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Lena J. Kruckenberg

The UNreal world of human rights

An ethnography of the UN Committee on the Elimination of Racial Discrimination

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List of Abbreviations

AC	Human Rights Council Advisory Committee
CAT	Committee Against Torture
CERD	Committee on the Elimination of Racial Discrimination
CESCR	Committee on Economic, Social and Cultural Rights
CHR	Commission on Human Rights
CMW	Committee on Migrant Workers
CONAP	Confederación de Nacionalidades Amazónicas del Perú
CRC	Committee on the Rights of the Child
CEDAW	Committee on the Elimination of Discrimination Against Women
CRPD	Committee on the Right of Persons with Disabilities
ECOSOC	Economic and Social Council of the United Nations
EU	European Union
FECONACO	Federación de Comunidades Nativas del Río Corrientes
GA	United Nations General Assembly
HRC	United Nations Human Rights Council
HRCom	Human Rights Committee
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICJ	International Court of Justice
ILO	International Labour Organization
IMADR	International Movement Against all Forms of Discrimination and Racism
ISHR	International Society for Human Rights
MNC	Multinational Corporation
NGO	Non-governmental Organization
NHRI	National Human Rights Institution
OHCHR	Office of the United Nations High Commissioner for Human Rights
OP	Optional Protocol
SC	United Nations Security Council
SG	Secretary-General of the United Nations
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNHCR	Office of the United Nations High Commissioner for Refugees
UNICEF	The United Nations Children's Fund
UPR	Universal Periodic Review
USA	United States of America
USSR	Union of Soviet Socialist Republics
WHO	World Health Organization
WWII	Second World War

1. Introduction: Explorations into an UNreal world

Probably one of the most miraculous features of research is its perpetual nature. Conclusions obtained from one project evoke new mysteries and lead further into unexplored territory; they raise more questions than have been answered. A couple of years ago I researched the engagement of Eastern and Central European Roma with the international human rights regime (Kruckenberg 2007). I analysed State Reports, reports produced by non-governmental organisations (such as minority rights organisations), and Concluding Observations issued by monitoring institutions. From these documents a picture of opportunities for non-state actors as well as limitations of their engagement with the international human rights regime emerged. However, the process as such and the ways in which these institutions *actually work* between diplomacy and law remained rather obscure. While comprehensive documentation and analysis of the rules of procedures followed by the treaty bodies as well as critical evaluations of their merits and shortcomings were widely available, it seemed difficult, if not impossible, to move forward to an 'understanding' ('*Verstehen*') of the actual practices of human rights monitoring. I was left with the impression that the practices of human rights monitoring as such were either tremendously tedious - or a black box no one could or would wish to explore any further.

I found this lack of attention to the practical dimensions of international human rights monitoring irritating, since I did not doubt that the practices of the international human rights system were as significant as the norms, rules and formal procedures of this system. As Watt notes, "the steps which need to be taken applying [...] rules can be as important as the rules themselves, going far to explain why many things are as they are" (Watts 2003: xvi).

Even if the practices of international human rights monitoring turned out to be routines of merciless boredom and fussiness, their exploration constituted a lacuna, and illuminating this black box, it seemed to me, would considerably add to our understanding of the international human rights system 'as it is'. Stumbling through the bleakness of many of these formalised and abstract accounts, it dawned on me that informal exchanges and relationships at places like Strasbourg or Geneva might be as important for the conditions, outcomes and impact of international human rights monitoring as the formalised rules and requirements.

With this surmise I applied for an internship as assistant to one of the expert members of the Committee on the Elimination of Racial Discrimination (CERD), the treaty body that monitors the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). In summer 2008 I attended its

73rd session in this role. My participant observation of this session and further fieldwork is at the core of this ethnographic study of one of the many spaces where the contemporary human rights regime unfolds.

International human rights in theory and practice

Ever since the adoption of the Universal Declaration of Human Rights, human rights have been understood as a universal principle of liberation. They provide a common language of human existence and dignity, and shape discourses on emancipation and self-fulfilment all over the world. International human rights law challenges and restricts the fundamental principle of state sovereignty by framing human rights violations as a matter of international concern. It has opened up the international sphere as a space where individuals, civil societies, and non-governmental organisations can take action on their behalf and for others, thus challenging the supremacy of states as actors. Human rights practices, as they are embedded in the social fabric of everyday life in societies, are linked to macro-discourses on justice and humanity. The underlying principles of equality and freedom have become a nearly global ideology. Yet, the ostensibly global endorsement of human rights has not been accompanied by an actual increase in compliance and respect for them; the gap between universal human rights rhetoric and widespread abhorrent human rights abuses has not diminished (Douzinas 2000: 2). Given the countless efforts of institutionalising and monitoring international human rights standards, the disassociation between words and action is a disturbing reality. On the national level, this becomes obvious in the dissociation between the national enactment of laws responsive to international standards and respective obligations, and their implementation in practice. The panoply of instruments of contemporary international human rights law seemingly lacks the capability to encourage and enforce compliance with the norms and principles that they establish. Consequently, questions as to the monitoring and supervision of human rights appear to be as pressing as they had been when the UN set up its first human rights instruments. The difficulties of finding solutions, however, have increased significantly over the past decades, not the least due to the legal and institutional expansion of the international human rights system.

Legions of human rights lawyers, practitioners, and legal experts are working on closing this gap, as do many academics. This is demonstrated by the body of literature on 'international human rights law' (see e.g. Rehman 2003; Chinkin 1998; Craven 2000; McCrudden 2008; Steiner et al. 2007; Schutter 2010; Möckli 2010), the 'international human rights regime' (see e.g. Donnelly 1986; Nowak 2003) or 'human rights in global politics' (see e.g. Evans 2001; Cassese 1994; Claude 1992, Dunne & Wheeler 1999; Forsythe 2000. However, whether in terms of law or politics, or whether cast as 'international law', 'soft law', or 're-

gime', most studies on international human rights monitoring tend to be evaluative. They aim at determining whether the established system is fit for purpose and fulfils its task, with a focus on the overall (macro)structure and functioning of the system.

Contemporary research has been unable to confirm that the widespread recognition of international legal instruments, such as human rights treaties, has had a principally beneficial effect on actual human rights practices.[1] It remains unclear to what extent this is caused by a lack of enforcement built into the system, ineffective monitoring practice, or both. Debates around this issue led to the creation of several reports on how to improve such supervision (Alston 1996; Bayefsky 2000 & 2001; Alfredsson et al. 2001; Klein 1998; Vandenhole 2004). Yet again, most of this research focuses on the 'formal design' of international human rights monitoring. Critical voices that deplore the lack of enforcement of human rights standards on the international level either localise this in the nature of international law in general, or human rights law in particular. In both instances, the fact that the international sphere is organised around the principle of state sovereignty is at the core of the problem, and a turn towards strong enforcement regimes seems highly unlikely.

Those who accept such built-in weakness of the international system as given, often view international human rights monitoring as an exercise in supervision rather than enforcement, where monitoring institutions act like "*gentle civilisers*" (Koskenniemi 2005a). This approach is based on the firm belief that through continuous review, norms slowly become institutionalised and 'internalised' by a society (see e.g. Goodman & Jinks 2008; Meckled-García 2006; Risse et al. 1999; Abbot et al. 2006), and states thus become 'socialised' just like individuals (Hafner-Burton & Tsutsui 2005: 1381). While there is no lack of theoretical arguments how this is supposed to be achieved, some supported by evidence from empirical cases studies, the examination of actual conditions and practices of such supervision rarely transcends rather abstract models of the mechanisms involved (see e.g. Risse et al. 1999; Liese 2006). Research in the emerging field of socio-legal and interdisciplinary studies attempts to close this gap by exploring the "recursivity" of 'global norm-making' as it moves between different levels, and impacts on law and society within and beyond the state (Halliday 2009: 263). In this context, a number of scholars emphasise the importance of discov-

1 Hathaway (2002, 2001) demonstrated that "treaty ratification appears to be frequently associated with worse, rather than better, human rights practices"; Neumayer (2005: 925) concluded that in "autocratic regimes with weak civil society, ratification [of human rights treaties] can be expected to have no effect and is sometimes even associated with more human rights violations". Improvements seem to be more likely in democratically governed states with well organised and internationally linked civil societies (Ibid.). See also Hafner-Burton & Tsutsui 2005 and Goodman & Jinks 2003.

ering the dynamics of global regulatory institutions in their interplay with "national lawmaking forums and sites of implementation" (Halliday 2009: 269). A better understanding of the capacities and limitations of these institutions and their mechanisms appears to be decisive for an explanation of the present state of the 'human rights project'.

Human rights are violated in everyday life, and international human rights institutions have developed distinct practices to monitor such violations. Committees of experts meet at dignified places of international cooperation, such as New York, Geneva or Strasbourg, where they consider reports on human rights issues from all over the world. They hold meetings with state representatives, listen to concerns brought forward by state and non-state actors, debate practical matters of treaty interpretation and application, and issue statements on complaints. They address systematic human rights abuses and draw international attention to dangerous situations which might escalate into massive violations of human rights. These expert bodies transform the process of supervising international human rights standards into a series of discrete events; they are "constantly negotiating the formulation and implementation of global norms with the [national, subnational and transnational] actors on which depend their ultimate efficacy" (Halliday 2009: 265). Even if they follow specified rules or procedure these are enacted in a politically charged environment that is dominated by national interests and power, and thus equally follows the routines and language of international law and diplomacy.

But how does this micro-cosmos of international human rights monitoring actually work? How are human rights and their violations (re)constructed, identified and understood in the conference rooms of international organisations such as the UN? How can human rights be monitored at such a distance from where the actual abuse happens? It is the *practical dimension* of (re)constructing, interpreting, and applying human rights in quasi-judicial diplomatic contexts that is the focus of this study. It aims at discovering the *micro-practices and discourses* which constitute international human rights monitoring through an in-depth exploration of a series of meetings of one of the most long-standing UN human rights monitoring bodies: the Committee on the Elimination of Racial Discrimination (CERD).

The Committee on the Elimination of Racial Discrimination

CERD was established by the first UN human rights core treaty, the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), which became effective in 1969. Ever since then CERD – which consists of 18 experts elected by the states parties to the Convention – has monitored the im-

plementation of the treaty which is a key mechanism for ensuring non-discrimination (Rehman, 2003: 289). The Committee holds two sessions of three weeks twice a year. CERD's sessions comprise of public and closed meetings during which the Committee reviews the implementation of ICERD in the 174 states that are party to the Convention. Each session is structured around a series of presentations and dialogues where diplomats and non-governmental representatives engage with the Committee. On a one-by-one basis CERD reviews dozens of countries under its various procedures. Like the meetings of other UN treaty bodies, CERD's meetings are characterised by an '*UNreal*' atmosphere arising from a formidable diplomatic setting and a feeling of disconnectedness in the face of the gruesome realities that are debated. As an independent committee, CERD creates its own arena of negotiation and contestation which is populated by state and non-state actors with conflicting perceptions and interests.

During my internship as assistant to one of CERD's members in summer 2008, I became familiar with the daily work of the Committee. I engaged with different actors involved in CERD's monitoring and traced them through their individual passages of meetings. I explored their interpretations of human rights monitoring, and closely observed their practices. In this way I collected multiple readings of events as they unfolded in CERD's 73rd session. My next step was to link these, and to reconstruct the series of events constituting the session and their underlying micro-dynamics, thus finally unearthing the actual practices of international human rights monitoring.

The practices and micro-dynamics of institutions such as CERD reflect macro forces and are directed towards them. As they constitute patterns of action and reaction, repetition and change they span across extended time periods and distances (Glaeser 2006: 73). Therefore, CERD's self-perception as well as the particular procedures and techniques with which it approaches its task need to be understood against the backdrop of its historical development and institutional context, and against the overarching discourses to which it relates. Many of its formal and informal rules were created in response to problems CERD was confronted with at some point in its history. A particular debate that was started with one state delegation might continue for years. Any analysis of CERD's activities and discourses thus requires an *extension into their history*.

CERD like other bodies of the international system is confronted with transnational actors such as human rights NGOs who challenge the traditional structures and principles governing the international sphere. CERD's monitoring relies on continuous negotiation and reconstruction of several distinct though interrelated layers of representation which refer to contexts outside the microcosm of CERD's meetings. These include human rights practices as they are constituted within the domestic sphere of the states under review, as well as the particular conditions which shape representations by state delegations and NGOs. CERD's

task is also intricately linked to other UN institutions involved in human rights monitoring, and these are closely connected to overarching developments in international relations. Therefore, CERD's monitoring practices further need to be understood as embedded in its particular *institutional context* and the issues that are at stake there.

The principles of non-discrimination and equality that CERD monitors explicitly refer to racial discrimination and, in a more implicit manner, to minority rights and indigenous peoples' rights. In times of proliferation of multiculturalism (Kymlicka 2007: 3) the latter issues instigate contentious discourses in the international sphere: "Attempts to internationalise multiculturalism and minority rights are running into a veritable minefield of conceptual confusions, moral dilemmas, unintended consequences, legal inconsistencies and political manipulation" (Kymlicka 2007: 8). New legal concepts and global norm-making procedures emerge and gain "constitutive power to order norms, and norm implementation in distinctive ways" (Halliday 2009: 265) that impact on the work of CERD. This *legal context and the ongoing international discourse* emerge as most important conditions and simultaneously as problems of CERD's existence.

Global Ethnography and Methodological Design

This study seeks to contribute to a deeper understanding of international human rights monitoring through an ethnography of CERD's 'UNreal world'. With its focus on the practices of global norm-making and regulation, it hopes to contribute to a small but growing body of ethnographic research in the field of international lawmaking. Two years ago, Halliday observed that "theoretical progress [in this field] suffers from scarcity of a core methodology of law and society – participant observation or ethnography" (2009: 286). Ethnographies in global arenas, however, are not without problems (Burawoy 2000: 2). Traditional methods of participant observation are often deemed as irrevocably local, limited to "issues in the here and now of the observation" (Flick 2007: 90). The presence of the 'macro' in 'micro' situations and their mutual determination are difficult to determine. Differentiating between micro and macro as two distinct (often even opposing) levels of analysis is deeply engrained in the social sciences, as is the division "between law on the books and law in action" (Halliday 2009: 283). This study seeks to overcome these limitations and situates the observed (micro) practices of international human rights monitoring in their (macro) historical, institutional, and discursive contexts.

Such an approach requires the construction of a research design that oscillates between techniques guiding in-depth investigations of micro practices, and those that explore and conceptualise their (macro) embeddedness. Developing such methodology led to the rediscovery, refinement and adaptation of methods for