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PAMUN XVII RESEARCH REPORT— Question of the effectiveness, validity and relevance of the Universal Declaration of Human Rights (reviewing and updating the UDHR)

Introduction of Topic

Rising from the ashes of WWII, the Universal Declaration of Human Rights (UDHR) was first conceived following the creation of the United Nations (UN) in 1945. Since its adoption on December 10th, 1948, the declaration has consolidated international respect for human rights and has continuously been referred to as the foundation of numerous constitutions and international laws. Its articles were the source of inspiration for the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR) (attached in Appendix) with whom it forms the International Bill of Human Rights. Although the UDHR does not assign any legal responsibilities, it holds great moral authority over states, governments, and individuals alike.

However, as the political, economic and social context of the declaration undergoes rapid changes, major flaws of the declaration are heavily emphasized. The document is also ridiculed by the repeated violations by its signatory states who subject civilians to brutal human rights abuses, eroding away its firm reputation that was held throughout the decades. Thus, noting the gravity of the issue at hand, this Council finds it necessary to revisit the content of the UDHR.

Definition of Key Terms

Human Rights

While the UDHR does not provide an official definition, human rights are described on the UN website as “rights inherent to all beings, regardless of race, sex, nationality, ethnicity, language, religion, or any other status.” The rights outlined in the UDHR include the right to life, liberty and property, freedom of expression, freedom of speech, freedom of religion, etc. Human rights are non-discriminatory, inalienable and indivisible, meaning that all individuals are credited to equal civil and political rights, economic and social rights, as well as collective rights regardless of identity or status. These rights cannot be taken away in place of another. States hold a moral obligation to protect individuals from human rights abuses while the individuals are to respect the rights of others.

Universality

In philosophy, universality is “the notion that universal facts can be discovered”. It implies that a principle or ethic can be applied to all situations regardless of context. Similarly, in the UDHR, the phrase is used to describe the nature of the rights that it guarantees. It states that human rights are universal, meaning that it is shared by all people of the world despite color, religion, economic or political environment, etc.

Declaration

As the United Nations Children’s Fund (UNICEF) puts it in its definition of key terms for the Convention for the Rights of the Child, a declaration assigns no legal obligation for the parties involved. Instead, its purpose is to “declare certain aspirations”. In the same manner, the UDHR does not carry legal force; however, it has since gained significant international respect and is now treated as customary law.

Background Information

The Universal Declaration of Human Rights (UDHR) was initially created as a reaction to the atrocities committed by Nazi Germany and other fascist countries during WWII. After witnessing the brutal extermination of over 6 million Jews, Sinti, and Roman, and the inaction of the international community, in 1945, governments across the globe created the United Nations, committing themselves to the preservation of peace and human dignity. The United Nations Charter “reaffirmed faith in fundamental human rights, and dignity and worth of human person” and entrusted member states to promote “universal respect for, and observance of, human rights and fundamental freedoms for all without distraction as to race, sex, language or religion”. To establish clear standards and principles for the “fundamental human rights”, member states assigned themselves the task of creating a document that will be held against governments and individuals as the norm of human rights. On June of 1946, the UN Economic and Social Council established the Commission on Human Rights (UNCHR) who then created the drafting committee headed by Rene Cassin, a prominent French jurist. The committee consisted of members from diverse cultural and political backgrounds, including notable figures such as Eleanor Roosevelt of the United States, Charles Malik of Lebanon, and Peng Chun Chang of Republic of China.

On December 10th, 1948, the declaration was voted 48 for to 0 against with 8 abstentions in the UN General Assembly and thus was formally adopted at the Palais de Chaillot in Paris, France. The 8 abstentions had come from the six Soviet blocs, South Africa and Saudi Arabia. The Soviet countries (USSR, Ukrainian SSR, Byelorussian SSR, People’s Republic of Yugoslavia, People’s Republic of Poland, Czechoslovakia) had previously split from the Western European countries when disagreements over political and socioeconomic rights arose during the drafting of the declaration. Deeming that the declaration does not go far enough to condemn fascism, the Soviet blocs abstained. Meanwhile, South

Africa had abstained as an attempt to protect their apartheid, which clearly violated several articles of the declaration.

