Innovation in Human Rights Protection: A Proposition for an Inverted Triangular Model for the Development of and Enforcement of Human Rights Law

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Abstract
One of the major issues associated with the development and enforcement of universal human rights is the often-contentious relationship between centralism, at the international level, and local governance at the domestic level. More centralized models of human rights development are often purported to offer a more homogeneous, effective, and uniform method of operation. However, this so-called 'universal' enforcement model is often criticized as too weak or too incoherent for true universal application. Although the enforcement of universal human rights is often considered to be the domain of international institutions and national governments, a more de-centralized model may be more efficient since it would incorporate an understanding of the factors specific to the smallest societal units and consider local peculiarities and cultural values. The diminished focus on the desires and cultural values of communities at the local level is the missing element in the ongoing effort to promote an effective international standard for human rights. The international community's increasing interest in the promotion of universal human rights has opened the possibility for "group base" enforcement, or models which are more proletarian in origin, as an effective alternative. Considering this, this paper proposes an inversion of the current model of human rights enforcement whereby international human rights law could act as the general framework for the establishment generally agreed-upon principles and norms which transcend strict national concerns, while the so-called "group based" mechanisms could work on enforcing principle and norms in a manner best fitting the specific abilities and needs of said groups.

Keywords: *Universal Enforcement, Group Based Mechanism, and Human Rights.*

I. INTRODUCTION

In the wake of the Second World War the international community began to take an increased interest in the development and protection of universal human rights. Since the middle of the 20th century numerous international human rights declarations and statutes have been drafted and put into effect by states and by the United Nations. These declarations often included provisions for implementation and enforcement to more easily secure the compliance of states and international governing bodies. However, despite these efforts, violations of human rights still occur even though most states have agreed to abide by human rights treaties and international law.

Many issues have been raised pertaining to the effectiveness of human rights enforcement mechanisms and where their implementation, or lack thereof, has gone wrong. At this point, it is important to note that the main cause of the aforementioned problem is the unresolved issue of the lack of a universal understanding, valuation, or definition of human rights. This paper argues that at the present international human rights law is *not* universally recognized and that this has led to many states not wanting to

comply with norms and values often associated with the protection of human rights. Furthermore, this paper will argue that, in order to improve states' compliance with international human rights law, the lack of universal human rights must be sincerely confronted, reinvestigated, and maybe even re-imagined.

This paper proposes that the international human rights community approach the discussion of human rights from a different, more modern perspective. The discussion should not be centred solely on the practical weaknesses of the current means by which international human rights laws are implemented and enforced (as others who have written on the topic have focused on). Instead, a balanced analysis should be made regarding three different, but related, areas of research pertaining to the field of human rights; the philosophical foundation of human rights, the historical development of human rights law, and the practical implementation of human rights law. The findings of such an analysis, as will be outlined in this paper, can be split into two parts: First, at present, the international community has yet to agree upon a universal definition and a universal valuation of international human rights, leading to a lack of a universally recognized statue on human rights. Second, it is this non-universal nature of human rights law which is the definitive factor in states' lack of compliance with human rights norms and principles.

II. CURRENT INTERNATIONAL HUMAN RIGHTS LAW IS NOT UNIVERSAL

The concept of universal human rights refers to a state where all individuals can make claims upon their society for freedoms and benefits outlined in the Universal Declaration of Human Rights (UDHR). This theory is based on the concept of "universalism," or that human rights should apply universally and without exception to all individuals, regardless of nationality, religion, ethnicity, or gender. At present, the clear majority of human rights advocacy organizations identify those rights as laid out in the UDHR as universally applicable, owing to the fact that virtually every member of the United Nations has accepted the international obligations outlined by the UDHR.

Conversely, those who dispute the belief that those human rights which are outlined by the UDHR are sufficient often argue that a substantial portion of what we call human rights today originated unilaterally form Western society and do not represent the values or and ideals of the non-Western world. This argument was raised by a majority of the third world countries present at the Vienna Conference on Human Rights in 1993, when they objected to the adoption of the UDHR for "cultural" reasons.[1] Though it has been agreed upon that in the case of many rights outlined in the UDHR, particularly those pertaining to the physical integrity of the individual, there may be little or no room for variation based on cultural considerations,[2] for other rights, such as those drawn from

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[1]   Robertson, Geoffrey. *Crimes Against Humanity: The Struggle for Global Justice*, (1999) London: Penguin; Van Genugten, Willem. 'Human Rights are not for Sale: On Universality and Conditionality', in Meijer, Martha, *Dealing with Human Rights: Asian and Western Views on the Value of Human Rights*, (2001) Oxford: Worldview Press, at 105-119.

[2]   Donoho, Douglas. 'Relativism versus Universalism in Human Rights: The Search for Meaningful Standards', (1991) 27 Stan. J. Int'l Law 345, at 377-387. There are a variety of ways to identify those rights for which universal consensus over specific meaning may exist. There are, for example, a number of rights that virtually all states have endorsed and for which culturally based variations are empirically implausible. Donoho, Douglas. 'Relativism Versus Universalism in Human Rights: The Search For Meaningful Standards', (1991) 27 Stan. J. Int'l Law 345, at 382. Other rights have been given some

abstract concepts which are less universally valued across all cultures, there may be little actual consensus over their specific meanings. Therefore, for these rights there is often significantly more potential for variation in interpretation. In fact, it may turn out that a consensus is lacking over the supposed core values represented in the abstract normative standard of the concept of human rights. In such cases, the level of mutual understanding regarding specific meanings may be so low as to cast doubt on the efficacy of "rights" as a meaningful internationally recognized concept.

This lack of an international consensus over the definition and interpretation of universal human rights begs the all-encompassing question: are the collection of human rights which the clear majority of human rights advocacy organizations espouse as fundamentally universal truly applicable across all cultures and in all societies? In attempting to answer this question one must approach it from two perspectives: the philosophical and the historical.

