what is the proper protection of human rights when the order or security of the nation-state is at risk, or its major economic interests are challenged?

[27] Donald W. Jackson, *The United Kingdom Confronts the European Convention on Human Rights* (Gainesville: University Press of Florida, 1997).



## Human rights as soft law

Hard law is "black letter law," the exact law as specified in court decisions. Soft law comes in two forms. There are legal rules that are not the subject of court decisions, but which nevertheless influence extra-judicial policy making. For example, some influential treaties are never or rarely adjudicated in court. They achieve their impact on policy and behavior by being interpreted by non-judicial bodies such as the legal office of the foreign ministry. Additionally there are norms that do not meet the procedural test of being law, but which nevertheless influence policy making as if they were law. For example, some UN resolutions become accepted as authoritative guidelines even while remaining, legally speaking, non-binding recommendations.

One of the official long-term goals of many actors in international relations is to institute the rule of law on behalf of human rights. This means not only that world affairs would be characterized by human rights standards, but also that these general norms would lead regularly to international and national court cases to protect human rights. Court cases would transform international legal principles into specific rules providing concrete protection. In this vision the international law of human rights would become hard law. This is an admirable goal, already partially realized.

For example, within the Council of Europe, and under the European Convention on Human Rights, we already have hard law. As will be shown primarily in Chapter 5, we have not just legal principles on behalf of civil and political rights. We also have hard or black letter law: we have court cases comprising specific judgments about what is legal and illegal in particular situations. The European states party to this legal system, which created, *inter alia*, a supranational court to issue binding judgments in human rights matters under this multilateral treaty, have thus far largely complied with all judgments of the European Court of Human Rights. There is nothing in the nature of the international law of human rights that prevents it from becoming hard law, even reasonably effective hard law. (The subject of national compliance with international court judgments is complex. For example, some states will pay reparations to wronged individuals as ordered by courts, but fail to make changes in national law so as to prevent future violations. So there is the matter of partial compliance.)

This book, however, is not a case book for law students. While covering considerable traditional legal materials, it stresses the importance, perhaps sometimes even the superiority, of soft law on human rights. The primary form of soft law covered is the attention given to

international human rights standards through non-judicial means such as state foreign policy, the action of non-profit non-governmental organizations (NGOs) like Amnesty International, the action of for-profit corporations, and the actions of private individuals. When these actors pursue human rights standards through their various actions, sometimes they can have greater impact than through court cases.

Apartheid was not ended in South Africa by a court case. Communism was not ended in Europe by a court case. Torture was not terminated in the Shah's Iran by a court case. Death squads were not suppressed in El Salvador by a court case. In all these examples, considerable progress was made on human rights through non-judicial action. This book emphasizes the reality of action on human rights through soft law – the implementation of human rights norms via public policy, reflecting the interplay of governments, intergovernmental organizations (IGOs), NGOs, corporations, and even individuals.

Two further examples can be cited to make the same point. If important strides are to be made on the problem of child soldiers, we need not only legal rules backed by court cases prohibiting child soldiers, but also a multifaceted approach to society's structures that lead to the recruitment of child soldiers.[28] Similarly one might recall the Danish cartoon controversy from 2006 in which there was a negative reaction (managed by certain actors leading to violent events with fatalities) to cartoons published in Copenhagen making fun of the prophet Mohamed. Certainly a court case will not resolve the problem. When the practice of freedom of speech and freedom of the press led to charges of defaming a religion, that clash was resolved, to the extent that it was, by diplomacy and cross-cultural communication.[29] Hence on these subjects, as on most others, we need soft law in addition to hard law.

Global international relations would be much improved if it approximated the regional international law of Western Europe with its inter-

[28] Scott Gates and Simon Reich, eds., *Child Soldiers in the Age of Fractured States* (Pittsburgh: University of Pittsburgh Press, 2010).

[29] For background, see David Keane, "Cartoon Violence and Freedom of Expression," *Human Rights Quarterly*, 30, 4 (November 2008), 845–875. In the UN Human Rights Council during the spring of 2011, a resolution was adopted that dropped language about defaming Islam. This language had been pushed for years by certain Arab and other Islamic actors. It had been strongly resisted by Denmark and other liberal states. Contributing to events was the assassination of Pakistani officials for supposedly defaming Islam. The resolution reaffirmed freedom of speech but opposed incitement to imminent violence. See Patrick Goodenough, "UN Human Rights Council Moves Away from 'Dangerous' Defamation of Religion Concept," March 25, 2011, www.cnsnews.com/news/article/un-human-rights-council-moves-away-dangerous-defamation-religion-concept.



locking human rights standards as specified by the European Court of Human Rights and European Court of Justice – the latter court ruling on certain human rights questions although it is supposedly and primarily a court for economic issues. When US courts have ruled on certain human rights issues affecting foreign relations, at least some symbolic victories have been achieved on such matters as prosecution of alien torturers.[30]

But one can make advances on human rights apart from courts and hard law. Armed conflict is a clear case in point. Since 1864 there have been a number of treaties codifying various legal protections for persons not active in armed conflict. What is now called international humanitarian law, or the law for the protection of victims of war, or the law of human rights in armed conflict, manifests a rich normative history. Numerous books, and even a few libraries, focus on these legal standards. We do not lack for lawyers in the various national military establishments. However, the number of important or influential national and international court cases adjudicating this international law, and the national laws derived from it, over the past 140 years is minuscule by any means of calculation. The relative paucity of court cases (excepting Germany after World War II) pertaining to the international law of human rights in armed conflict does not mean that the law is irrelevant to armed conflict. Rather, this law is brought to bear (to the extent that it is) mostly by military and political decisions, and by the private efforts of groups like the International Committee of the Red Cross. (This macro-evaluation remains valid even though one can point to the occasional important court case dealing with international humanitarian law, such as the US Supreme Court's Hamdan judgment of 2006 holding that a provision of the 1949 Geneva Conventions applied to the US military prison at Guantanamo Bay on the island of Cuba.)