The declaration was first announced with high hopes that its vision will guide member states to promote human rights worldwide. However, such aspirations were crushed with the entry into the Cold War. The principles of the declaration were generally ignored by member states who often used the declaration and the UN as a platform for propaganda against their political adversaries. The declaration was also criticized for being an embodiment of Western-orientated philosophy and an imposition of cultural imperialism of the West. Consequently, support for the declaration became fragmented and human rights became misconfigured as political weapons. While the United States and Western European countries championed for civil and political rights such as the right to vote, right to speak freely, etc., Soviet blocs were biased for socioeconomic rights such as the right to work, healthcare, etc. Meanwhile, segregation persisted in the United States, and USSR continued to use violent methods to crush rebellions in its satellite states.

Eventually with the collapse of USSR, socioeconomic rights lost its stigma with communism and thus was accepted by the United States and Western European countries. Entering the 1990s, the UDHR attained a higher moral position as the human rights movement experienced a great surge. This was well highlighted by the Vienna Declaration from the World Conference on Human Rights in 1993. Many of the constitutions of the liberated colonies were based upon the doctrines of the UDHR and the number of non-governmental organizations (NGOs) promoting human rights increasingly grew during this decade.

In the 21st century, the UDHR holds great significance in the international community. It is the unwavering standard that holds states, individuals, and NGOs responsible. Numerous UN agencies, such as UNESCO, UNICEF, WHO, ILO & WIPO are dedicated to upholding the mission of the declaration. In fact, most of the modern human rights movements originates from its very articles.

Major Countries and Organizations Involved

Office of the United Nations High Commissioner for Human Rights (OHCHR)

The Office of the United Nations High Commissioner for Human Rights (OHCHR) is a United Nations agency which works to promote the goals of the UDHR. The OHCHR was established in 1993 by the UN General Assembly after the World Conference on Human Rights. The office is headed by the High Commissioner for Human Rights, which is currently occupied by Prince Zeid bin Ra'ad of Jordan. The office also oversees the United Nations Human Rights Council (see below).

United Nations Human Rights Council (UNHRC)

The United Nations Human Rights Council (UNHRC) is an inter-governmental branch within the United Nations whose purpose is to promote and strengthen international respect for human rights. It was created by the UN General Assembly in 2006 as a replacement for the United Nations Commission on Human Rights (UNCHR). The council consists of 47 members who are elected by the United Nations General Assembly by their human rights records. The Human Rights Council addresses cases of human rights abuses worldwide and makes recommendations on them.

United Nations Educational, Scientific and Cultural Organization (UNESCO)

The United Nations Educational, Scientific and Cultural Organization (UNESCO) is a United Nations agency whose purpose is to “contribute to peace and security by promoting international collaboration through educational, scientific, and cultural reforms in order to increase universal respect for justice, the rule of law, and human rights along with fundamental freedoms proclaimed in the United Nations Charter”. UNESCO often works in cooperation with the UNHRC and other non-governmental organizations to fulfill their core mission.

Non-governmental Organizations (NGOs)

Non-governmental Organizations promoting human rights play a significant role in ensuring that member states act in accordance to the articles of the UDHR. Notable organizations include Amnesty International, Human Rights Watch, Anti-slavery International, UN Watch, and others. Although most NGOs do not have the military or diplomatic capabilities, their scrutiny of human rights activities around the world greatly contribute to seeing that the principles of the UDHR are preserved.