1. The Philosophical Perspective: A Universally Applicable Theory of Human Rights Does Not Exist

In coming to this conclusion, two fundamental philosophical theories were examined. First, the validity of the entire concept of "universalism" was called into question and second, the general theory of human rights was scrutinized as to whether it could be universally applied, provided that universalist principles even exit. In other words, the philosophical inquiry seeks to answer the questions 1.) what is the meaning of universalism and can this concept exist beyond the theoretical realm, and 2.), what are human rights and can they be defined as "universalist" principles? As to whether those human rights which are currently recognized throughout the international community are universally applicable, one must first determine whether the concept of universalism itself is achievable in the real sense. To this end, the finding of this paper is that it is not. Furthermore, it is the intent of this paper to argue that instead of "universalism," what exists today, particularly about human rights, is "universality," i.e. an agreement as to the need for a concept of human rights as opposed to a unanimous agreement as to the scope and definition of applicable human rights. This assertion is supported by modern anthropological research pertaining to the idea of cultural relativism. According to this theory, norms of human rights are, as the name implies, ultimately relative and dependent upon the individual circumstances of those demanding said rights. In other words, whenever one attempts to interpret the meaning or ascertain the viability of application of any particular human right, one must first consider the cultural, social, and even religious background of the individuals which the right pertains to. In doing so, one might discover, for example, that certain aspects of an individual's religion conflict with a supposedly universal human right to the extent that attempting to uphold this right would lead to a contradiction of the religious principle. Similarly, many societies are organized in such a way as to hinder the application of what are commonly thought of as basic human rights. For an example one need only consider how hierarchical gender systems

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specific content in the treaty text itself (e.g., secret ballots, segregation of minors from adult criminal defendants, etc.) or subsequent international declarations. See, e.g., United Nations Declaration on the Protection of All Persons from Being Subjected to Torture, G.A. Res. 3452, U.N. GAOR, 30th Sess., Supp. No. 34, at 91, U.N. Doc. A/1034 (1975). Ultimately, a process of dialogue and debate among governments, advocates, scholars, and international institutions should progressively develop and expand consensus over the specific, concrete meaning of rights.

effect the divisions of labour that exist between men and women in many traditionalist societies.[3]

While this does not preclude the existence of the idea of human rights a whole, a cultural relativist would argue that one must take into account an individual's culture and the influence of their society before attempting to devise and apply an appropriate theory of human rights. This stance would inevitably lead one to believe that different societies will require different approaches in the application of human rights principles relative to the varying cultural factors existing within said societies.[4] Furthermore, it can even be argued that the entire concept of human rights, being a construct of Western society, was developed out of necessity during the development of Western liberal-democratic frameworks and capitalist economic models. This is evident in the highly "individualistic" nature of most generally accepted human rights. Predictably, the enforcement of human rights, particularly those rights pertaining to equality and non-discrimination, is generally much more effective in Western nations due to their often highly developed economies and stable societies.[5] By contrast, a developing state or a state where religion, traditional cultural values, or caste systems play a much more significant role in society, will not necessarily desire, nor can uphold all human rights norms.[6]

Further fault can be found with the concept of "universalism" as it pertains to human rights when one examines the theoretical concept of the "individual." In examining the manner by which states are structured and the relationship between states and individuals, it is often the case that in an "atomist" society, or a society where the individual is the central player or the focus of protection, the concept of human rights will generally be welcomed.[7] However, in a more group-oriented society, referred to as a "communitarian"

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[3] Baderin, Mashood. *International Human Rights and Islamic Law*, (2005) Oxford University Press; Goodale, Mark. *On Universality and the Transnational Validity of Human Rights.*

[4] International human rights institutions have generally accepted that universal human rights standards ought to be interpreted differently in different cultural contexts. The International Covenant on Civil and Political Rights, for example, provides that, in the election of members of the Human Rights Committee, consideration be given to the representation of different forms of civilization and difference legal systems. The committee itself has said that the right to family life may vary according to socioeconomic conditions and cultural traditions. *See Robertson,* A. H. & *Merrills,* J. G. *Human Rights in the World: An Introduction to the Study of the International Protection of Human Rights*, (1996) Manchester University Press, Manchester at 64.

[5] "Because of the great numbers of societies that are in intimate contact in the modern world, and because of the diversity of their ways of life, the primary task confronting those who would draw up a Declaration on the Rights of Man is thus, in essence, to resolve the following problem: How can the proposed Declaration be applicable to all human beings, and not be a statement of rights conceived only in terms of the values prevalent in the countries of Western Europe and America? ... the problem is complicated by the fact that the Declaration must be of worldwide applicability. It must embrace and recognize the validity of many different ways of life. It will not be convincing to the Indonesian, the African, the Indian, the Chinese, if it lies on the same plane as like documents of an earlier period. The rights of Man in the Twentieth Century cannot be circumscribed by the standards of any single culture, or be dictated by the aspirations of any single people. Such a document will lead to frustration, not realization of the personalities of vast numbers of human beings." American Anthropological Association. 'Statement on Human Rights', (1947) 49 American Anthropologist 4, at 539-543

[6] See Moravcsik, Andrew. 'The Origins of Human Rights Regimes: Democratic Delegation in Postwar Europe', (2000) 54 International Organization at 217; See also Moravcsik, Andrew. 'Taking Preferences Seriously: A Liberal Theory of International Politics', (1997) 51 International Organization at 513; See also Goldstein, Judith. & Keohane, Robert O. *Ideas and Foreign Policy: Beliefs, Institutions, and Political Change*, eds. (1993) Cornell University Press.

society, the notion of the individual is generally supplanted by larger societal units or groups whose wants and needs align more with the interests of all members in the society.[8] While this is not to say that such a society is incapable of upholding human rights, it often means that communitarian societies place a greater emphasis on what is important to society as a whole and that they may have developed concepts of "the individual" and of "rights" that differ significantly than those which are found in atomist societies.

These differing definitions of the concept of the individual naturally lead to a difference in priorities when atomist and communitarian societies attempt to establish an all-encompassing principles concerning human rights law. In fact, recent history is rife with such incidences of clashing priorities, the most notable of which occurring during the drafting of Universal Declaration of Human Rights in 1948.[9] As a result, the human rights enumerated in the in the final document (UDHR)[10] have been divided into "covenants" reflecting the various prevailing beliefs and world players during the periods when the rights were proposes. The first of these covenants outlines what are generally thought of as basic civil and political rights. These are now known as "first generation" rights[11]. Another covenant contains the "second generation" rights; those social, economic and cultural rights[12] which reflected the cultural/economic divisions between the East and West and which were deemed threatened by developments during the Cold War. Those rights proposed during the 1960s and 1970s by the postcolonial states, in an effort to achieve more equitable social and economic development, became known as the "third generation" or "solidarity" rights.[13] Finally, at the end of the Cold War the international community began to take an increased interest in the plight of disenfranchised native populations, leading to the adoption of a "fourth" generation of human rights which dealt with the rights of indigenous peoples[14]. While these effort to expand the scope of internationally recognized human rights are laudable, the development of a hierarchy of rights based on their "generation," further calls into question universal nature of most recently adopted rights. This so-called "inconclusiveness in concept" has had a profound

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[7] Brohi, A. K. 'Islam and Human Rights', in Gauhar, Altaf. *The Challenge of Islam*, ed. (1978) London: Islamic Council of Europe; Donnelly, Jack. *Universal Human Rights: In Theory & Practice*, (2003) Cornell University Press; Mat, Ismail. 'Human Rights in Islamic Legal Shari'ah Perspective', Paper Presented at The AMSS 33rd Annual Conference George Mason University Arlington Campus – Virginia, Sept 24-26, 2004.

