

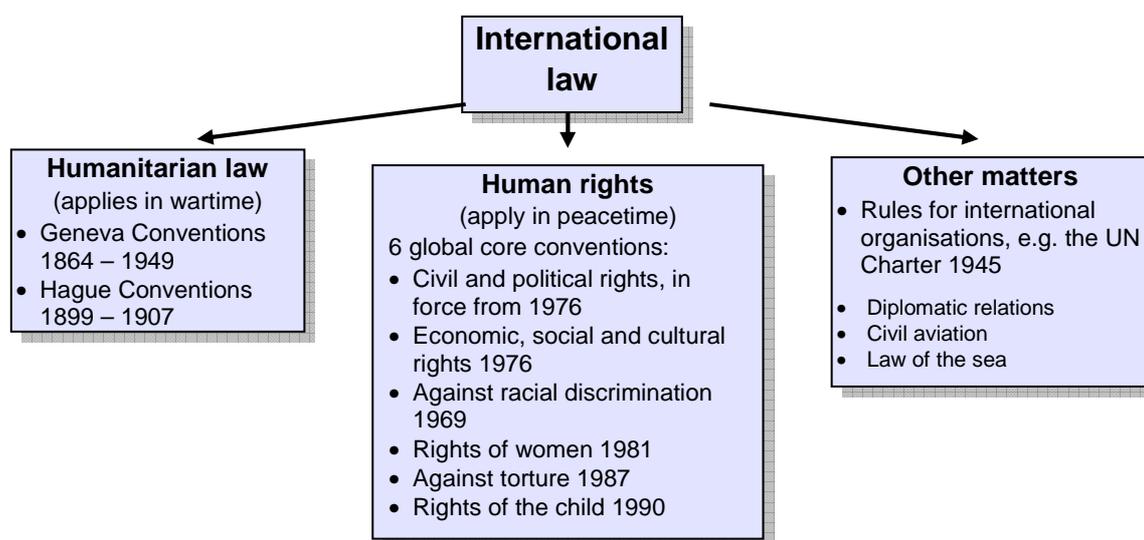
# International law and the UN

This theoretical background:

- presents a review of international law and the threats to it from the boundless war on terrorism
- describes the UN's role in an effective system for human rights
- concludes with the role of democracy's fundamental principles in the work of strengthening the present system of rights

## International law and the war on terrorism

International law (see the simplified outline below) has recently been severely strained by spectacular transnational terrorist attacks and the resultant retaliation.



In a matter of weeks after the attacks on the World Trade Center and the Pentagon on 11 September 2001, the United States managed to obtain the UN's mandate for a boundless war on terrorism. The US-led alliance achieved its immediate objective of overthrowing the Taliban regime in Afghanistan, which had provided a haven for the perpetrators in the Al-Qaida network.

A police action on a global scale would have been more to the point. Terrorism does not have a fixed territorial base and the terrorists are not officially recognised regimes. They act anonymously and their attacks hit civilians in an unpredictable manner that aims to spread fear and undermine trust in the authorities' ability to maintain law and order. In that case, however, those who were caught would have been suspected criminals, protected in principle by the UN system for human rights.

The United States chose – and was authorised by the UN – to declare war. At the same time, the humanitarian law that applies in wartime was set aside by a proclamation that the Taliban and anyone who was identified as their allies were “illegal combatants”. The UN found that in practice it had condoned a global state of emergency in which neither wartime's nor peacetime's law applied.

Some years later, in 2003, US forces attacked Iraq even though President Bush, despite persistent efforts, had not managed to get the Security Council's support. Contrary to the UN Charter and thereby international law, Iraq was invaded and its dictator, Saddam Hussein, was deposed. But Bush lost the peace; many years later, US troops were still in Iraq, entangled in a new kind of civil war between Sunni and Shia groups, with a constant succession of suicide bombings that mainly killed or injured civilians.

Note that on both occasions the United States tried to get the UN to authorise the intervention, which would confer a *right* to attack. When this failed in the case of Iraq, the United States defied the UN's authority and took the matter into its own hands. This unprincipled behaviour reflects a dual attitude to international law and human rights.

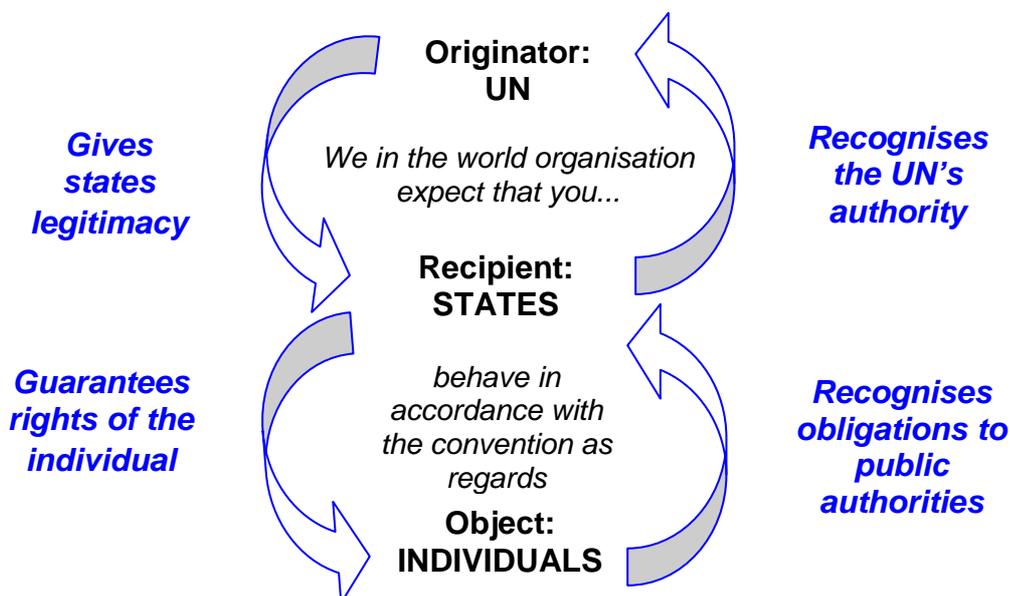
US domestic policy is based on rights to a greater extent than in most other countries; the right to private property is a linchpin and many political issues are fought as legal disputes over rights. Foreign policy supports human rights activists around the world in their struggle for a transition to a national FD government.

At the same time, rights are regarded as a national concern and a global system that limits national sovereignty is not accepted. At the international level the United States does not recognise binding laws, thus abandoning the fundamental principle that no one is above the law. If this were to be the attitude of countries in general, international law would be a paper tiger and global terrorism would have achieved its aim of putting an end to the idea of rule of law encompassing the whole world.

## An effective system for human rights

The human rights system presupposes an effective interaction of three parties: the United Nations as a global organisation, its member states and individuals. If the parties do not play their parts, the rights will be mostly rhetoric with little legal force.

More specifically, rights are a type of norm whereby someone requires or expects a particular behaviour of someone else. Besides their intellectual or value content, they sustain a social structure, as when a parent (the norm's originator) tells off her child (the norm's recipient). For rights, the structure involves three parties: (1) the originator, (2) the recipient, who is obligated, and (3) the object or holder of the right that the obligation concerns.<sup>1</sup> In an effective human rights system, the structure can be pictured as follows:



A state that ratifies a UN convention acquires a binding obligation to guarantee its people the rights that are specified in the convention. This can be seen as a contract between three parties where the fine print spells out some tacitly understood conditions:

- the UN gives legitimacy to the state in question
- the state acknowledges the world organisation's authority in certain matters
- in exchange for their rights being guaranteed by the state, its citizens are expected to meet certain obligations in respect of its authorities, for instance to observe the country's laws and pay tax

Quite a few countries have neither signed nor ratified a number of conventions and are therefore not legally bound by them. At the same time, all 6 core conventions have been ratified by many of the states that show least respect for human rights.<sup>2</sup> Cynicism is widespread here. Even so, the standing of human rights has been greatly improved since the UN was founded:

- the UN's machinery for oversight is still weak and bureaucratic in spite of reforms such as for example the reorganised Human Rights Council
- regional law courts have been set up that are in a better position than national courts to superintend human rights: around 20 countries in Latin and Central America have recognised the Inter-American Court of Justice; the European Court for Human Rights has jurisdiction over some 40 countries; a corresponding African Court was set up in 2006
- an international criminal court was established in 2002 to deal with genocide and other crimes against humanity
- Amnesty, Human Rights Watch and many other transnational voluntary organisations monitor observance of the conventions and undertake important opinion-forming work throughout the world
- many countries and voluntary organisations such as Oxfam take a rights-based approach to the UN programme for economic development (UNDP), particularly as regards economic, social and cultural rights.

## A rights-based approach

A rights-based approach to development comprises two strategies:

1. persuade states to guarantee their citizens' rights
2. strengthen people's own possibilities of asserting their rights

### **The state as the upholder of human rights**

The principle behind the first strategy is *Equal consideration*: if everyone is of equal value, each person's interests merit equal consideration. Every abuse of human rights goes against this principle. When that happens, the state has failed its responsibility. In many cases the abuse comes from a public authority, which poses a dilemma: how can

the authority be persuaded to deal with itself without, as it were, asking the wolf to protect the lambs?

One way is to promote the judicial system's independence. While it is true that rights abuse seldom results in a conviction in the country where it is committed, there is a better chance of this if a case can be appealed to a regional or global instance.

Another important approach in this strategy is to strengthen the FD institutions so that rulers are exposed to competition for political power (see *A Fairly Democratic Country*).

Last but not least, in the work of shaping opinion and superintending rights, it should be born in mind that human rights are universal – they constitute a global system centred on the UN.

### **Strengthen people's possibilities of asserting their rights**

The other strategy of a rights-based approach amounts to strengthening people's own possibilities of asserting their rights. This almost goes without saying for those who agree with the view of democracy presented in the section *An ABC of Democracy*. The presumption of Personal autonomy that is outlined there implies that, in general, people are capable of being the best judge of their own interests.

We live in a world of stark contrasts, with a large majority fully occupied with day-to-day survival and a small minority who can satisfy most of their wishes. It would be unwise to rely on the efforts of the privileged few in building up and distributing resources so that, on a global level, everyone has an equal possibility of pursuing their interests. People must also take matters into their own hands, for instance by acting in their own democratic organisations.

How is this to be done? This variant of a rights-based approach also poses a dilemma: how can one strengthen the possibilities of *others* without becoming their guardian? By being clear about the alternative forms of rule, about when democracy is preferable, and about how to get there, one is better equipped to face this challenge.

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<sup>1</sup> See Johan Galtung, *Human rights in a new key*, Polity Press, 1994

<sup>2</sup> See the website of the Raoul Wallenberg Institute, <http://www.rwi.lu.se/tm/ThemeMaps.html>