Timeline of Events

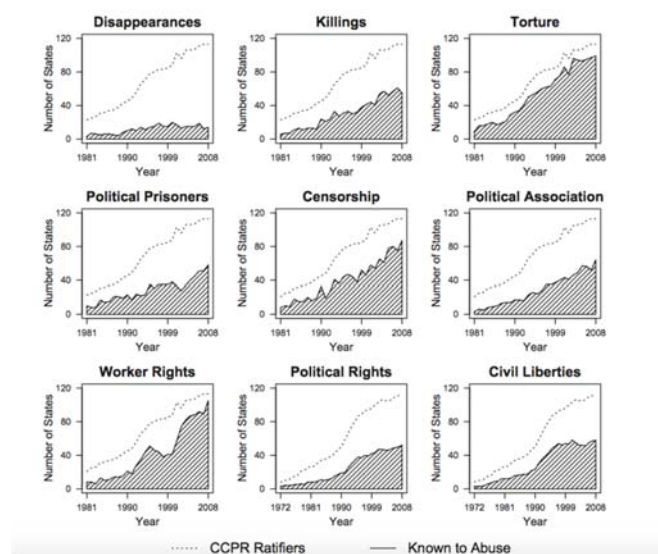
Date	Description of event
September 2nd, 1945	End of World War II
October 24th, 1945	Creation of the United Nations
December 10th, 1948	General Assembly adopts the Universal Declaration of Human Rights
December 16th, 1966	General Assembly adopts the International Covenant on Economic, Social, and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR)

Relevant UN Treaties and Events

- Universal Declaration of Human Rights, 10 December 1948 **(A/RES/3/217)**
- International Covenant on Economic, Social and Cultural Rights, 16 December 1966 **[Resolution 2200A (XXI)]**
- International Covenant on Civil and Political Rights, 16 December 1966 **[Resolution 2200A (XXI)]**
- Optional Protocol to the International Covenant on Civil and Political Rights, 16 December 1966 **[Resolution 2200A (XXI)]**
- World Conference on Human Rights, 20 December 1993 **(A/RES/48/121)**
- Human Rights Council, 3 April 2006 **(A/RES/60/251)**

Main Issues

Despite the UDHR being celebrated by numerous governments who have vowed to uphold the values inscribed its articles, recent trends and statistics from UN branches and NGOs suggest otherwise. In a report issued by Amnesty International in 2008, the statistics indicated that torture is still put to use in at least 81 countries (Article 5), unfair trials are held in over 54 countries (Article 11) and freedom of speech is restricted in 77 countries (Article 19). As the figures on the right show, ironically, the number of known abuses of human rights law has increased in parallel with the number of states who have ratified human rights conventions.



Likewise, despite the UDHR's 'distinguished history' and 'moral status', its contents are frequently contradicted by its signatory states, rendering it ineffective and superficial. Moreover, as the generations unfold and different trends in the social, political, economic and cultural patterns emerge, the need to revise and update the declaration is stressed even more.

Tackling the Problems of the Modern Age

The UDHR was first drafted in 1946 and was adopted in 1948. Most of its articles were written in response to the crimes committed by the Nazi Germany and were formulated in accordance with the political, social and economic environment of the time period. Naturally as time progressed, the context of the declaration rapidly changed, eliciting concerns that it has become outdated in many aspects.

The most obvious change from the 1940s is the advent of new technology. Innovations such as the internet has shook the foundation of our society, transforming most if not all aspects of its functions. However, as progress is made, problems concerning individual rights have also surfaced; such are but not limited to: basic digital rights such as right to cyber privacy and right to protection from cyber abuses, right to access, freedom to use it to one's benefit, right to freely enjoy the technological innovations, right to freely innovate, etc. Few articles of the UDHR touch on this subject matter – the few being Article 19 which guarantees the right to expression “through any media and regardless of frontiers” and Article 27 (1) which outlines the right to “freely participate in the cultural life of the community, to enjoy the arts and to share in scientific achievements and benefits”. While there are UN branches and other international law created on this subject matter, the UDHR seems somewhat lacking when approached with a more modern perspective.

Globalization also poses another challenge to the current status of the UDHR. Since 1948, migration has grossly multiplied and the current refugee crisis continues to be the source of division between member states. Article 14 (1) of the declaration recognizes the right to seek and enjoy in other countries asylum from persecution; however, member states are still resistant to accepting refugees into their countries. Article 14 (2), which states that “this right may not be invoked in the case of prosecution genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations,” is also hotly contested, suggesting the need for reform. Under Article 14 (2), governments have denied numerous migrants the title of refugees due to their prior involvement in criminal activities, despite the fact that the individual might be subject to life-or-death situation. Countless migrants are classified as ‘economic refugee’ and thus are denied asylum.