[8] Tharoor, Shashi. 'Are Human Rights Universal?', (Winter 1999/2000) World Policy Journal, Vol. xvi, No. 4. See also Tharoor, Shashi. 'Are Human Rights Universal?', (March 2001) Essay New Internationalist Magazine, 332.

[9] Normand, Roger & Zaidi, Sarah. *Human Rights at The UN: The Political History of the Universal Justice*, eds. (2008) Indiana University Press.

[10] G.A. Res. 217, U.N. GAOR, 3rd Sess., U.N. Doc. A/819, Dec. 10, 1948.

[11] International Covenant on Civil and Political Rights, Mar. 23, 1976, 999 U.N.T.S. 171; See also G.A. Res. 2200, U.N. GAOR, 21st Sess., Supp, No 16, at p. 52, U.N. Doc. A/6316 (1966) (U.N. resolution adopting the ICCPR).

[12] International Covenant on Economic, Social and Cultural Rights, Jan. 3, 1976, 993 U.N.T.S. 3; See also G.A. Res. 2200, U.N. GAOR, 21st Sess., Supp. No. 16, at 49, U.N. Doc. A/6316 (1966) (U.N. resolution adopting the ICESCR).

[13] Declaration on the Right to Development, G.A. Res. 41/28, U.N. GAOR 41st Sess., 97th mtg., U.N. Doc. A/RES/41/128 (1987) was adopted by 146 votes to one, with eight abstainers. The United States of America cast the only vote against adoption. Abstainers were Denmark, Finland, Germany, Iceland, Israel, Japan, Sweden, and the United Kingdom.

[14] The fourth generational terminology was first used in an affirmative sense by George Manuel and Michael Poslins. See Manuel, George & Poslins, Michael. *The Fourth World: An Indian Reality*, (1974) Collier-Macmillan, at 7, 11-12.

effect on the practical implementation of human rights in the real world. Very often, efforts to implement these rights have resulted in contradictions which necessitate a decision having to be made as to which right should take precedence over another.[15]

The fluidity of the concept of human rights themselves often contributes to the misunderstanding of their meaning and theoretical foundation.[16] In fact, for all intents and purposes, unless a unanimous and conclusive definition as to the nature and scope of human rights can be established, truly universal human rights can never exist. The so-called universal human rights that we uphold today are merely a set of general propositions with little or no concrete details regarding the actual meaning contained in their language. Because of this, it is often the case that any proposition that even slightly resembles or reflects a concept already outlined in the UDHR is quickly ushered into the general list of human rights and claimed to be universally accepted and applicable in all situations. Ironically, this fluidity also allows these rights to be disputed by those countries whose values differ from those which the "universal" rights are based on, thereby contributing further to the non-universal nature of existing international human rights law.

As a result of the numerous attempts made by scholars, jurists and legal practitioners to define the meaning of human rights, there exists a wide range of often conflicting theories and ideas on the subject. In particular, there is a distressing lack of consensus regarding the origin of human rights. For example, unanswered questions persist as to whether human rights are endowed by the divine, are moral obligations, or are simply a privilege of the existence of law and government. Similarly, there is considerable disagreement as to whether certain human rights should take precedence over local customs, are necessary for the implementation of social contract theory and the principles of distributive justice, or are even prerequisites for happiness. There is even debate regarding whether human rights are to be understood as irrevocable, or whether they can be entirely or partially revoked. These questions over the breadth and number of human

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[15] "People tend to attach importance to particular human rights according to ideology and political convenience. New privileges have been created and elevated to the status of human rights in order to entrench particular political and economic systems. It is however, evident that certain basic rights are indispensable for the meaningful existence of all other rights ... Agitation for an ever increasing number of so-called human rights is growing steadily. On the other hand human rights that once flourished and safeguarded the individual are being gradually undermined. There are many reasons for this occurrence. One of the most significant of them is the indiscriminate proliferation of human rights and the failure to draw qualitative distinctions between those rights which are essential conditions of freedom and those which have become human rights only by virtue of being declared to be such." Cooray, Mark. 'The Basic Human Rights And The Needs Based Human Rights', online: <http://www.ourcivilisation.com/cooray/rights/chap5.htm>.

[16] See Donnelly, Jack. *Universal Human Rights: In Theory & Practice,* (2003) Ithaca: Cornell University Press; Freeman, Michael. *Human Right: An Interdisciplinary Approach.* (2002) Cambridge: Polity Press; Steiner, Henry J. & Alston, Phillip. *International Human Rights in Context: Law, Politics, Morals.* eds. (2007) Oxford University Press; Shute, Stephen & Hurley, Susan, *On Human Rights: The Oxford Amnesty Lectures.* eds. (1993) New York: BasicBooks; Forsythe, Frederick P. *Encyclopedia of Human Rights,* (2009) New York: Oxford University Press; Landman, Todd. *Studying Human Rights.* (2006) Oxford and London: Routledge; Ball, Olivia & Gready, Paul. *The no-nonsense guide to human rights,* (2006) Oxford: New Internationalist; Beitz, Charles R. *The idea of human rights,* (2009) Oxford: Oxford University Press; Ankerl, Guy. 'Relativity of human rights', (2011) Sacha Journal of Human Rights, 14-36; Barsh, R. 'Measuring Human Rights: Problems of Methodology and Purpose', (1993) Human Rights Quarterly 15: 87-121.

rights will likely remain points of contention as long as any attempt at revisiting them is swiftly pushed aside by the international community.[17]

In fact, after examining the variety of definitions proposed by several prominent human rights scholars, it can be argued that the contemporary understandings of human rights are so exceedingly elastic that the concept of rights can mean just about anything.[18] For example, one of the most common practices in definition of human rights is to try and relate the idea of rights to other similar abstract concepts like "justice," "equality," "freedom," "democracy" to "the rule of law." This approach is ultimately self-defeating as any definition of rights devised by such a method relies on a concrete definition of yet another complicated and oft-debated philosophical concept.

In summary, when one considers the flexible nature of the concept of human rights and the dubious foundations of the concept of universalism, one must conclude that true universalism in human rights cannot be achieved.