In the complicated armed conflicts that characterized much of the territory of the former Yugoslavia between 1992 and 1995, eventually it proved possible to reduce the violations of international humanitarian law. This was achieved primarily by political means, chief of which was the negotiation of the 1995 Dayton accords. Systematic rape as a weapon of war, the killing and mistreatment of prisoners, and attacks on – and evictions of – civilians were all reduced over time, but not through court

[30] US federal courts have asserted jurisdiction over alien torts that violate the law of nations. Thus certain foreign or alien torturers who enter the United States have been successfully prosecuted for violations of international human rights. Monetary judgments have rarely been collected, but international travel has been restricted for those convicted. See further Henry J. Steiner and Philip Alton, *International Human Rights in Context: Law, Politics, Morals* (New York: Oxford University Press, 1996), 779–810. This subject is updated later in the text.

cases. Indeed, Chapter 4 in particular addresses the thorny question of whether attempts at war crimes trials during or immediately after an armed conflict always comprise a preferred course of action. Suffice it to say at this point that the Clinton administration, with widespread support among European governments, decided not to vigorously pursue certain of those indicted as war criminals circa 1995, making the political judgment that pursuit of peace in former Yugoslavia – and with it the reduction of abuses of civilians and prisoners – overruled pursuit of legal justice at least for certain persons for certain times.[31] This book emphasizes those types of policy decisions in relation to international human rights, rather than hard law emerging from courts. (The creation in 1993 of the International Criminal Tribunal for the former Yugoslavia did not alter the fact that it was US mediation at the Dayton conference in 1995 that greatly reduced atrocities mainly in Bosnia, in the context of broader political and military developments. The first Balkan war of 1991–1995, and its series of atrocities, was not ended by court cases.)

One of the basic functions of all law, international law included, is to educate in an informal sense. To the extent that the international law of human rights informs military training, foreign policy decisions, and the actions of private groups, *inter alia*, it has achieved one of its primary purposes. It is not necessary to have court cases for the law to exert influence – and sometimes broad influence. It is commonplace to have legal obedience or compliance without legal enforcement. Indeed, the optimum situation is for legal standards to be internalized by individuals to such an extent that court cases are unnecessary. Effective law is usually that law which is internalized successfully, with court cases attempting to sanction a few violators. When violations are widespread, they overwhelm the justice system and usually lead to the collapse of the law. The ineffective laws in the USA making alcoholic drinks illegal during the era of prohibition classically demonstrate this point.

A number of lawyers active on human rights issues always argue for more hard law on human rights. From one point of view that is a laudable objective. The OECD states endorse the principle that all individuals are equal before the law. All those who violate the law should be prosecuted without regard to "political" considerations. From another point of view, however, the pursuit of international human rights standards through mostly hard law decisions is not likely to transpire with any regularity in the coming century – nor should it in all situations. The USA tried to

[31] See Richard Holbrooke, *To End a War* (New York: Random House, 1999), who says that in mediating the Dayton accords his mandate was to obtain peace and not to pursue legal justice.



arrest one of the more powerful warlords in Somalia during the early 1990s, holding him personally responsible for a number of violations of international law. The result was a firefight in downtown Mogadishu in October of 1993 that killed eighteen US soldiers and many more Somalis, led to the withdrawal of US troops from that failed state, and contributed to the reluctance of the USA to have the UN decisively engage to stop massive genocide in Rwanda during 1994. There is no doubt in retrospect that the pursuit of legal justice in Somalia led to a hell of good intentions, and that it would have been better, for Somalia and for the entire Great Lakes region of Africa, if the USA and other actors had defined their objectives in less criminal terms.

At the end of the Desert Storm campaign in early 1991, the USA and its coalition partners decided not to follow up on all their talk about war crimes committed by the Iraqi leadership. Such a pursuit would have entailed a continuation of the war, as the Allied Coalition would have had to launch a ground attack on Baghdad in order to try to capture Saddam Hussein and his commanders. That attack would have cost many Coalition lives and entailed much "collateral damage" to civilians in Baghdad. It is highly doubtful if American public opinion would have sustained such an operation at that time, based on pursuit of legal justice. To expect the first President Bush and his military staff to ignore such political calculations and look only at human rights violations and other violations of international law is to joust with windmills in the tradition of Don Quixote. Putting human rights violators in the dock is, after all, only one human rights strategy.[32]

After the US invasion of Iraq in 2003, with prolonged instability that cost more than 4,425 US military deaths by 2016, and tens of thousands of Iraqi deaths, mostly civilian, debate grew about the wisdom of decisions by George W. Bush to pursue a radical solution to the problem of Saddam Hussein – especially since weapons of mass destruction were never found. One of the outcomes from the US invasion was the increased power of the Shi'ite government of Iran next door, a government that was brutally repressive and anti-USA. And the trial and execution of Hussein after his overthrow and capture proved not to be a decisive factor in the evolution of Iraqi and regional politics. The decision to remove by force a gross violator of human rights such as Saddam Hussein can be fraught with complexity, especially since the "law of unintended consequences" often comes into play.

[32] Paul Hunt, *Reclaiming Social Rights: International and Comparative Perspectives* (Aldershot: Dartmouth, 1997), 41.

When it became clear that the Saddam regime had not been a clear and present danger to US society, American opinion turned against the invasion and the administration that had produced it – especially when the follow-on occupation and transition were badly managed for several years. This in turn contributed to American fatigue with foreign interventions and hence a reluctance to get deeply involved in the Syrian internationalized civil war next door. So just as one saw the "Somalia syndrome" from 1993 impede opposition to the Rwandan genocide in 1994, so one saw an Iraqi syndrome impeding measures to stop the humanitarian disaster in Syria.

Moreover, the US invasion of Iraq in 2003 and the follow-on mismanaged occupation helped create the vicious Islamic State group. Much of its leadership and core support were made up of Iraqi Sunnis who had been imprisoned during the war, but later released into an Iraq dominated by a narrowly partisan Shia elite. Feeling strangers in their own country, they became radicalized against Shia, the USA, and even moderate Sunni Muslims. The result was horrific: torture and murder of prisoners, beheadings, systematic rape and sexual slavery, and a host of other atrocities. This was all rationalized as the will of Allah, as the Islamic State Group created for a time a brutally repressive and exploitative "caliphate" in parts of Iraq and Syria. The US take-down of the brutal Saddam and the hope for a democratic Middle East led instead to a series of horrors constituting one of the worst human rights situations in the world circa 2015.

In El Salvador by the early 1990s, the USA, the UN, and others decided that human dignity would be best advanced by avoiding the question of legal justice for those on both sides of the civil war who had murdered civilians or engaged in other violations of human rights. Human rights concerns were addressed through various political and administrative steps, but prosecutions of past crimes associated with the political struggle were not attempted. Likewise in the Republic of South Africa after the era of apartheid, the government of Nelson Mandela decided to emphasize a national Truth and Reconciliation Commission that had the authority to pardon those on either side who had violated human rights during the long and brutal conflict over apartheid, provided they were truthful and publicly took full responsibility for their actions.

The South African experience in turn affected developments in Colombia by 2016. The government and its main armed opposition, FARC, negotiated a peace accord that avoided most criminal responsibility for war crimes in the long-running insurgency. This negotiated agreement was then opposed both by certain political and social circles



in the country who had borne the brunt of FARC abuses, and by Human Rights Watch which wanted more criminal responsibility for abuses on both sides. A popular referendum rejected the peace agreement by a narrow margin. The government then negotiated a modified agreement by FARC which was approved by the legislature. It also did not emphasize full criminal justice.