In recent decades, economic and corporate activities have increasingly become dynamic, driven by the rapid technological advancements and industrialization. However, as businesses and companies grow in significance and influence that it casts over the modern society, individual rights are often sacrificed in the process. Businesses' unscrupulous exploitation of workers and resources has elicited criticism for degrading the principles of the UDHR. On June 16th, 2011, the UNHRC endorsed the *Guiding Principles for Businesses and Human Rights* (attached in Appendix) written by Professor John Ruggie, the UN Special Representative for Business and Human Rights. The report provides a framework for governments and business corporations under which their economic activity and the rights of individuals can both be respected. The standards are starting to be applied in various member states, suggesting the notion that it should be further enforced through implementation in the UDHR.

Right to Refuse to Kill

The right to refuse to kill, also known as the right to refuse to bear arms, is the right of the individual to refuse to serve in the armed forces or bear arms in a military conflict. Such individuals are known as 'conscientious objectors'. While Article 18 declares the freedom of conscience and the right to "manifest his religion or belief in teaching, practice, worship and observance", none confronts this issue in a direct manner. In 1974, Sean Macbride, a former Assistant Secretary General of the United Nations and a founding member of Amnesty International, quoted in his Nobel Speech: "To the rights enshrined in the Universal Declaration of Human Rights one more might, with relevance, be added. It is the 'Right to Refuse to Kill'." Unfortunately, the political atmosphere of the post-WWII era had been an impediment for the right to be drafted in the declaration. Previous resolutions, such as resolutions 1995/83 and 1998/77, of the UNCHR affirmed the right of individuals to develop conscientious objections, but neither carried much weight. Currently, mandatory military service exists in over 55 countries though the term of service varies by regions. Conscientious objections are not recognized in several countries and those who expresses such objections are often treated with hostility and animosity, and in severe cases, are punished.

Ecocide

As global warming and climate change pose a dangerous threat to humanity, environmental issues have long been on the spotlight of the international community. The call to make ecocide an international crime was first proposed in the 1970s, but was never implemented. Previously in 2010, it was put forward to the United Nations that the Rome Statute should be amended to include ecocide as the fifth international crime. However, once again, the motion was not accepted. Recently, with the United Nations Climate Change Conference (COP21), governments have dedicated themselves to the preservation and the betterment of the Earth. However, with the United States' sudden announcement of withdrawal, concerns are being raised. Meanwhile, no articles in the UDHR highlights any rights related to the environment.

Relativism v. Universality

The debate over whether the UDHR is truly universal or is in reality, relative, has continued since its creation in 1948. Supporters of the universal concept claim that human rights are inherent to all individuals and is independent from social or cultural context. Meanwhile, those who believe that human rights are in fact relative and hugely determined by the society's atmospheric pressure have claimed otherwise. The same reasonings are applied in the modern context and the problems arising from it are such as but not limited to:

Prioritizing Rights

The criticism expressed by member states is often that the sheer quantity and the variety of the human rights listed in UDHR is overburdening considering the government's limited resources and budget, especially for the Less Economically Developed Countries (LEDCs). Such countries have always

been condemned for the repeated violations of human rights in their territories. This is not to say that these countries' contravention of human rights law can be justified by their economic situation (nevertheless, it is evidenced that economic development show a positive correlation with improved human rights records). Rather, countries have 'prioritized rights' in order to contrive the most effective solution. For example, in Brazil, the use of torture in the police force is prevalent and is openly criticized by several NGOs and other member states. However, overhauling the judiciary and the legislative system would require significant amounts of resources which the Brazilian government cannot afford. Instead, the government argues that it dedicates most of its resources to improving the most basic standards in life, such as enforcing the right to education, right to access to medicine, etc. in hopes that enhanced living conditions will have a positive impact on other aspects of its human rights progress.