2. The Historical Perspective: The Western-Dominated Drafting of the UDHR

A belief in the existence of universal human rights is generally considered a prerequisite for participation in modern international relations. However, this belief is the result of an assumption that there is an international consensus regarding the basic tenants of human rights. One could argue that it is the appeal of the assumed universal nature of the right enumerated in the UDHR which has driven the increased interest in human rights among the international community resulted in the creation of a myriad of human rights laws and countless NGOs devoted to rights issues.[19] However, as has previously been discussed, the philosophical foundations for this assumption are shaky at best. Unfortunately, this issue aside, one may also call into question the supposed "universal" nature of the agreement upon the UDHR itself. In other words, was the process by which human rights were proposed and ratified by the U.N. truly the result of fair and equal contributions from all nations and cultures represented? In order to answer this question, one must identify who the specific authors of the UDHR were, which states were primarily involved in the decision-making process, and whether or not the underlying ideologies which catalysed the creation of UDHR were universally valued by all of the nations which ratified it.

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[17] Weston, Burn H. *Human Rights, New Encyclopaedia Britannica*, (1992) Vol. 20, 15th Edn., University of Chicago Press.

[18] See some of the various definition and conceptual ideas from various scholars on the term of 'Human Rights': Donnelly, Jack. *Universal Human Rights: In Theory & Practice*, (2003) Cornell University Press; Wallace, Rebecca M. M. 'Human Rights and Responsibilities: the Inextricable Link', (2001) Human Rights & UK Practice 2.3 (9); Perry, Michael J. *The Idea of Human Rights: Four Inquiries*, (2000) Oxford University Press; Perry, Michael J. *Toward a Theory of Human Rights: Religion, Law, Court*, (2007) Cambridge University Press; Bentham, Jeremy. *An Introduction to the Principles of Moral and Legislations*, (1970) Routledge; Freeman, Michael. *Human Rights,* (2002) Polity Press; Landman, Todd. *Protecting Human Rights: A Comparative Study*, Georgetown University Press; Landman, Todd. 'Measuring Human Rights: Principle, Practice and Policy', (2004) Vol. 26, No. 4, Human Rights Quarterly; Guzman, Andrew T. *How International Law Works*, (2008) Oxford University Press; Gewirth, Alan. *Reason and Morality,* (1980) University of Chicago Press.

[19] Normand, Roger & Zaidi, Sarah. *Human Rights at The UN: The Political History of the Universal Justice*, eds. (2008) Indiana University Press at 194.

When examining the chronology of the drafting of the UDHR it becomes obvious that the influence of the Western world vastly outweighs that of any other contributing culture. This is due in large part to the fact that, during the inception of the UDHR, many non-western nations, particularly those which would become known as 3rd world countries, were still colonial holdings of western nations.[20] Given this imbalance, it would be safe to assume that most of the ideas which formed the foundation of the UDHR were based largely on Western philosophies, Western legal tradition, and Western geopolitical imperatives. Yet it seems the international community has failed to consider the implications of this fact, as evidenced by the conventional view that the UDHR was the product of a worldwide consensus on rights.[21]

It is a matter of historical record that the United States, due to the skill of its drafting team and its unparalleled ideological power in the post-war world, was the driving force behind most of the key decisions made by the Commission for Human Rights (CHR).[22] In fact, just a few years after the United States adopted the UDHR, US Secretary of State John Foster Dulles told a group of lawyers that the Universal Declaration of Human Rights was not a simple affirmation of mundane legal principles, but America's "Sermon on the Mount" in the ideological struggle against the Soviet Union.[23]

The negotiations that produced the UDHR were both lengthy and reflected the complex political landscape of the era. As case in point, one of the most peculiar aspects of the drafting process was the fact that, due a deadlock between the US and the Soviet Union, most suggestions regarding the enforcement of the principles being debated were refused. Therefore, the question as to how to implement the protection of the rights outlined in the UDHR was essentially left unanswered.

States that were absent (in many instances since they had not yet achieved independence) lost the opportunity to express their views, assert agendas, or contribute in any way to the development of the modern concept of human rights. This has led some scholars to argue that the effort to promote the idea of human rights can be viewed as

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[20] "Most African and Asian countries did not participate in the formulation of the Universal Declaration of Human Rights because, as victims of colonization, they were not members of the United Nations. When they did participate in the formulation of subsequent instruments, they did soon the basis of an established framework and philosophical assumptions adopted in their absence. For example, the pre-existing framework and assumptions favoured individual civil and political rights over collective solidarity rights, such as right to development, an outcome which remains problematic till today. Some authors have gone so far to argue that inherent differences between the Western notion of human rights as reflected in the international instruments and non-Western notions of human dignity", An-Naim, Abdullahi Ahmed. 'Human Rights in the Muslim World', (1990) 3 Harvard Human Rights Journal, 13, in Steiner, Henry J. & Alston, Phillip. *International Human Rights in Context: Law, Politics, Morals*, eds. (2007) Oxford University Press.

[21] An-Naim, Abdullahi Ahmed. 'Human Rights in the Muslim World', (1990) 3 Harvard Human Rights Journal, 13, in Steiner, Henry J. & Alston, Phillip. *International Human Rights in Context: Law, Politics, Morals*, eds. (2007) Oxford University Press; Mutua, Makau M. 'Standard Setting in Human Rights: Critique and Prognosis', (2007) Human Rights Quarterly, Vol. 29.

[22] The fact that almost all these disagreements were resolved in favor of the U.S. position cannot be explained on the basis of geopolitical power alone. America emerged from World War II as the dominant global power, due both to its geographic distance from the devastation in Europe and its enormous economic capacity. That the influence of the United States on the human rights project far overshadowed that of Britain and the Soviet Union can also be attributed to the priority the State Department placed on planning and working toward a successful outcome and on the personal strengths of the U.S. representative.

[23] Quoted in Anderson, Carole. *Eyes Off the Prize: The United Nations and the African American Struggle for Human Rights, 1944-1955*, (2003) Cambridge: Cambridge University Press, at 131.

nothing more than an extension of US and Western hegemony, or, more precisely, that it was designed to serve such a purpose.[24]

Additionally, even among those states which did send delegates to participate in the CHR, the distribution of power and the degrees of contribution were far from equal. Just a handful of delegates wielded most of the political clout. In particular, there were three individuals who dominated the drafting process: Eleanor Roosevelt of the US, Charles Malik of Lebanon, and Peng-chun Chang of China. Mrs. Roosevelt was, without doubt, possessed of the most authority, the strongest personality among the commission members, and an ardent champion of Western ideals. Similarly, though officially representing non-Western cultures, both Malik and Chang had been educated following a "European template," and both were understood at the time to be closely allied with the US delegation.[25]

Interestingly, an exhaustive study conducted by the UNESCO, which sought to discover the degree to which the UDHR represented a plurality of ideologies and cultural traditions, concluded that most of the materials used to develop the early drafts of the UDHR had been written in English and that all but two had originated in the democratic west.[26] This study, which was presented to the CHR before the final incarnation of the UDHR had been agreed upon, was ultimately rejected. What's more, the choice of languages used by the CHR, and more specifically, the translation of material made available to all members of the commission, played a significant role in the overall process of creating the UDHR. The manner by which the UN translated documents from English and French (the two official languages at the time) into the various languages spoken by delegates from non-western countries often failed to reflect the nuances of said languages. This resulted in rather literal translations which were inadequate to the task of accurately conveying the meaning intended in the original materials. Furthermore, because no provisions were made for the simultaneous interpretation of languages during CHR sessions, many delegates were left unaware of what topics were being discussed until transcripts of the session were translated. This affected their ability to confidently cast votes and assert their opinions in real-time. As case in point, Rene Cassin, one of the French members of the commission, admitted that at certain times "[he] failed to understand, and thus let pass, proposals and resolutions that did not correspond to [his] own views."[27]

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[24] Eide, Asbjorn. 'The Historical Significance of the Universal Declaration', (1998) No. 4 International Social Science Journal 50. Eide argues that by adopting the UDHR, member states of the UN attempted to make break with traditional realpolitik that dictates normal intergovernmental relations. In his opinion, the UDHR is significant in the evolution of human rights ideas in the following respects: (1) restoring the process of normative development; (2) broadening the twin concepts of freedom and equality; (3) expanding the content of human rights by including economic, social, and cultural rights; (4) expanding rights to the whole world (widening the geographical scope); and (5) making human rights a legitimate concern of international law. See also Waltz, Susan. 'Reclaiming and rebuilding the history of the Universal Declaration of Human Rights', (2002) Third World Quarterly 23, No.3 at 437-448.

[25] Mutua, Makau M. 'Is the Universal Declaration of Human Rights Truly Universal?' in Harvard Human Rights Program 20th Anniversary Symposium, (2001) Cambridge, Mass.: Harvard Law School, in Normand, Roger & Zaidi, Sarah. *Human Rights at The UN: The Political History of the Universal Justice*, eds. (2008) Indiana University Press at 195-196.

[26] Humphrey, John P. *Human Rights & the United Nations: A Great Adventure*, (1984) Transnational Publisher, at 32.

[27] Evans, Tony. *US Hegemony and the Project of Universal Human Rights*, (1996) New York: St. Martin's Press, at p. 93. Normand, Roger & Zaidi, Sarah. *Human Rights at The UN: The Political History of the Universal Justice*, eds. (2008) Indiana University Press, at 196.

Therefore, to summarize the findings presented above, contemporary human rights law cannot be considered universal because, conceptually, the idea of universality is inconsistent with the concept of rights. Furthermore, because the development of modern human rights law, and in particular the process by which the UDHR was drafted and adopted, was dominated by Western notions of rights and the overwhelming influence of the United State, the provisions outlined by the UDHR and subsequent statues concerning human rights cannot, in good faith, be considered the result of universal consensus and equal contribution.

3. The Lack of International Compliance with Norms and Values Outlined by Modern International Human Rights Law is a Direct Result of Its Non-Universal Nature

Modern human rights laws have been designed as, and are generally assumed to be, components of a universal legal system that can be applied to virtually every individual on earth, regardless of origin, race, culture, etc. Yet violations of these laws are still all too common, and enforcement mechanisms are often sorely lacking. In this day and age this gap between expectation and reality is inexcusable, as it threats the integrity of the entire concept of human rights as tool of international governing bodies. Given this state of affairs, and in light of the information previously presented, one must wonder whether the decline in states' compliance with the norms and values outlined by human rights law is primarily due to the intrinsic non-universal nature of said laws.

Upon examining the manner by which the international community has provided for the enforcement of international human rights law, it can be observed that the prevailing system is almost entirely premised on the primacy of national implementation mechanisms.[28] As a result, treaties have become the primary tool utilized by international governing bodies to ensure states' compliance with international law. Unfortunately, however, the effectiveness of this treaty system relies entirely upon both the degree to which states pass national laws reflecting the stipulations outlined in each treaty, and the degree to which they allow international institutions to monitor and report on their level of compliance. In other words, although the obligation to protect human rights may originate from the various provisions of *international* human rights treaties, it is essentially up to each individual state as to whether they will "give effect" to these treaties within their own *domestic* legal systems.[29]

Because the international community lacks any real central enforcement authority with which to ensure that states abide by its statues and laws, compliance with human rights treaties have always been voluntary. It is up to each individual state as to whether or not it will comply with the international laws that it has agreed to. Therefore, as long

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28 See, e.g., Cerna, Christina M. 'East Asian Approaches to Human Rights', (1996) 2 Buff. J. Int'l L. 201, at 210; Donnelly, Jack. 'International Human Rights: A Regime Analysis', (1986) 40 Int'l Org. 599, at 613-15. See also 'Certain Aspects of the Laws on the Use of Languages in Education in Belgium', (1968) 1 Eur. H.R. Rep. 252, 284 (A/6) (Convention mechanisms are subsidiary to national implementation of rights).

29 E.g., ICCPR, Art. 2; ICESCR, Art. 2. See also Alston, Phillip & Quinn, Gerard. 'The Nature and Scope of States Parties' Obligations under the International Covenant on Economic, Social and Cultural Rights', (1987) 9 Hum. Rts. Q. 156, at 164-77; Schachter, Oscar. 'The Obligation to Implement the Covenant in Domestic Law', in Henkin, Louis. *The International Bill of Rights: The Covenant on Civil and Political Rights*, ed. (1981) Columbia University Press, at 311.

as human rights laws exist within the general framework of international law, they will always be restricted by the inherent limitations of international law like the pre-eminence of state sovereignty and the principle of non-intervention. While it cannot be ignored that there have numerous instances when states *have* complied with international human rights law,[30] the existence of a failure-of-form, so to speak, is evident when one considers the overwhelming number of overdue reports, untenable backlogs,[31] minimal individual complaints from potential victims, and widespread refusal of states to provide domestic solutions when violations of human rights are discovered.[32]

In summary, the research present above suggests that, instead of an "interest based" theory, such as those proposed by realist theorist, a "constructivist" approach makes more sense in explaining the problems associated with the enforcement of international human rights law. Upon conducting a constructivist investigation into the efficacy of international human rights laws, one observes that states' willingness to comply with said laws very much depends on the degree to which their leadership, population, or culture believes in the concept of universal human rights.[33] In other words, states comply (or at least make a sincere effort to comply) only if they truly believe in the legitimacy of human rights law as a component of a legal system that they are bound to follow.

III. DISCUSSION

It cannot be claimed that the arguments previously outlined are innovative or novel. In fact, the criticisms of international human rights law which form the foundation of this work have existed for some time, and the international community has already made various efforts to responded to them. Therefore, the findings here-presented simply reinforce the idea that modern international human rights law *is not* and *cannot* be truly universally applied, and that, as a direct result of this fact, efforts to effectively promote human rights and ensure the enforcement of international laws regarding the protection of these rights, for the most part, have failed.

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[30] See Morgenthau, Hans P. *Politics Among Nations*, (1973) 5th Edn., New York, at p. 290-1; Henkin, Louis. *How Nations Behave: Law and Foreign Policy*, (Published for Council on Foreign Relations) (1979) at 46-9; Brierly, I. *The Outlook of International Law*, (1944) Oxford, at 5, and Jessup, R. *A Modern Law of Nations*, (1948) New York, at 6-8.

[31] The treaty bodies cannot handle in a timely manner the number of reports which the system now requires or produces, even if there was a general amnesty - which in practice is now the case. The average consideration by each treaty body of a state for six or seven hours once every five years has not maximized constructive interaction. Six different working methods, documents, practices, rules of procedure, and reporting guidelines do not serve users. There is substantive overlap of treaty rights and freedoms, and inevitable overlap of reporting and dialogue.

[32] Scholars tried to study the various reasons and factors behind states' compliance and non-compliance with human rights treaties. See Hathaway, Oona A. 'Do Human Rights Treaties Make a Difference?', (2002) 111 Yale L.J.; Hathaway, Oona A. 'The Cost of Commitment', (2003) 55 Stan. L. Rev.; Goodman, Ryan & Jinks, Derek. 'Measuring the Effects of Human Rights Treaties', (2003) 14 Eur. J. Int'l L.; Helfer, Lawrence R. & Slaughter, Anne-Marie. 'Toward a Theory of Effective Supranational Adjudication', (1997) 107 Yale L.J.; Peerenboom, Randall. 'Show Me The Money: The Dominance of Wealth in Determining Rights Performance in Asia', (2004) 15 Duke J. Comp. & Int'l L.

[33] Moravcsik, Andrew. 'The Origins of Human Rights Regimes: Democratic Delegation in Postwar Europe', (2000) 54 International Organization, at 217; See also Moravcsik, Andrew. 'Taking Preferences Seriously: A Liberal Theory of International Politics', (1997) 51 International Organization, at 513; See also Goldstein, Judith & Keohane, Robert O. *Ideas and Foreign Policy: Beliefs, Institutions, and Political Change,* eds. (1993) Cornell University Press.

Nevertheless, human rights advocates and international organizations alike continue to promote the belief that modern international human rights laws are universally agreed upon, and that any problems associated with their enforcement are entirely unrelated to the possibility of the converse being true.[34] In fact, for the majority of the international human rights advocacy community, the issue as to the universal nature of the concept of human rights has long since been settled and is now viewed as beyond question. Therefore, most attempts to revisit this topic are met with stiff resistance, and shortfalls in enforcement and rights promotion are often left unresolved.

While the theoretical debate between the universalists and relativists continues, it is indisputable that the efficiency of the mechanisms which have been designed to protect and promote human rights relies on the degree to which states cooperate with international law. As long as states do not deem the modern conception of human rights to be universally applicable, the realization of an international standard of human rights will remain a failed component of international law. This, in itself, is evidence in support of the ultimate claim that the international community's view of human rights is, at least for the present, untenable, and that there cannot exist truly universally applicable human rights.

In order to reform current international human rights laws, the question as to whether or not the concept of human rights represents an international or intercultural consensus, is ultimately irrelevant. After all, this question is, in essence, simply a variation of the question as to whether human right really exist at all. From the standpoint of developing a solution, these questions are overshadowed by the more pressing question as to how the non-consensual nature of modern human rights laws effect their usefulness. Answering this question may reveal that laws which *are* truly based on an international consensus are inherently weaker than intended, or are more subject to distortion. Perhaps there are many benefits of to the adoption of a model of human rights promotion which does not rely on an international consensus. Perhaps by acknowledging the truth about the limitations of the concept of "human rights" and "universalism," and by acknowledging the historical discrepancies associated with the drafting and adoption of the UDHR, the international community may finally be able to develop a sufficient and attainable model for rights promotion and protection.

Taking into account the intricacies involved in developing solutions to these issues, this paper recommends the adoption of a more pragmatic approach regarding human rights. This is not to say that those who have developed modern human rights laws have hitherto failed to devise laudable and partly-effective theories and policies, but that they have often ignored certain pragmatic concerns and treated human rights as an object of devotion rather than calculation.[35] In so doing, they have undermined the ultimate intent

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[34] Generally speaking, a strong ideological position of universality will result in ensuring a certain constancy and general applicability of human rights concept, which for instance makes individual country performance both easier to evaluate and impact. See *Tomasevski, Katerina.* 'Human Rights and Humanitarian Challenges', in *Childers, Erskine.*, *Challenges to the United Nations: Building a Safer World*, ed. (1994), St. Martin's Press, at p. 98. However, Lindholt comment that, "On the other hand it will also tend to narrow the possibility of adapting human rights policies to actual circumstances, whether they are of a political or a cultural nature. Hereby the price of consistency is lack of flexibility and, eventually, the danger of stagnation and ineffectiveness of human rights instruments to serve as measures of protection and promotion." See Lindholt, Lone. *Questioning the Universality of Human Rights: The African Charter on Human and People's Rights in Botswana, Malawi, and Mozambique*, (1997) Ashgate, at 24.

[35] Kennedy, David W. 'The International Human Rights Regime: Still Part of the Problem?', (2002) 14 Harv. Hum. Rts. J. 101

of upholding the value in human rights which forms the foundation of their international instruments. Instead of focusing on the original aims of the human rights promotion movement, such as emancipation from slavery and protection of human dignity, human rights activists and organizations have become subconsciously side-tracked and now focus merely on obedience to the black-letter provisions of existing international human rights law. While these activists and organizations should be commended for their devotion to the promotion of human rights, by ignoring the inherent failures of these modern laws, the effectiveness of the enforcement of said laws will remain far from what could potentially be achieved.

1.   A More Pragmatic Approach in the Enforcement of Human Rights:
Universalist Vision with Relativist Logic

Having acknowledged the unfortunate reality that the operation of human rights enforcement is fraught with problems, this paper seeks to propose a more practical approach towards improving the efficacy and efficiency of human rights enforcement. The discourse over the enforcement of human rights law must be centred on the question as to whether particular methods are useful and effective in stopping violations, regardless of whether they adhere to the principles of the concept of universal human rights.

An appropriate starting point would be to question whether current international human rights laws truly serve as binding international law for all, or whether they merely act to encourage a consideration for human rights among the international community. Based on the information earlier presented, one must conclude in favour of the latter, and admit that instead of seeking to develop universally applicable human rights, the human rights movement should acknowledge the unviability of the concept of universal human rights and focus instead towards the development of mechanisms which allow more diversity in application, while at the same time uphold the core values implicit in international human rights law.

What would such a model look like? It may, in fact, take many forms; for certain rights like the right to freedom from torture or summary execution, there is little room for interpretive variation due to a nearly universal consensus over their meanings. Some rights are simply not susceptible to significant cultural, social, or political variations. Conversely, there are rights which occupy the opposite end of the spectrum and for which there may be significant disagreement concerning their meaning, even though their core values may be presumed to be universal. Agreement over the definition of "core values" may itself ultimately determine the degree to which variations in the interpretation of specific rights can exist. Free speech, for example, may be defined as narrowly as free political expression, or, more broadly, as relating to all facets of human expression, and may even include both blasphemy and pornography. Whether pornography, commercial speech, hate speech, or other incarnations of speech are protected internationally, and the circumstances under which they are expected to be protects, depend on one's initial view of the "core value" of the right to free speech.[36]

It is, however, possible to create a model which reconciles these two contrasting approaches, at least in practice, without first settling the debate between universalists and relativists. For example, the application and development of human rights could take

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[36] See, e.g., Kausikan, Bihari. 'An East Asian Approach to Human Rights', (1995) 2 Buff. J. Int'l L. 263 at 269-72.

place within the context of smaller societal units, and an emphasis could be placed on identifying the many different ways in which rights may be perceived or interpretation. One could develop a model which both acknowledges the universal nature of certain rights, while at the same time utilizes mechanisms which recognize that, for other rights, social and cultural variations influence interpretation. What is important is that the model effectively protects individual rights while also taking into account the existence and importance of divergent societal and cultural norms.

2.   A Proposal for Reform: Group-Based Enforcement as an Alternative to the Top-Down Approach

The present problem of human rights enforcement reflects the often contentious relationship between centralism, at the international level, and local governance at the domestic level. Although the enforcement of universal human rights is often considered to be the domain of international institutions, more decentralized methods of problem solving are more efficient since they incorporate an understanding of the factors specific to the smallest societal units and take into account these local peculiarities, and cultural values.

Centralist solutions are often considered to be more homogeneous, effective and uniform in their method of operation. However, based on the findings of the research presented in this paper, there are still missing components that must be addressed if the international community hopes to achieve an ultimate goal of developing a practical and applicable universal standard for international human rights law. While the increase in the number of international rights advocacy organizations and the development of the concept of "civil society" have helped bring the issue of human rights law implementation to international attention, they have, in many ways, compounded the issues associated with developing human rights around the world. The rapid speed with which the global community adopted the concept of human rights has left neglected the alternative "group based" model of human rights development. However, this model offers many benefits, such as providing a general framework which establishes generally agreed principles and norms that transcend strict national concerns while at the same time taking into consideration so-called "group based mechanisms" which could be applied toward the enforcement of those norms relative to the societal and cultural values of various groups within states.

The term "group based" is used to denote a wider concept which includes geographically based group, such as the current existing regional mechanism of human rights protection, as well as other societal units which represent various cultural concerns, religion, ethnicity, etc. This is done in order to take into consideration the fact that certain group within nations/states have coalesced around religion or ethnicity as opposed to geographically based affiliation.

For states, establishing a group based model of rights development would help them achieve several objectives related to the promotion and protection of human rights. When states are required to report to an international governing body which monitors the status of smaller societal units and makes recommendations based on the wants and need of groups within a state or society, such recommendations may be more politically viable within the state, and, therefore, more effective than recommendations based on foreign concepts or a universal model.

In particular, the needs and interests of smaller societal units, including ethnic and religious groups such as a conservative religious group that usually refers to their textual meaning of the holy book to filter certain ideas and norms, must be considered when developing human rights enforcement mechanisms as their inclusion is central to creating "ownership" of the process. An example of this concept in practice is the Association of Southeast Asian Nations' Intergovernmental Commission on Human Rights (AICHR), which seeks "to promote human rights within the regional context, bearing in mind national and regional particularities and mutual respect for different historical, cultural and religious backgrounds, and taking into account the balance between rights and responsibilities."[37] In essence, while the ASEAN nations are still committed to upholding principles of the universal human rights in keeping with international norms, they are at the same time incorporating into this process regionally specific cultural norms and values.

In fact, inverted triangular, or bottom up, methods of human rights enforcement have already been proven to be quite effective when compared with the results of the traditional top down model. At present there exist a number of regional arrangements regarding the protection of human rights which operate concurrently with broader, global recognized international laws and statues. Europe was the first region to have adopted a regionally specific set of laws when it developed the Convention for the Protection of Human Rights and Fundamental Freedoms," which established the European Court of Human Rights and the European Commission on Human Rights. These two entities, which provide avenues by which groups and individuals can seek regress in cases of rights violation, function within the framework of the Council of Europe.[38] Inspired by this European model, the Western hemisphere has been witnessed two similar drafting conventions: The Central American Convention and the Inter-American Convention for the Protection of Human Rights, which created Central American Commission and Inter-American Commission and the Court of Human Rights respectively.[39]

On the other hand, on the African and Asian continents many nations have been preoccupied with ongoing efforts to remedy the effects of colonization and achieve the goals outlined during the Bandung Summit of 1955. However, the international agreement produced by this very summit (also known as the Afro-Asian Conference) included a set of ten unanimously agreed upon principles for the promotion of world peace and international cooperation. Section C of this document includes a declaration of support-in-full of the fundamental principles of human rights as set forth in the Charter of the United Nations, and identifies the Universal Declaration of Human Rights as the standard which all peoples and nations should seek to achieve. The document further stipulates the "full support of the principle of self-determination of peoples and nations … and took note of the United Nations resolutions on the rights of peoples and nations to self-determination, which is a prerequisite of the full enjoyment of all fundamental Human Rights."[40] It also decries the policies and practices of racial segregation and

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[37] AICHR. 'Terms of reference of ASEAN Intergovernmental Commission on Human Rights', para. 1.4. Online: <http://bit.ly/a7472B>.

[38] ECHR. 'European Conventions on Human Rights and European Convention Protocols (No. 1)', Nov. 4, 1950, 213 U.N.T.S. 222.

[39] See International Commission of Jurists. 'Comparative Texts of Drafts of Regional Conventions on Human Rights', (Geneva). See also 'American Convention on Human Rights', Nov. 22, 1969, O.A.S.T.S. No. 36, at 1.

[40] Final Communique of the Asian-African (Bandung) Conference, April 24, 1955, reprinted in Selected Agreements and Treaties Affecting South-East Asia 31 (South-East Asia Treaty Organization 1970).

discrimination which, at the time of its inception, plagued many African nations and postcolonial societies, as both gross violations of human rights and denials of human dignity.[41]

IV. CONCLUSION

The above analysis demonstrates that the regional-focused human rights initiatives illustrate two of the most important benefits of utilizing "group based" enforcement mechanisms. First, communities and local governments often possess more freedom to prioritize those rights which they deemed to be important relative to the specific circumstances of each community. Second, when using a group based model, the development of human rights is directly correlated with the pace of development among the various members of a group or community. Therefore, states are not rushed (or forced) into implementing unnecessary and often financially burdensome policies which do not reflect the pressing needs of their societies. For example, unlike in Europe, America and Africa, there has been no corresponding "Asian Covenant on Human Rights." This is the result of an increased focus on economic development and the belief that the need for social and agrarian reforms is more pressing than a regional declaration on human rights. However, in the case of many primarily Muslim nations in Southeast Asia, the question as to the protection of human rights was answered as long ago as 1968, when they adopted the Islamic Universal Declaration of Human Rights, a comprehensive outline for the protection and promotion of various political, economic, social, environmental, and cultural rights.[42]

The United Nations has taken a generally positive attitude towards these instances of group based enforcement through regional agreement, as they usually supplement and support the UN's own efforts to develop human rights protections. In fact, in creating the Vienna Declaration in 1993, the UN World Conference on Human Rights essentially affirmed that regional arrangements should be relied upon to reinforce universal human rights standards and endorses efforts to strengthen international arrangements. It even went so far as to advocate for the establishment of these regional and sub-regional arrangements where they do not already exist.[43]

The term "group-based" enforcement proposed in this paper may prove unfamiliar to the reader as it has never been used in this context before. Naturally, this might invite questions pertaining to its suitability in describing the intended concept. In order to assuage these concerns, and to provide the reader with a better understanding of the term,

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[41] The Conference also discussed the problems of dependent peoples and colonialism and the evils arising from the subjection of peoples to alien subjugation and exploitation. ... and it declared support of the rights of the people of Algeria, Morocco and Tunisia to self-determination and independence and urged the French Government to bring about a peaceful settlement of the issue without delay. Final Communique of the Asian-African (Bandung) Conference, April 24, 1955, reprinted in Selected Agreements and Treaties Affecting South-East Asia 31 (South-East Asia Treaty Organization 1970).

[42] The Permanent Arab Commission on Human Rights. (1968), Arab League.

[43] Article 37 of the Vienna Declaration and Programme of Action 1993 states that:
"Regional arrangements play a fundamental role in promoting and protecting human rights. They should reinforce universal human rights standards, as contained in international human rights instruments, and their protection. The World Conference on Human Rights endorses efforts under way to strengthen these arrangements and to increase their effectiveness, while at the same time stressing the importance of cooperation with the United Nations human rights activities.
The World Conference on Human Rights reiterates the need to consider the possibility of establishing regional and subregional arrangements for the promotion and protection of human rights where they do not already exist."

it may be prudent take a look at a more familiar concept which shares many characteristics with the proposed "group based" model: subsidiarity. As has already been stated, modern understandings of state sovereignty cannot adequately address the issue of reconciling the concept of rights with their practical application. However, the principle of subsidiarity can provide an analytically descriptive way to make sense of a variety of disparate features of the existing structure of international human rights law, from the interpretive discretion accorded to states, to the relationship of regional and universal systems, while also justifying the necessity of international cooperation, assistance, and intervention.[44]

The general ideas behind the concept of subsidiarity are often reflected in legal systems where a variety of different legal entities may interact. Subsidiarity involves the deferral of decisions to the smallest unit within an association of relatively small entities which are controlled and held together by one, or several, larger entities. In this context, subsidiarity is generally invoked to regulate the decision-making processes between the various entities operating in a particular legal system.[45]

Subsidiarity is based on a view of society in which responsibilities are dependent upon the closeness of people's relationships. Intervention by entities occupying higher societal status has to be seen as less important, or "subsidiary," to the actions taken by smaller social units. Applied more narrowly, subsidiarity is to be understood to refer to a functional division of administrative responsibilities, and though it can at times be used in a broader sense, given the context provided above it implies an emphasis on decentralization and diversity.

This principle is very similar to the concept of group based enforcement which has been argued for in this paper. In terms of overall goal, subsidiarity aims to defer the handling of various issues the smallest, least centralized authorities capable of effectively addressing said issues. The Oxford English Dictionary defines subsidiarity as the idea that a central authority should have a subsidiary function, performing only those tasks which cannot be performed effectively at a more immediate or local level. This is almost identical to the concept at the heart of group based models which posits that issues regarding human rights enforcement be handled by smaller societal units, i.e. "groups," which share similar social and cultural backgrounds. .

Unfortunately, to delve into the specific details of this model is beyond the scope of this paper. Suffice it to say that, at this point, the concept of subsidiarity has only been introduced as a tool to illustrate the viability of the mechanisms proposed in this paper. It is believed that the implementation of a system whereby more responsibility is proffered to smaller societal units as a means of strengthening human rights enforcement (as outlined in the concept of subsidiarity) might produce more opportunities for non-Western states to more effectively regulate their own human rights affairs while at the same respecting international human rights standards.

As a form of final reflection, perhaps it would be prudent to consider the words of the American Anthropological Association which stated over half a century ago, that:

"… ideas of right and wrong, good and evil are found in all societies, though they differ in their expression among different peoples. What is held to be a human right in one society may be regarded as anti-social by another people, or by the same people in the period of their history. The saint of one epoch would at a later time be confined as a man not fitted to cope with reality. Even the nature of the

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[44] Mathew, S. 'Human Rights and The Principle of Subsidiarity', V. (2009), Iura Orientalia at 239-254.

[45] Carozza, Paolo G. 'Subsidiarity as A Structural Principle of International Human Rights Law', Vol. 97, (2003) American Journal of International Law, at 38.

physical world, the colours we see, the sounds we hear, are conditioned by the language we speak, which is part of culture into which we are born …

... doctrine of the white man's burden have been employed to implement economic exploitation and to deny the right to control their own affairs to millions of peoples over the world ... Rationalized in terms of ascribing cultural inferiority to these peoples or in conceptions of their backwardness in development of their "primitive mentality," that justified their being held in the tutelage of their superiors, the history of the expansion of the Western world has been marked by demoralization of human personality and the disintegration of human rights among the peoples over whom hegemony has been established. The values of the ways of life of these people have been consistently misunderstood and decried. Religious beliefs that for untold ages have carried conviction and permitted adjustment to the Universe have been attacked as superstitious, immoral and true. And since power carries its own +++ conviction, this has furthered the process of demoralization begun by economic exploitation and the loss of political autonomy …"[46]

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[46] American Anthropological Association. 'Statement on Human Rights', (1947) 49 American Anthropologist.

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