Whether international courts are created, whether they are supported with adequate political and material resources, and whether national courts are to be encouraged to take up human rights issues on sensitive questions are all considerations that policy makers face. Whether and how far human rights issues should be pushed at the expense of traditional security and economic concerns is a classic dilemma in soft law decisions. This is the clash of liberalism and realism. Foreign policy is inescapably about the management of contradictions.[33] This fact means that policy makers will frequently find it necessary to strike compromises between the advancement of human rights through criminal prosecutions and that of another perceived public good such as physical security and/or economic welfare. Moreover, peace accords that by-pass or delay or limit prosecution for human rights violations also reduce human rights violations by terminating the conflict. This was true of the 1995 Dayton accords in Bosnia, and will be true of the 2016 modified accord in Colombia.

Even after a "third wave" of democratization in the world,[34] many governments remain authoritarian and without serious interest in advancing democratic and other rights. This was certainly true of China and Russia under Presidents Xi and Putin. Moreover, public and especially corporate opinion in the liberal democracies does not always or easily endorse national cost in order to advance the rights of foreigners. The US Supreme Court, in the 2013 Kiobel judgment, made it more difficult for foreign plaintiffs to use US courts to sue corporations for complicity in human rights abuses abroad.[35] As one scholar has written, even in the 1990s there were many "structural" constraints faced by those interested in international human rights.[36] Policy makers, including those in the

[33] Stanley Hoffmann, "The Hell of Good Intentions," *Foreign Policy*, 29 (1977–1978), 3–26.

[34] Samuel P. Huntington, *The Third Wave: Democratization in the Late Twentieth Century* (Norman: University of Oklahoma Press, 1991). Twenty-five years later, this third wave had dissipated. There was an uptick in autocratic rule.

[35] See David P. Forsythe and Patrice C. McMahon, *American Exceptionalism Reconsidered: US Foreign Policy, Human Rights, and World Order* (London and New York: Routledge, 2016), ch. 5.

[36] Jack Donnelly, *International Human Rights*, 2nd edn. (Boulder: Westview, 1997).

OECD states, operate in this context, in which there can be genuine debate about how best to advance human dignity, and what can be attempted with reasonable prospect of success. This book focuses on those debates and dilemmas in soft law decisions – while not omitting the contributions of hard law to the place of international human rights in the modern world.

This orientation leads to an emphasis on politics in the form of power and policy choice, not just legal judgments. In both national and international societies, it is politics that determines the content of the law. All law is made in a legislative process, and the legislative process always involves policy choice and calculations of power.[37]

With regard to applying the law, even in the OECD states a political decision frequently affects judicial or administrative application of the law. If a federal or state attorney-general in the USA decides to make the prosecution of a certain category of crime – or a particular defendant – a high priority, this is in essence a policy choice; no legal rule tells an attorney-general that he/she must have certain priorities. If the US Environmental Protection Agency or an equivalent agency in one of the states decides to prosecute an entity for violation of environmental laws, as opposed to seeking a negotiated solution outside court, that decision is in essence a policy one, not controlled by a rule of law. Prosecutorial discretion is not tightly regulated by legal rules. So even in the OECD states characterized by the rule of law in general, the law does not make itself or apply itself. Political decisions based on policy choice and calculations of power are intertwined in various ways with decisions mandated by legal rules. Within states, chief executive officers and their legal staff make political decisions all the time about whether and how to apply the law in particular situations. International relations presents this same basic situation, but with much greater emphasis on political decisions in a soft law process, and relatively less emphasis on hard law emerging from judges in adjudication.

Because my approach does not simply ask, "What is the law, and how can we get courts to adjudicate it?," in Chapter 2 I explain the difference between classical liberals (who emphasize hard law for personal rights), pragmatic liberals (who emphasize both hard law and various soft law decisions for personal welfare, not just for rights), and realists (who emphasize national interest and power).

[37] See further Werner Levi, *Law and Politics in the International Society* (Beverly Hills: Sage Publications, 1976).



## Non-governmental actors

Under the Westphalian system of international relations, in place more or less since the middle of the seventeenth century, it is states that make the basic rules of the game. It is states that are full legal subjects, or have full legal personality, under the international law which is fashioned on the basis of state consent – explicit consent via treaty law, implicit consent via international customary law. As noted above, states can fulfill their duties and exercise their rights through judicial action, but even more so by their extra-judicial foreign policies. But this traditional and somewhat legalistic view of international relations has great difficulty in accommodating the sometimes important role played by various nongovernmental actors. This book seeks to expand the usual state-centric focus by paying considerable attention to non-profit and for-profit private actors. Whether or not the state has actually lost control of many important foreign policy decisions to a variety of non-state actors is a matter of considerable debate.[38] It is reasonably clear that on many issues in international relations, including those pertaining to human rights, the state *shares* decisions with important non-state actors – especially from a political rather than strictly legal perspective. (The issue of armed non-state actors is a separate subject.)

It should be noted here that some observers view human rights NGOs as the real motor to the process of growing attention to international human rights. In this view, it is the relatively well known transnational human rights organizations (e.g., Amnesty International, Human Rights Watch, the International Commission of Jurists, the International Federation for Human Rights, etc.) and their less well known colleagues (e.g., Africa Rights, Lawyer's Committee for International Human Rights, now renamed Human Rights First, etc.) that push states into giving attention to rights issues. Without the sum total of human rights NGOs, it is said, contemporary international relations would be far less supportive of human rights.

A related view is that it is not human rights NGOs *per se* that account for much transnational influence on behalf of human rights, but rather these groups acting in tandem with other actors, the sum total of which is a human rights network or movement.[39] It is said that various human

[38] See further Robert H. Jackson and Alan James, eds., *States in a Changing World: A Contemporary Analysis* (New York: Oxford University Press, 1993).

[39] See especially Kathryn Sikkink, "Human Rights, Principled Issue-Networks, and Sovereignty in Latin America," *International Organization*, 47, 3 (Summer 1993), 411–442.

rights actors, the international communications media, the Catholic Church, the Inter-American Commission on Human Rights, etc. all brought effective pressure to bear on certain countries in the Western Hemisphere leading to an improved human rights situation. In this view, state foreign policy was relatively unimportant in improving the human rights situation in places like Mexico, because it was an essentially non-governmental network that generated most of the effective pressure. Also in this view, the Arab Spring in Egypt circa 2011 was propelled mostly by individuals with smartphones making up a movement who teamed with various NGOs to enlist media coverage and some outside governmental support to at least oust the ruling dictator Hosni Mubarak.[40]

It follows from the above that if important for-profit actors such as multinational corporations join this transnational human rights network, or act parallel to it, even more pressure can be generated for human rights – whatever the position taken by states through their official foreign policies. Some believe it was a series of private decisions by for-profit actors that helped convince white supremacists in the Republic of South Africa that apartheid, and with it minority rule, had to be abandoned. When western investors judged the future of South Africa too risky and otherwise problematical for safe and productive investments, in this view progressive change was accelerated. In other situations for-profit actors have taken clear human rights decisions in fashioning their various market strategies, as will be noted especially in Chapter 8. Pepsico refused to expand operations into Burma/Myanmar under military rule there, with related rights violations of various types. Levi Strauss refused to make blue jeans in China between 1993 and 1998 because of certain violations of labor rights.[41] A coalition of sporting goods companies, including Nike and Reebok, will only produce soccer balls in Pakistan and elsewhere if they can certify that child labor is not involved.

At the same time, if important corporations refuse to engage for the advancement of human rights, but rather take the view that profits and not human rights are their proper concern, then that is a factor of considerable importance. In the 1990s there was considerable debate about the role of the Royal Dutch Shell oil company in Nigeria, where authoritarian government, human rights violations, and ecological damage led some states to consider various types of sanctions.

[40] See further Mahmood Monshipouri, ed., *Information Politics, Protests, and Human Rights in the Digital Age* (Cambridge: Cambridge University Press, 2016).

[41] Mark Landler, "Levi Strauss Going Back to China Market," *International Herald Tribune*, April 9, 1998, 1.



The central debate for present purposes concerns the precise role played, and influence generated, by all these non-governmental actors, relative to governments and their intergovernmental organizations. This is a longstanding and complex debate, similar to the debate about national politics and the role and influence of interest groups. Some observers and policy makers are not convinced that governments have been so relatively unimportant in international human rights developments. Two examples suffice to make the point. One author believes that officials in the Truman administration, not the representatives of private groups (or Latin American states), were primarily responsible for the human rights language that eventually appeared in the UN Charter.[42] Also, Donald Fraser, who organized a series of hearings on human rights and foreign policy when he was a member of Congress in 1974, and who is generally regarded as having been instrumental in the placing of human rights on the agenda of US foreign policy from that time, indicated that he was not pushed into that action by any human rights NGO.[43] His account is that the basic idea of renewed attention to human rights in US foreign policy was his, and that he then subsequently invited the rights groups to testify in order to support his objectives. (A contrary view expressed by some NGOs is that it was their action that created the context within which Fraser decided to hold hearings on rights.)

This latter situation typifies the problems for social science analysis in this regard. Private action for human rights is frequently merged, or dovetails, with public action (governmental and intergovernmental), making it extremely difficult to separate the lines of influence that went into a decision or impacted a situation. Was US foreign policy, bilaterally and through NAFTA, really unimportant for rights in Mexico, relative to an essentially private and transnational network at play? How can we be sure, since we cannot hold one line of influence constant or even remove it, while we replay history with only the other line of influence at play?

Fortunately we do not need to be so precise about who generated what exact influence in what exact situation. For some questions, it is enough to know that the combined weight of public and private actors for human rights led to definite developments. We know, for example, that both representatives of Amnesty International and the Dutch government, *inter alia*, combined to help negotiate the UN Convention against

[42] Cathal Nolan, *Principled Diplomacy: Security and Rights in US Foreign Policy* (Westport: Greenwood, 1993).

[43] David P. Forsythe, *US Foreign Policy and Human Rights: Congress Reconsidered* (Gainesville: University Press of Florida, 1989).

Torture.[44] We know that various public and private actors combined to negotiate the UN Convention on the Rights of the Child.[45] We know that various types of actors combined to help create the new post of UN High Commissioner for Human Rights in 1993.

Because of such cumulative effects of non-governmental *and* governmental actors on human rights matters, we know that there have been considerable changes in international relations.

## Changing state sovereignty

This book treats the notion of state sovereignty as a social construct.[46] It is an idea devised by social beings. It can change along with changing circumstances. Like the concept of human rights itself, the idea of state sovereignty is a claim relating to proper exercise of public authority, a claim to be evaluated by the rest of the international community. Thus state sovereignty is not some immutable principle decreed in fixed form once and for all time, but rather an argument about state authority whose meaning and scope are constantly subject to re-evaluation. Just as the nature of "states' rights" can change over time in a federal political-legal system, ebbing and flowing with political tides, so the notion of state sovereignty can change in international relations.

Prior to 1945, the relation between an individual and the state controlling "its" citizens was a matter for that state alone. The state was sovereign in an almost absolute sense, exercising supreme legal authority within its jurisdiction. International law existed primarily to keep states apart, and thus prevent conflicts, by confirming separate national jurisdictions.[47] Prior to 1945 there were four exceptions to the basic rule that individual rights were a matter of national rather than international concern.[48] In war, or international armed conflict, from the 1860s belligerent states were obligated to allow neutral medical assistance to the sick and wounded under their control, and from the 1920s a humanitarian quarantine to prisoners of war. In peace, foreigners residing in a state, called legal aliens, were granted some minimum civil rights. Also in

[44] Peter R. Baehr, "Negotiating the Convention on Torture," in David P. Forsythe, ed., *The United Nations in the World Political Economy* (London: Macmillan, 1989), 36–53.
[45] Lawrence J. LeBlanc, *The Convention on the Rights of the Child: United Nations Lawmaking on Human Rights* (Lincoln: University of Nebraska Press, 1995).
[46] Thomas J. Biersteker and Cynthia Weber, eds., *State Sovereignty as Social Construct* (Cambridge: Cambridge University Press, 1996).
[47] Among many sources, see C. Wilfred Jenks, *The Common Law of Mankind* (London: Stevens, 1958).
[48] See in general David P. Forsythe, *Human Rights and World Politics*, 2nd rev. edn. (Lincoln: University of Nebraska Press, 1989).



peace, from 1920, laborers might be legally protected under conventions developed and supervised by the International Labour Organization. Finally, in what passed for peace in the European interwar years of 1919–1939, certain minorities in some of the defeated states were officially afforded certain international rights as supervised by the League of Nations. Furthermore, certain of the European Great Powers claimed a right to act in foreign states when events shocked public morality. As noted below, these claims to "humanitarian intervention" were never collectively approved, and most European interventions for supposedly humanitarian purposes were heavily affected by political calculations.[49] Otherwise, while European states and private actors might debate human rights, they remained a matter of national rather than international law and policy.[50]

The situation summarized above represents the basic legal view. Rules for organizing international relations and centering on the central notion of state sovereignty (with few restrictions) were always "organized hypocrisy," because states often violated in practice the rules that they endorsed in theory.[51] Nevertheless, international relations were indeed affected by the notion derived from state sovereignty, that states should not intervene in the domestic affairs of other states; and while this norm was violated, it also exerted considerable influence.[52]

International human rights trends since 1945, summarized in the first paragraph of this chapter, have, in tandem with certain other developments in international relations, caused some to see a radical reformulation of state sovereignty. Javier Perez de Cuellar, UN Secretary-General 1981–1991, saw "an irresistible shift in public attitudes toward the belief that the defense of the oppressed in the name of morality should prevail over frontiers and legal documents."[53] This statement was made during the high tide of multilateral optimism immediately after the end of the Cold War. His successor during 1992–1996, Boutros Boutros-Ghali, believed that, "The time of absolute and exclusive sovereignty ... has passed."[54] Because of aggression against Kuwait

[49] See especially Gary J. Bass, *Freedom's Battle: The Origins of Humanitarian Intervention* (New York: Vintage, 2008).
[50] Herman Burgers, "The Road to San Francisco: The Revival of the Human Rights Idea in the Twentieth Century," *Human Rights Quarterly*, 14, 4 (November 1992), 447–477.
[51] Stephen D. Krasner, *Sovereignty: Organized Hypocrisy* (Princeton: Princeton University Press, 1999).
[52] R. J. Vincent, *Human Rights and International Relations* (Cambridge: Cambridge University Press, 1986).
[53] Quoted in Thomas G. Weiss, ed., *Collective Security in a Changing World* (Boulder: Lynne Rienner, 1993), 14.
[54] "Agenda for Peace," A/47/277 and S/24111, June 17, 1992, para. 17.

and subsequently renewed abuse of Iraqi citizens, Iraq was placed in a kind of "receivership" by the international community and denied the normal perks of state sovereignty during 1991–2003. Baghdad was not allowed to develop weapons of mass destruction, to engage in full trade with others, or even to have full control of parts of its territory. Because of Milosevic's repression of the Albanian Kosovars in 1999, other western states overrode his claims to state sovereignty and tried to coerce him into a change of policy.

Outside Europe, one should not overstate, however, the importance of various "humanitarian interventions" in international relations after the Cold War.[55] As suggested above, international law had never codified a clear right of humanitarian intervention for the benefit of nationals oppressed by their own government. Particularly developing countries, fearful of the action of the most powerful states, and ever mindful of their colonial experience, remained opposed during the 1990s to any such effort at codification. Even developed countries such as the USA and UK resisted international review of national policy in the name of human rights when the issue was something like racial discrimination in the application of the death penalty or UN debate on Northern Ireland. In fact, these western states were not eager to have their national decisions reviewed by international bodies. One of the reasons for the Brexit vote in 2016, by which the British decided to withdraw from the European Union, was that regional governance had become too intrusive in national affairs.

By 2005, however, as already briefly noted, states agreed on the abstract notion of an international responsibility to protect (R2P): that if a sovereign state failed to exercise its primary responsibility to prevent gross violations of human rights, being unable or unwilling to do so, outside states inherited a responsibility to act. But, as also already noted, norms do not implement themselves. Thus the question arose after 2005 of the political will to make the principle of R2P meaningful in the real world of failed, failing, and weak states. In some cases, e.g. Sudan (Darfur) and Democratic Republic of Congo (Ituri province), political will to decisively end atrocities was lacking despite some international involvement. The endorsement of R2P at a UN meeting in New York was not the first time that progressive principles had been agreed to, only to find subsequently that state enthusiasm for the agreed norm waned in the face of complex situations and disagreeable estimates of

[55] Kelly Kate Pease and David P. Forsythe, "Human Rights, Humanitarian Intervention, and World Politics," *Human Rights Quarterly*, 15, 2 (May 1993), 290–314.



the costs of implementation.[56] But in other cases, e.g. Kenya wracked by ethnic tensions in 2008, timely diplomacy and various actions by the International Criminal Court, *inter alia*, brought the country back from the brink of major instability-cum-human rights violations. This was true in the interim despite the fact that the Kenyan case eventually collapsed at the ICC because of effective maneuvering by the targeted elites, along with lack of effective support of the Court from important outside states. The long-term effect of diplomatic agreement on R2P was not yet clear.

By comparison especially with the statement of Perez de Cuellar above, a more analytical view was that the nature of state sovereignty had indeed changed, but that the "reality of state power and authority cannot be ignored."[57] So the principle of R2P was almost always joined by outside states' calculations about expending blood or treasure to protect the rights of "others."

More generally, state consent was still a bedrock principle of international law. But increasingly states were using their sovereign consent to create international institutions that restricted the subsequent operation of state sovereignty. Almost all of the states of Eastern Europe emerged from the control of the Soviet empire only to stand in line to join the Council of Europe, the European Union, and NATO. Each of these international organizations would reduce the operational independence of the state. Even the USA, the one superpower on the planet, chose to use its sovereign authority to join international institutions like NAFTA and the World Trade Organization that restricted its subsequent freedom of choice. In general, virtually all states felt the necessity to choose to participate in international legal regimes that "enmeshed" the state in international governing arrangements.[58] International arrangements concerning human rights constituted an important part of this trend.

States came to share jurisdiction over human rights issues with various international organizations and even foreign governments. Routinized

[56] For a discussion of R2P and the literature it has generated, see Jennifer Welsh, "Implementing the Responsibility to Protect: Where Expectations Meet Reality," *Ethics & International Affairs*, 24, 4 (Winter 2010). For a discussion of how Winston Churchill joined with FDR in issuing the Atlantic Charter in 1941 promising broad human rights guarantees, then later tried to preserve the British Empire by saying the promises of the Atlantic Charter did not pertain to India, Nigeria, etc., see Richard Toye, *Churchill's Empire: The World that Made Him and the World He Made* (New York: Henry Holt, 2010), 212–216.

[57] Oscar Schachter, "Sovereignty and Threats to Peace," in Weiss, ed., *Collective Security*, 20.

[58] Mark Zacher, "The Decaying Pillars of the Westphalian Temple: Implications for International Order and Governance," in Rosenau and Czempiel, eds., *Governance Without Government*, 58–101.

international diplomacy confirmed the legality and legitimacy of state and IGO discussion of almost all human rights issues. This debate, and resulting forms of diplomatic pressure, constituted an international attempt at *indirect* protection of human rights. IGOs, and also NGOs, tried to get states to meet their responsibilities under international rights standards. Emerging practice suggested that if a state failed to meet its responsibility to protect internationally recognized human rights, then the UN Security Council or some other entity might override traditional notions of state sovereignty and try international *direct* protection of rights. Where political will was adequate, the UN Security Council might declare large-scale human rights violations to constitute a threat to, or breach of, international peace and security, permitting authoritative action under Chapter VII of the UN Charter. The Council, using Cold War precedents stemming from Rhodesia and South Africa, had done so after the Cold War in places like Iraq, Somalia, the former Yugoslavia, and Haiti. The result might be military coercion, economic coercion, or the creation of international courts entailing mandatory cooperation, etc.[59]

While some observers had been predicting the decline of the territorial state for a considerable time,[60] international relations on the eve of the twenty-first century remained a modified state system. The territorial state and its claim to sovereignty remained important features of this international political system. But increasingly the territorial state was obliged to share the international stage with other actors. On some issues the state might retain supreme or ultimate authority. But in Western Europe on migration issues the national executives became intermediate authorities, sandwiched between individual claims on the one hand and the rulings of courts about international law on the other.[61] On still other issues the state might be legally superseded by another organization such as the European Court of Human Rights, the European Court of Justice, the UN Security Council, a dispute resolution panel of the World Trade Organization, etc. It was states themselves that found it desirable to create these processes that some called supranational. Others referred to "pooled sovereignty." States themselves recognized that state independence might need to be restricted for the achievement of other public

[59] See further Oliver Ramsbotham and Tom Woodhouse, *Humanitarian Intervention in Contemporary Conflict* (Cambridge: Polity Press, 1996), on the various forms of international involvement in conflict situations.

[60] John Herz, *The Nation-State and the Crises of World Politics* (New York: D. McKay, 1976).

[61] David Jacobson, *Rights Across Borders: Immigration and the Decline of Citizenship* (Baltimore: Johns Hopkins University Press, 1995).



goods such as prosperity, security, or human rights. Once these international organs that transcended state sovereignty were created, they might in certain cases override the particular wishes of a particular state. This was the price paid for orderly and beneficial international relations, a situation long recognized in most national societies. As President Eisenhower remarked about binding international decisions, "It is better to lose a point now and then in an international tribunal and gain a world in which everyone lives at peace under the rule of law."[62] (Ike's view might be seen as heresy if not treason to later Republican presidents such as Ronald Reagan and George W. Bush.)

The changing nature of state sovereignty, and along with it the changing nature of international norms and organizations, was produced by many causes. Science and technology had produced both terribly destructive wars and globalized markets. Following in the wake of each was a process of social globalization, with human rights as the cutting edge. The Geneva Convention of 1864, mandating neutral medical assistance to the sick and wounded in war, came about in part because improved communications allowed news of the wounded to reach the home front more quickly. European governments realized they had to do more for the wounded, in an era in which armies had more veterinarians to care for horses than doctors to care for the wounded,[63] in order to preserve support for the war back home.[64] Especially by 1945 there was a widespread moral revulsion against large-scale industrialized warfare,[65] and the idea took hold that internationalizing the concept of human rights might help erect barriers against the destruction so evident in the two world wars.[66] By about 2000, globally integrated markets had also led to increased emphasis on the plight of workers worldwide, such as the estimated 250 million child laborers.

In sum, science and technology had produced changing material and psychological conditions so that state sovereignty was no longer what it once was. Reference to the idea of state sovereignty no longer provided an automatic and impenetrable shield against international action on issues once regarded as essentially domestic. But then, human rights was also not

[62] Quoted in David P. Forsythe, *The Politics of International Law: US Foreign Policy Reconsidered* (Boulder: Lynne Rienner, 1990), 55.

[63] François Bugnion, *Le Comité International de la Croix-Rouge et la Protection des Victimes de la Guerre* (Geneva: ICRC, 1994). An English edition was published subsequently.

[64] John Hutchinson, *Champions of Charity: War and the Rise of the Red Cross* (Boulder: Westview, 1996).

[65] John Mueller, *Retreat from Doomsday: The Obsolescence of Major War* (New York: Basic Books, 1989).

[66] Nolan, *Principled Diplomacy*.

what it had been. Human rights was essentially a western concept, first put into widespread political and legal practice by western states.[67] But over time and for various reasons human rights had become internationalized.[68] Modern war, modern markets, modern repression all presented similar threats to human dignity. Human rights was widely seen as a useful means to help achieve human dignity in contemporary international relations.

However, by 2016 it was evident there was a pervasive push back against international regimes and a resurgence of nativist nationalism and desire for more state sovereignty. We already mentioned the Brexit vote in the UK, supported in large part by the belief that the EU principle of freedom of labor movement was producing undesirable changes particularly in more rural England.[69] Similarly, states like Hungary and Poland were adamant about not wanting to accept more Muslim refugees fleeing Middle Eastern crises, even when urged to do so by the EU, Council of Europe, and UN. European developments paralleled the surprising success of Donald Trump as Republican presidential candidate in the USA. Many of his white supporters with less than a college education felt aggrieved by economic globalization and the loss of manufacturing jobs abroad under the rules of the World Trade Organization. All of these political developments in the West reflected a dislike for changes that were occurring under the forces of economic globalization, international integration, and multiculturalism.[70] As such, these Western political factors dovetailed with strong nativist nationalism in China, Russia, and most of the post-colonial states. A backlash against the existing international structure, sometimes referred to as American hegemony and/or liberal world order, had been noted some time ago.[71]

## Conclusion

As we look at global, regional, national, and sub-national actors for international human rights, we will see time and time again that liberal norms have indeed been injected into international relations, and that:

[67] See especially Burns Weston, "Human Rights," in Richard P. Claude and Burns Weston, eds., *Human Rights in the World Community*, 2nd rev. edn. (Philadelphia: University of Pennsylvania Press, 1992), 14–30; and also Jack Donnelly, *Universal Human Rights in Theory and Practice* (Ithaca: Cornell University Press, 1989).

[68] David P. Forsythe, *The Internationalization of Human Rights* (Lexington: Lexington Books, 1991).

[69] See http://lordashcroftpolls.com/2016/06/how-the-united-kingdom-voted-and-why/.

[70] See http://blogs.timesofindia.indiatimes.com/just-graffiti/nativist-dog-whistles-hyper-nationalism-threatens-the-idea-of-liberal-democracy-in-both-india-and-the-us/.

[71] Thomas L. Friedman, in *The Lexus and the Olive Tree: Understanding Globalization* (New York: Picador, 1999), noted that globalization was accompanied by resentment and a reassertion of traditional cultures, whether real or imagined.



(1) the notion of human rights is here to stay in international relations – certainly for the immediate future,
(2) human rights as soft law is important and pervasive – which is not to denigrate the role of hard law through court cases,
(3) private actors – not just public ones – play a very large role, and
(4) state sovereignty is not what it used to be. Because of these changes, one can be guardedly optimistic about the future of human rights in international relations – of liberalism in a realist world. However, insecurities fueled by economic dislocation, terrorism, and cultural change make evident that history does not move in straight lines or in a teleological direction. No particular future is guaranteed.

## Case study: from humanitarian intervention to the responsibility to protect

It is generally agreed that the territorial state system of international relations began to emerge from the middle of the seventeenth century with its central notions of state sovereignty and domestic jurisdiction. It is also generally agreed that after the great destruction from the "Great War" of 1914–1918 there was a concerted effort to restrict state use of force to self-defense and to outlaw the aggressive first use of force. This left open the question of the use of force for other purposes, such as to protect human rights within the domestic jurisdiction of another sovereign state.

Already in the nineteenth century, improvements in communications technology made possible the rather rapid knowledge of atrocities in foreign states. In Britain and France, two of the leading powers at this time, governments faced the question of whether to take action to stop atrocities in places such as Greece and Bulgaria, the western Balkans, and the eastern Mediterranean. The Ottoman Empire was in decline and a humane order was not guaranteed. In Britain and France foreign policy realists were mostly in key positions. They therefore tended to be reluctant to use military force for humanitarian reasons, preferring to concentrate on power struggles and other disputes among leading states. Yet these realist national officials faced such domestic and international pressures that they wound up authorizing military action to stop what today we would call gross violations of human rights.

These interventions were obviously carried out by the stronger against the weaker, with no centralized approval from any international organization (there not being any of a general political nature), and with many other atrocities being ignored (as in the case of, somewhat later, the fate of Christian Armenians under Ottoman control). And no state

intervened to stop, for example, British atrocities in colonial India. Still, it was clear that, at least sometimes, leading states could be pressured to deal with mass killings in foreign lands. Liberal transnational activism was relatively effective, at least sometimes – as shown by the British and French interventions mentioned earlier.

Subsequent events for a time only accentuated the tension between, on one hand, state power and authority and, on the other, the fate of individuals inside states. The German Holocaust certainly gave sovereignty a bad name. German Jews and other German outcasts were not protected by the international law of that time and were, legally speaking, at the mercy of Nazi persecution and murder. Yet in 1945 the UN Charter codified traditional thinking, namely that the organization was prohibited from intervening in matters that were "essentially within the domestic jurisdiction" of member states (Article 2 [7]). While the UN Security Council was given the authority to take action, including forceful action, in order to guarantee international peace and security, it was not at all clear from 1945 that outside parties, whether states or the UN Security Council, could "intervene" (whatever that meant) regarding human rights violations *per se*, particularly those not seen as affecting *international* peace and security. The 1948 UN Convention against Genocide obligated ratifying states to take action to prevent and correct genocide, but without specifying any precise action. And what about human rights violations falling short of genocide?

It was NATO's intervention against Serbia over the issue of Kosovo in 1999 that brought some new normative developments concerning humanitarian intervention. European and North American governments had not been persistently decisive, to put it mildly, in their responses to mass starvation in Somalia in the early 1990s, to genocide in Rwanda in 1994, and to various atrocities in the first Balkan wars of 1991–1995 with the epicenter of distress being in Bosnia. But when Serbia escalated the persecution of ethnic Albanians in the Kosovo region, the United States led a delicately unified NATO into a bombing campaign with the ostensible purpose of compelling Belgrade and Slobodan Milosevic to stop the policy of ethnic cleansing or forced displacement. NATO did not claim self-defense nor did it have the advance approval of the UN Security Council, China and Russia possessing the veto and being opposed to NATO's role. NATO "won ugly" in the sense of compelling a shift in Serb policy, but only with much controversy, damage to civilians and civilian structures, and help from Russian quiet diplomacy. The status of, and conditions within, Kosovo at the time of writing cannot be treated here.



For present purposes the point to be emphasized is this: given a widespread view in the West that the NATO operation in Serbia/Kosovo was "technically" illegal but morally justified, some parties tried to clarify the status of the idea of humanitarian intervention. They sought to close the gap between legality and legitimacy. In particular, the Canadian government appointed a panel of private eminent persons to consider the issues. This process led to the influential report (2001) of the International Commission on Intervention and State Sovereignty (ICISS). This report gave a renewed push to the notion of the permissibility of outside involvement to deal with gross violations of human rights.

The ICISS report in turn led to new developments at the UN. "Norm entrepreneurs" such as Gareth Evans from Australia and Francis Deng from Sudan, among others, argued that what was really at issue was not outside punishment of recalcitrant states. Such a formulation tended to conjure up visions of powerful western states imposing their will in a neocolonial process. Rather, so it was argued, what was involved was a broad and largely diplomatic process to guarantee responsible sovereignty. Hence, what was at issue was not an attack on sovereignty, but a broad, largely diplomatic process to redefine sovereignty to ensure it was compatible with human rights. It was this approach that led in 2005 to consensus endorsement at the UN of the idea of R2P, a responsibility to protect. Concerning genocide, crimes against humanity, war crimes, and ethnic cleansing, states had the primary responsibility to prevent such mass atrocities – as they did for other human rights. But if a state was unwilling or unable to handle this responsibility, the undefined "international community" had a responsibility to become involved concerning gross violations.

One could reasonably be cautious about the importance of this apparent agreement. The Outcome Document of the 2005 UN Summit consisted of 178 paragraphs. Two paragraphs, nos. 138 and 139, made up the principle of R2P. Other paragraphs reaffirmed virtually all ideas normally endorsed at the UN every year: peace, security, international law, human security, etc. This sort of ritual lip service often means very little.

It was evident this 2005 UN document did not lead to a radically transformed international relations and certainly not in the field of human rights. In fact, more or less as soon as the ink was dry on the summit outcome document, various delegations at the UN tried to undermine the apparent agreement. There was certainly only a little increased determination by outsiders to stop gross violations of human rights in Sudan (e.g., Darfur) or in Democratic Republic of Congo (e.g.,

Ituri province). These situations were terribly complex, the USA and much of the West were preoccupied with Islamist militants not to mention being overstretched in military commitments and having a weakened economic foundation, and those carrying out the atrocities were both brutal and persistent.

Still, once the language was in the UN summit outcome document, various state and non-state personnel made reference to it as they sought to improve the fate of individuals in places such as Burma (Myanmar), Kenya, Ivory Coast, and elsewhere. Those jousting for power in various national settings did not do so in a vacuum. They had to anticipate the possibility of various international involvements and pressures. One needs only to recall Libya in 2011 to realize the upper range of an international duty to protect that might come into play.

What are the lessons to be drawn from this case study? One conclusion is that decisive improvement for human rights in international relations is difficult, takes time, and is affected by the history of the subject. Another conclusion is that ideas matter, and once there is formal agreement on an idea, that new principle can be appealed to by a variety of actors interested in protecting human rights. Yet another conclusion runs in a somewhat different direction, namely that power matters. It is important to note whether powerful states are willing to take action for human rights abroad, whether one speaks of NATO and Serbia or Libya, or France and Ivory Coast, or South Africa regarding the Mugabe government in Zimbabwe, etc.

### Discussion questions

- Is support for international human rights a form of western imperialism? Is Francis Fukuyama correct that history shows no better way to legitimize and limit government's power aside from human rights? Did the Arab Spring of 2011 confirm the accuracy of Fukuyama's views? Is it not true that those supporting "Asian values" are correct in pointing out excessive individualism and legalism and too much litigation in the West? How can human rights be a good thing when the western liberal democracies, based on human rights, show so many problems?
- Which is more important, hard law or soft law? How do we know when to pursue hard law options, viz., litigation, as opposed to soft law options, viz., extra-judicial policy? Is it sufficient for law to educate over time, as opposed to providing legal rules for litigation? Whatever our conclusions about sufficiency, is soft law a necessity much of the time in international relations?



- Are human rights statements by private advocacy groups more reliable than governmental statements? Does it depend on which group is under discussion? Are private human rights groups too rigid and one-dimensional in their focus? How do we separate out the influence of private groups compared to public authorities in the evolution of human rights?
- Is state sovereignty a good thing or a bad thing? Should the international community disregard claims to state sovereignty when gross violations of human rights are at issue? Is any subject essentially or totally within the sovereign domestic affairs of states? Is it not true that state power, state authority, and citizen loyalty to the nation-state are still very strong in modern international relations? Is it not true that the nation-state and state sovereignty will be with us for some time? But in what precise form?

## SUGGESTIONS FOR FURTHER READING

Barber, Benjamin R., *Jihad v. McWorld* (New York: Ballantyne Publishing Group, 1995). Sees the world as a contest between universal secularism (human rights fits here) and romantic particularism such as renewed assertions of virulent nationalism as in the Balkans, Iran, and other places.

Bass, Gary J., *Freedom's Battle: The Origins of Humanitarian Intervention* (New York: Vintage, 2008). A highly readable account of how domestic public opinion, as led by liberal activists, compelled realists in high positions in Britain and France to take action to protect human rights in foreign countries during the nineteenth century.

Burgers, Jan Herman, "The Road to San Francisco: The Revival of the Human Rights Idea in the Twentieth Century," *Human Rights Quarterly*, **14**, 4 (November 1992), 447–477. The best short treatment of the origins of human rights as practical politics and diplomacy in the twentieth century.

Carey, Sabine, Mark Gibney, and Steven Poe, *The Politics of Human Rights: The Quest for Dignity* (Cambridge and New York: Cambridge University Press, 2010). A clear introduction to the subject focusing on selected subject matter and based on much empirical information.

Donnelly, Jack, *Universal Human Rights in Theory and Practice* (Ithaca: Cornell University Press, 2013). One of the best advanced treatments of human rights in international context.

*International Human Rights* (Boulder: Westview, 2012). A sound introduction by a leading scholar on the subject. Strong on theory.

Evans, Gareth, *The Responsibility to Protect: Ending Mass Atrocity Crimes Once and for All* (Washington: Brookings Institution Press, 2008). An excellent discussion of the attempted move from the discourse on humanitarian intervention to that on the responsibility to protect. This involved an attempt to redefine state sovereignty as the primary responsibility of states to avoid gross violations of human rights, and the permissibility of outsiders to act when states were unwilling or unable to fulfill this responsibility.

Forsythe, David P. and Patrice C. McMahon, *American Exceptionalism Reconsidered: US Foreign Policy, Human Rights, and World Order* (London and New York: Routledge, 2016). Argues that the USA has not been as committed to human rights abroad as the language of American exceptionalism would suggest, but that the contempory world order established by US leadership will prove better on human rights than any world dominated by the BRICs (Brazil, Russia, India, China).

Freeman, Michael, *Human Rights* (Cambridge: Polity, 2017). A very good introductory overview, strong on political theory.

Fukuyama, Francis, *The End of History and the Last Man* (New York: Free Press, 1992). A former US foreign service officer and leading conservative intellectual argues that the highest stage of history reflects recognition of human rights as the superior way to legitimize the exercise of power.

Hoffmann, Stanley, *Duties Beyond Borders: On the Limits and Possibilities of Ethical International Politics* (Syracuse: Syracuse University Press, 1981). The late Harvard professor of United States foreign policy and international relations examines international ethics from a liberal perspective.

Hopgood, Stephen, *The Endtimes of Human Rights* (Ithaca and London: Cornell University Press, 2013). A very critical account of human rights as Western cultural imperialism. Sees the power decline of the West as signaling a much weaker human rights push by states at the UN.

Ignatieff, Michael, *Human Rights as Politics and Idolatry* (Princeton: Princeton University Press, 2001). A short, provocative treatment, stressing the social construction of human rights and emphasizing the value of the individual.

Ishay, Micheline R., *The History of Human Rights: From Ancient Times to the Globalization Era* (Berkeley: University of California Press, 2004). A thematic, conceptually interesting, and provocative history of human rights.

Krasner, Stephen D., *Sovereignty: Organized Hypocrisy* (Princeton: Princeton University Press, 1999). An analytical look at the theory and practice of this central concept. The author is a realist analyst who continues to emphasize the power of states and to suggest that all the ideas and diplomacy and laws about human rights, among other subjects, have not altered traditional understandings of world affairs very much.

Moyn, Samuel, *The Last Utopia: Human Rights In History* (Cambridge, MA: Belknap for Harvard University Press, 2012). Criticizes the push for human rights in the world as being contingent on politics circa 1970 and destined to fail in the long term, as did communism and national liberation movements. Provocative argument but with many critics.

Rosenau, James N., and Ernst-Otto Czempiel, eds., *Governance Without Government: Order and Change in World Politics* (Cambridge: Cambridge University Press, 1992). An excellent collection showing the extensive efforts to collectively manage problems in international relations, with a good chapter by Marc Zacher pertaining to human rights.

Singer, Max, and Aaron Wildavsky, *The Real World Order: Zones of Peace, Zones of Turmoil*, 2nd edn. (Chatham, NJ: Chatham House Publishers, 1996). Two conservatives indicate why they are optimistic about the future of international relations, believing that current authoritarian and failed states will learn the proper lessons about the benefits of democratic capitalism.

Vincent, R. J., *Human Rights and International Relations* (Cambridge: Cambridge University Press, 1986). A somewhat dated introduction, but still good on basic philosophical and legal points.