Although this may be considered an effective method, it can also be exploited by states to justify their wrongdoings. For example, the Chinese government justifies their acts of political oppression by citing their 'right to development'. Numerous states have appealed to the 'right to security' to overshadow their harsh enforcement methods. Vladimir Putin claimed that his invasion of Crimea was to honor the rights of the ethnic minorities in the region. In Saudi Arabia, the inferior status of women are rationalized by its 'religious and cultural traditions'. As patterns of such are repeatedly shown, it is evident that clear provisions need to be set to establish under what circumstances can rights be ranked or prioritized, or whether it can be or not in the first place.

Previous Attempts to solve the Issue

The articles of the declaration remain the same since its adoption date in 1948. The UNHRC currently administers number of enforcement mechanisms such as the Universal Periodic Review, Special Procedures, Advisory Committee, and Complaint Procedure. The council provides suggestions and makes recommendations on the human rights policies of all UN member states, often condemning some when necessary. During its time of existence, the council has seen both failures and successes. The council's initiatives in Côte d'Ivoire and Sri Lanka focusing on the basic rights such as right to water and sanitation has been commended while on the other hand, its failure to address chronic violations of human rights such as the oppression of political rights or child slavery has been harshly criticized.

Possible Solutions

The problems found in the UDHR may be far-reaching but is not impossible to amend. The following are potential solutions. Please keep in mind that the number of topics or strategical approach is not in any way limited by the content of this report.

- Adding 'new' rights or amending preexisting articles to broaden its spectrum
- Adding articles as interpretative guides, such as Articles 29 and 30, to redefine the morality, extent, or limits of human rights
- Giving the declaration a binding force or enforcing some sense of 'responsibility'
- further amending the rift between 'civil and political rights' and 'social and economic rights'

As mentioned before, at its origin, the articles of the UDHR were easily split into two categories – 'civil and political rights', and 'social and economic rights' – primarily due to the political power struggle between the USSR and the Western world in the post-WWII era. In an attempt to reconcile the differences, the two international covenants (mentioned in Introduction) was adopted by the General Assembly. The division, although not as explicit or aggressive, still persists in the modern world. Perhaps, incorporating the basic principles of the two covenants into the declaration (or other solutions that the delegates may contrive) may be effective in directly addressing claims that the UDHR is a form of cultural imperialism by the West by making it a truly 'universal' declaration.

- Devising a 'collective rights of humanity'

While the UDHR strictly deals with rights entitled to individuals, one may consider incorporating the 'collective rights of humanity' into its core values. This is speaking on a much broader and perhaps more philosophical term than the solutions proposed above. Collective rights are usually seen in regional human rights regimes, such as the African Charter on Human and Peoples' Rights. The benefit of addressing the collective rights of humanity is that one could seek solidarity amongst a large group of people unlike the current articles of the UDHR that prove to be divisive at times. Moreover, collective rights could tackle issues that the UDHR couldn't such as self-determination, universal heritage, generational rights, rights and responsibilities of states, etc. Collective rights can also refer to the rights of smaller distinct groups, such as the rights of indigenous people. There are several UN documents that one could consider to incorporate in the UDHR, such as the Declaration on the Rights of Indigenous Peoples (attached in Appendix), previously adopted by the UNGA on September 13th, 2007. However, the assignment raises difficult questions. The major concern is that admitting collective rights in the declaration may overpower the preexisting individual rights. Moreover, it could bring on clashes between societies where the political or cultural backgrounds are very different. Therefore, it is crucial that one approaches this task with sensitivity and prudence. To provide further guidance, the 'Declaration of Humankind Rights', drafted by Corinne Lepage in preparation of COP21, is attached under Appendix.

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- Vienna Declaration and Program of Action*. Office of High Commissioner for Human Rights, 25 June 1993, www.ohchr.org/EN/ProfessionalInterest/Pages/Vienna.aspx

Appendix

- International Covenant on Economic, Social and Cultural Rights (ICESCR) <<http://www.ohchr.org/EN/ProfessionalInterest/Pages/ICESCR.aspx>>
- International Covenant on Civil and Political Rights (ICCPR) <<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>>
- Guiding Principles for Businesses and Human Rights <http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf>

Declaration of Humankind Rights <<http://droitshumanite.fr/DU/?lang=en>>

Declaration on the Rights of Indigenous Peoples - <http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf>