

A Very Brief Overview of Modern Human Rights: A SENCER BACKGROUNDER

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Introduction

The list of human rights violations in the 21st century seems inexhaustible. In 2012, as examples, many Syrian civilians were being killed¹ in the on-going civil war, and the world seemed paralyzed, unable to stop the killing. In the Democratic Republic of the Congo, children were forced to become rebel soldiers. Women were trafficked for domestic service and sexual slavery, including into Europe and the United States. Two men who criticized Islam were sentenced to seven-year jail terms in Tunisia. Human rights activists are persecuted in Bahrain. The International Labor Organization estimated that 21 million are victims of forced labor.



Child Soldier in the Congo



*Family in Debt Bondage
Making Brick, 2012*

According to the World Health Organization, in 2011 about 165 million children under age 5 are stunted from malnutrition. Freedom of information is suppressed in China, and freedom of assembly is

severely penalized in Russia. Yet despite all these abuses and countless others, human rights have advanced greatly since the end of World War II.

This overview of modern human rights consists of five major sections:

Section I, on the universality of human rights, discusses, in turn, the moral bases for human rights, the challenge of cultural relativism, and the relationship between human rights and duties.

Section II offers a summary of the United Nations system of human rights as it has developed from the founding of the United Nations in 1945 to the present. This section, the longest of the five, includes descriptions of the drafting of the *Universal Declaration of Human Rights*, the major United Nations conventions and declarations, and the major U.N. operational mechanisms for advancing human rights. This section concludes with short overviews of the International Criminal Court, the Responsibility to Protect, and the Millennium Development Goals.

Section III describes the development of international humanitarian law, the laws governing the conduct of war. While international humanitarian law predates human rights law, it is now seen as a part of human rights law, due largely to its modern emphasis upon the rights of civilians during wartime.

Section IV reviews the human rights systems of the five regional organizations, from the first European system

¹ Throughout this backgrounder, hyperlinks offer access to resources where readers can learn much more on specific topics (by clicking on the green underlined text).

to the most recent Association of Southeast Asian Nations Human Rights Declaration.

Section V examines the United States' role within the international legal system of human rights.

I. The Universality of Human Rights

The concept of human rights implies that basic rights belong to every member of the human race. In contrast to the European “divine right of kings,” which gave kings God-given (and often god-like) authority, the Universal Declaration of Human Rights, discussed below, states that human rights belong to every human “without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status” (Art. 2).

A. The Moral Foundation of Universal Rights

From the moral perspective, human rights refer simply to the morally justifiable claims that every human should be able to make upon society. For example, if one can make the moral claim that no person should be sold into slavery, then the right not to be enslaved is, morally speaking, a human right.

But what is the moral basis for these claims? Many Christians view human rights as a gift of God, as the American Declaration of Independence states that “all men. . . are endowed by their Creator with certain unalienable Rights.” And when the United Nations drafted the *Universal Declaration*, several Christian delegates wanted to insert reference to God as the source of rights. However, one delegate noted that “the *Declaration* is meant for mankind as a whole, whether believers or unbelievers,” and another said that referring to God in the *Declaration* “might arouse the opposition of delegations representing more than half the world’s populations.” Because human rights are intended for theists and non-theists alike, for pragmatic reasons, no reference to God was inserted. While the *Declaration* was being drafted, UNESCO asked 32 famous philosophers, religious leaders and others to write their views on human rights. When they had finished, philosopher Jacques Maritain summarized, “We agree about the rights, but on condition that no one asks us why.”

Since the 1940s, most writers have sought the moral justification for universal human rights in secular reasoning rather than religious faith. James Nickel (2007) has offered perhaps the most compelling secular justification for human rights to date. To Nickel, this moral justification consists

of a combination of everyone’s self-interest, utility for the common good, and four “secure moral claims.” It is certainly in every person’s self-interest to know that, should he or she be charged with a crime, “Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law” (Article 14, *International Covenant on Civil and Political Rights*). Secondly, human rights serve the utility of the common good and increase well-being; many studies have shown that people are happier in countries that honor human rights.² And finally, according to Nickel, every human being has the right to four secure moral claims:

- “A secure claim to life,”
- “A secure claim to live one’s life,”
- “A secure claim against severely cruel or degrading treatment,” and
- “A secure claim against severely unfair treatment.”

To Nickel, the morality of these claims is self-evident, just as the authors of the American Declaration of Independence regarded it as “self-evident” that “all men are created equal” and possess “certain inalienable rights.” That is, they require very little thought to recognize their truthfulness. For that reason, they are claims that rightfully belong to human beings in every society. Morally speaking, they are not created by the laws of one’s country, but rather they provide a moral foundation for a country’s laws and a measuring stick for its actions. As a result, any society that violates these moral claims -- any society that arbitrarily kills or tortures its citizens, denies them fundamental freedoms, or provides rights for some that are denied to others (such as to a fair criminal trial) -- is acting immorally and violating the human rights that its citizens have a moral right to expect.

B. The Challenge of Cultural Relativism

For many years, the main philosophical objection to the ideal of universal human rights has been the competing idea of cultural relativism. Franz Boaz and other early

² See, for example, Diener, E., Diener, M., & Diener, C. (2007). Factors predicting the subjective well-being of nations. *Journal of Personality and Social Psychology*, 69, 851-864; Fisher, R. & Boer, D. (2011). What is more important for national well-being: Money or autonomy? A meta-analysis of well-being, burnout, and anxiety across 63 societies. *Journal of Personality and Social Psychology*, 101, 164-184; Inglehart, R., Foa, R., Peterson, C., & Weizel, C. (2008). Development, freedom, and rising happiness: A global perspective (1981-2007). *Perspectives on Psychological Science*, 3, 264-285.

anthropologists discovered vast differences between cultures in their values and ways of viewing the world. Their moral concern was to oppose racism, particularly the false “scientific” racism of the 19th and early 20th centuries, and the Eurocentric assumption that European culture and values are superior to all others. In its most extreme form, however, cultural relativism holds that all values that individuals hold dear are derived from their culture and, for that reason, there can be no values that are objectively true for all cultures. Following this logic to its end, extreme cultural relativism denies the existence of universal moral values, including universal human rights.

Without question, human cultures vary greatly and strongly shape the fundamental beliefs and outlooks of their members. While advocates of universal human rights recognize and respect most of these differences, they argue that the most basic rights are still universal. How could one seriously believe, they ask, that slavery, torture, the abuse of women, or a dictator having his troops shoot peaceful protestors is immoral in one culture but moral in another? Human rights, they argue, are intended to guard only the basic ingredients necessary for individuals to live decent lives, so they leave wide room for cultural differences. Donnelly (2003), Nickel (2007), and many others offer thoughtful discussions of the issue of human rights and cultural relativism.

Alan Dershowitz (2004) has argued that, historically speaking, human rights have arisen from our growing awareness of great wrongs. Through the centuries, humanity has slowly become aware of the horrors caused by religious wars, slavery, mass killings, and other forms of injustice and suffering that humans cause to others. As our awareness of each of these has grown, humanity has sought to end these evils by erecting human rights as barriers against them. Because these horrors that humans face are universal, so also should be the human rights legal regimes that are intended to prevent them.

C. *The Relations of Rights and Duties*

The modern concern for human rights is sometimes viewed as neglecting moral duties and responsibilities. Yet rights and duties must coexist; duties toward our fellow humans and their rights mutually imply one another.

Most great religions speak of moral duties, but in doing so, rights are often implied. The Hebrew commandment, “Thou shalt not kill” (Exodus 20:13) implies that

other people have a moral claim, or right, to life. When Jesus told of the good Samaritan who reached across the boundaries of race and religion to help a man who had been robbed and beaten, and told his listeners, “Go and do likewise” (Luke 10:37), there is an implication that all humans have a right for their needs to be addressed without concern for race or status. And when the Q’uran commands, “O you who believe! Stand out firmly for justice, as witnesses to Allah, even if it be against yourselves, your parents, and your relatives, or whether it is against the rich or the poor. . .” (Quran 4:135), the right of all to be treated with fairness and justice seems implied. Of course, followers of the great religions have not always fully followed these ideals.³

Just as our moral duties toward others often imply their rights, the recognition of their rights imposes duties on us toward them. My son’s right not to be abused created a duty for me, his father, to not abuse him and to protect him from others’ abuse. Similarly, in the broader sphere of human rights, the right to life in *the Universal Declaration of Human Rights* (“Everyone has the right to life, liberty, and the security of person;” Article 3) imposes the duties to not kill and to support others’ right to life. As Nickel says, rights impose duties on both governments and individuals. For example, the right not to be treated cruelly imposes a duty on governments not to torture, but citizens also “bear the responsibility of insisting, encouraging, and pressuring governments to refrain from torture and to provide effective protections against torture” (Nickel, 2007, p. 41).

The *Universal Declaration* also imposes duties on both the international community and individuals to uphold human rights. In stating that “Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be realized” (Art. 28), a duty is imposed on all members of the United Nations to create a world that honors human rights. Article 29 adds that “Everyone has duties to the community in which alone the free and full development of his personality is possible.”

3 For excellent discussions of the relationships between specific religions and human rights, see John Witte, Jr. and Christian Green (Eds.) *Religion & Human Rights: An Introduction* (New York: Oxford University Press, 2012) and Irene Bloom, J. Paul Martin, & Wayne L. Proudfoot (Eds.) *Religious Diversity and Human Rights* (New York: Columbia University Press, 1996).

II. The United Nations System of Human Rights

Regardless of how we may reason about the moral foundations of human rights, or about the duties they impose upon us, human rights today are less a matter of moral philosophy than of international law that the majority of nations (called “states” in international law) have adopted as binding law. Human rights law, as we know it today, has developed primarily under the auspices of the United Nations since the end of World War II. The sections below summarize the creation of this law.

There were, of course, slow, but major, human rights developments in earlier centuries. Some were embraced in documents from the Magna Carta (1215) to the American Bill of Rights (1789) and the French Declaration of the Rights of Man and of the Citizen (1789). In other developments, torture was outlawed by almost all Western nations across the 18th century. The 19th century saw the end of legal slavery and great developments in the rights of children and laborers. The political enfranchisement of women occurred mainly in the early 20th century. Weston (n.d.), Ishay (2004) and Lauren (2008) offer excellent histories of the development of human rights before the Second World War. For the most part, however, these developments were within each nation rather than international or universal.

A. The Universal Declaration of Human Rights

Following World War I, a few individuals pressed for an international bill of human rights, but universal human rights as we know them today emerged only after World War II. They have been created in large part in response to the horrors of the Holocaust, in which about



German Girl Viewing Holocaust Victims

six million Jews and many others were slaughtered by the Nazi regime.

The United Nations was established in 1945, just as World War II was ending. While the first aim of the U.N. was to preserve peace, the Charter of the United Nations refers seven times to the importance of human rights. The preamble affirms the “Peoples of the United Nations . . . faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small.” Article 1 states that a purpose of the United Nations is the “promoting and encouraging of respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion.” The U.N. charter also contains the goals of strengthening international law and advancing human health and welfare.

With the evils of the recent Holocaust in their minds, everyone at the U.N.’s founding knew that one of its first major tasks would be to prepare a universal bill of rights. A Commission on Human Rights was soon established and given the charge of writing it. Eleanor Roosevelt, President



Eleanor Roosevelt

Franklin Roosevelt’s widow, was unanimously selected to chair the 18-member Commission. Her intelligence, ability to build trusting relationships, and humanitarianism were all clear to her fellow delegates.

The Commission began its work in January 1947. An immediate issue was whether the bill of rights should be a covenant or convention, that is, binding law for all nations that ratify it, or merely a *declaration*, which is just a statement of ideals. Several smaller nations wanted a binding covenant, but all of the major powers that had won the war (the United States, Great Britain, France, and the Soviet Union) wanted only a declaration, in large part because the Western democracies and communist countries differed on what rights should be included in a binding covenant. Roosevelt personally believed a covenant was essential, and she was distressed when the American government instructed her to produce only a declaration. As a result, shortly after the Commission began its work, a decision was made to first produce a



Roosevelt and the Universal Declaration

declaration of human rights principles and to write a binding covenant at a later time.

Through 1947 and 1948, the Commission members argued philosophy of human rights, launched tirades against each other's human rights records, and drafted and redrafted each article several times. At times, they worked with considerable harmony; at others, their disagreements and animosities almost wrecked the whole effort. But when the process was over, they had given to the world the *Universal Declaration of Human Rights* (UDHR). It was adopted by the United Nations General Assembly by a 48-0 vote, with 8 abstentions, on December 10, 1948. Because the *Universal Declaration* is the singular most important foundation for modern human rights, readers are encouraged to click on the link to the [UDHR](#) and read it carefully.

American readers are likely to notice that the rights presented in Articles 3 to 21 and Articles 22 to 28 seem to be different kinds of rights. French Jurist Karel Vasak called these two kinds of rights the “first generation” and “second generation” human rights. The “first generation” rights, which historically arose earlier, cover the kinds of civil and political rights that are familiar to Americans in our own Bill of Rights (e.g., protection against cruel punishment, presumption of innocence, and freedom of thought and religion). Articles 22 to 28, the “second generation” rights, cover economic and social rights (e.g., the rights to education, employment, safe working conditions, health care, and social security in times of need), a kind of rights not found in the American Bill of Rights. However, the writers of the UDHR never distinguished these rights as differing in kind. Also, many current human

rights theorists discourage this distinction, as it may be interpreted as implying that first generation rights are more fundamental or important than second generation rights.

With the adoption of the UDHR, the nations of the world had created, for the first time in human history, a statement of human rights that should apply to all human beings, everywhere in the world. But it was only a declaration of guiding ideals, not binding law.⁴

B. Turning the Universal Declaration into International Law

The process of turning the principles of the UDHR into international law has been painfully slow. During the first few decades after its ratification, the development of human rights law was slowed by several historical realities. First, the Cold War, which pitted the Soviet Union and its satellite states against the United States and its Western allies, dominated international politics and overwhelmed concern for human rights. Second, from the late 1940s through the 1960s, many new nations emerged from colonial rule. These countries joined the U.N. and brought their own concerns for self-determination and development. Many of these nations also drifted toward

4 While the UDHR was a statement of ideals and not binding law, some scholars argue that many parts of the UDHR, if not all of it, should now be regarded as “Customary International Law.” When many nations act for a long time as though something is law, it may become “customary law.” It would then be regarded as law, even though it is not written. It also may be applied to a nation or group that has not ratified the convention or covenant that made it a law.

Customary international law is assumed to fit the worst of crimes, such as genocide, crimes against humanity, war crimes, and slavery. These crimes are so horrible that a nation that engages in them may be treated as violating international law, even if that nation has not ratified a treaty against them. Piracy is also regarded as violating customary international law. More recently, customary international law has been applied to the conduct of war by rebel groups in internal conflicts (for example, forcing children to serve as soldiers).

The application of customary international law raises many hard issues: How many nations must act as though something is law before it becomes customary law? And for how long must they do so? And should it be applied to less egregious crimes? Most nations today allow freedom of religion, but does a nation that does not accept freedom of religion violate customary international law? These issues are often discussed within international law, and there are no easy resolutions.

one-party or one-man dictatorships that did not honor individuals' human rights. Despite these obstacles, in the six decades that followed its adoption, the UDHR has provided the foundation for many U.N. human rights conventions, regional human rights systems, and mechanisms for advancing and enforcing human rights.

The Two Major Covenants. The split between West and East over the importance of first and second generation



John Humphrey

of human rights, with the West favoring the first generation rights and the Soviet Union and its allies inclined only toward the second generation rights, was very evident by the early 1950s. For that reason, rather than try to write a binding covenant that included all the rights in the UDHR, and rather than let the whole human rights project collapse, the decision was made to write two covenants, one that embraced each of the two kinds of rights. John Humphrey, a former international law professor at Canada's McGill University and Director of the U.N. Human Rights Division, led the drafting of both covenants. Humphrey also had written the first draft of the UDHR.

Finally, on December 19, 1966, the *International Covenant on Civil and Political Rights* (ICCPR) and the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) were each presented to the U.N. General Assembly and adopted. The first focused on the "first generation" of rights that Americans know well. The second contained the "second generation" of rights.

The adoption of a covenant or convention by the U.N. General Assembly does not automatically make it a part of international law. That only occurs when the number of states specified in a covenant or convention have ratified it. For these two covenants, thirty-five states were required before each one "entered into force." Also, covenants, like conventions, become law only for the states that ratify them. It took ten years, until 1976, for thirty-five states to ratify each of the major covenants. However, as of 2013, at least 160 of the U.N.'s 193 member states have ratified each one. The UDHR, ICCPR and ICESCR are together called the *International Bill of Human Rights*.

Four features of the two covenants are noteworthy. First, Article 1 of each covenant begins, "All peoples have the right to self-determination." A right of "peoples" rather than individuals is not found in the UDHR. The concerns of new nations, recently freed from colonial control, to protect their independence and to own their national resources led to the inclusion of this right.⁵

Second, under the ICCPR, many human rights may be restricted ("derogated," in the language of the treaties) during war or other public emergencies, but only "to the extent strictly required by the exigencies of the situation" (Article 4, ICCPR). However, the most essential rights are "non-derogable," and these rights may not be restricted in even the worst of circumstances. These include the right to life and the prohibitions against torture, slavery, prosecution for a crime that was not a crime when the act was done, and the freedom of "thought, conscience and religion" (Art. 18, ICCPR).

Third, while the ICCPR assumes that all rights in the treaty must be honored and fulfilled immediately, the ICESCR recognizes that many economic rights, such as the rights to education, health care, employment and social security, are beyond the capabilities of very poor countries. For that reason, they are to be fulfilled "to the maximum of its [a state's] available resources, with a view to achieving progressively the full realization of the rights. . ." (Art. 2.2). Each state party is expected to do all it can to fulfill these rights, even if it cannot fulfill them immediately or completely.

Finally, each covenant, like most other U.N. covenants or conventions, allows for "reservations" and "declarations." A reservation allows a state that ratifies the treaty to say that it accepts all parts of the treaty except for specific

⁵ The unofficial term, "third generation rights" is often used to describe the wide range of human rights concerns that emerged after the first and second generation rights of the *Universal Declaration*. Some have been embodied in international covenants, such as rights of "peoples" in the ICCPR and ICESCR. The term is also often used to refer to rights not yet fully recognized in U.N. covenants. The right to a healthy environment is the most discussed of these. Others, such as the rights of Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) persons are also often regarded as third generation rights, as their rights were not specifically protected in the UDHR.

articles.⁶ A declaration is a statement by a state that clarifies its understanding of a provision or otherwise states its intentions regarding the convention. Reservations and declarations are controversial. On the one hand, they make more states willing to ratify a covenant or convention. On the other, they reduce the force of a covenant or convention. For example, when the United States ratified the ICCPR, it declared that the treaty is not “self-executing.” This means that, if a nation or individual charges that the U.S. has violated the ICCPR, Congress would still need to pass specific legislation to allow the ICCPR to be enforced. While many believe that reservations and declarations often reduce a state’s ratification of a covenant to mere lip service, its ratification still places the state on record as supporting the meaning and significance of the covenant.

C. Other Major U.N. Conventions for Preventing Human Rights Abuses

In addition to the two primary covenants, the U.N. has adopted a number of conventions to protect individuals and groups from the worst human rights abuses.

- The *Convention on the Prevention and Punishment of the Crime of Genocide*, the first and most important of these, was adopted by the General Assembly by unanimous vote on December 9, 1948, one day before the UDHR was adopted. Often called the *Genocide Convention*, it defined genocide as an international crime for the first time. **Raphael Lemkin**, a Holocaust survivor and an international lawyer, was the person most responsible for its adoption. Lemkin knew that throughout human history some leaders and nations had often tried to kill entire races or religious groups. For that reason, in 1944 he coined the word “genocide,” a combination of “genos” (race or tribe) and “cide” (killing, as in homicide). Lemkin struggled for many years to see that genocide was made an international crime, and the *Genocide Convention* was due in large part to his



Raphael Lemkin

tireless efforts. As of 2013, this convention has been ratified by 142 states.

- The *Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others* was adopted in 1950 and has been ratified by 82 states.
- The *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (CAT) was adopted in 1984. Although the UDHR said in 1948 that “No one shall be subjected to torture or to cruel, inhuman, or degrading treatment or punishment” (Article 5), the decades that followed revealed that torture was still practiced widely. For that reason, *Amnesty International*, a leading human rights NGO (non-governmental organization), began a campaign against torture in 1973 and continued until the *Torture Convention* was adopted. Without Amnesty’s efforts, it is quite possible that this convention never would have appeared. This convention makes the prohibition against torture a non-derogable right in the strongest possible terms, stating that “No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture” (Art. 2). The *Torture Convention* now has 154 state ratifications.
- The *International Convention for the Protection of All Persons from Enforced Disappearance* was adopted in 2006. An “enforced disappearance” is when a person vanishes at the hands of a government or its agents, or at the hands of a terrorist group, and those responsible do not admit knowing what happened to the victim. During civil conflicts, and in efforts to suppress dissent, many thousands have been “disappeared” around the world since the UDHR was adopted. Because it is relatively new, this convention has been ratified by just 38 countries as of June 2013.



Amnesty International Logo

⁶ However, under the *Vienna Convention on the Law of Treaties* (1969), reservations cannot be made that are “incompatible with the object and purpose of the treaty” (Art. 19).

D. Conventions and Declarations to Protect Specific Groups

We might wish that general covenants on human rights would be sufficient, that conventions would not be needed to protect specific groups. However, in many cases, these groups have experienced severe discrimination and suffering and need special protections. It has proven vital for the U.N. to emphasize through conventions to protect particular groups that all human beings are entitled to equal rights. The United Nations has adopted these five major conventions and two declarations designed to protect specific groups:

- The International Convention on the Elimination of all Forms of Racial Discrimination (CERD) was adopted in 1965. Condemnation of the white-minority apartheid government in South Africa led many of the new African nations to champion this convention, and 176 states have ratified it. CERD became a precedent for the later conventions that address the human rights of specific groups.
- The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) was adopted by the U.N. in 1979, and 187 U.N. states have ratified it.
- The Convention on the Rights of the Child (CRC) was adopted in 1989, and 193 states have ratified it; only three U.N. states have not.
- The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, adopted in 1990, has been ratified by just 46 states.
- The Convention on the Rights of Persons with Disabilities (CRPD) was adopted in 2006, and 76 states have ratified it.
- In 2007, the General Assembly approved a Declaration on the Rights of Indigenous Peoples. Just four nations voted against it. This declaration emphasizes the rights of world's 350 million indigenous peoples (peoples, such as American Indians, who live in a nation controlled by people from other cultures who generally came later) to preserve their cultures, languages, and traditions, to be protected from discrimination, and to have their educational, health care, and employment needs fully addressed by the countries

where they live. A convention on the rights of indigenous peoples does not yet exist.

- In 2008, the General Assembly adopted, by a narrow vote, the Declaration on Sexual Orientation and Gender Identity, reaffirming that “everyone is entitled to the enjoyment of human rights without distinction of any kind,” and condemning “violations of human rights based on sexual orientation or gender identity wherever they occur.” As of June 2013, 94 states have approved this declaration.

E. Optional Protocols

Most human rights covenants and conventions have been followed by “optional protocols” that complement or add to the basic treaty. These protocols often describe how a convention is to be enforced, describe how individuals may complain that a state has violated a treaty, or add other provisions to the treaty. For example, the optional protocols to the Convention on the Rights of the Child prohibit the use of children under the age of 18 in armed conflict, the sale of children, child prostitution, and child pornography. Optional protocols for each covenant or convention are ratified separately from the main treaty.

F. United Nations Mechanisms for Advancing and Enforcing Human Rights.

The United Nations has always had a mandate to advance human rights, but its efforts to fulfill this mandate were weak, largely blocked by the Cold War conflict between East and West. Since the end of the Cold War in the early 1990s, and particularly under the leadership of U.N. Secretary General Kofi Annan (1997-2006), the United Nations has taken a number of steps to strengthen its monitoring and enforcement of human rights. These include, as described in turn below, the creation of the Office of the High Commissioner for Human Rights, the Human Rights Council, special appointees on human rights, the International Criminal Court, the policy of Responsibility to Protect, and the Millennium Development Goals.

U.N. High Commissioner for Human Rights. In 1993, the U.N. held a World Conference on Human Rights in Vienna and adopted the Vienna Declaration and Programme of Action. The Declaration concluded that human rights are a matter of concern for all mankind and are never a matter of a nation's internal jurisdiction



Navanethem (Navi) Pillay

alone. The Declaration represented a major change from the U.N.'s earlier view that the outside world could not interfere in a nation's internal affairs, no matter how horrible that nation's human rights violations. The Declaration also called for creating a High Commissioner for Human Rights, which was done by the General Assembly later that year. The Office of the High Commissioner for Human Rights is now the principal United Nations office with the mandate to promote and protect human rights for all. Its work is devoted to seeing that human rights principles and laws are implemented and followed.

Navanethem (Navi) Pillay, a native of South Africa, has served as High Commissioner since 2008.

Human Rights Council. Beginning in 1946, the U.N.'s Commission on Human Rights was its main body for "promoting respect for, and observance of, human rights and fundamental freedoms for all."⁷ However, by 2004, it was clear that the Commission was failing. Its members were elected by world region, and because regional politics often determined who was selected, some Commission members had vile human rights records. In 2004, Zimbabwe and Sudan, perhaps the world's worst violators of human rights, were members. Countries with terrible human rights records often sought seats on the Commission to shield themselves from its scrutiny.

Many NGO's, including Amnesty International and Human Rights Watch, another major human rights NGO, urged that the Commission be replaced. In December 2004, Secretary-General Annan recommended that the replacement be a much smaller Human Rights Council. Further, those aspiring to be members should be required to present evidence of their commitment to human rights for all U.N. members to review. The U.N. General Assembly adopted the new Human Rights Council in March 2006 by a vote of 170 to 4.

The Council improves on the Commission it replaced in several ways. For example, the Council conducts universal periodic review of the overall human rights records of all U.N. members, something the Commission did not do, beginning with those elected to the Council.

⁷ Charter of the United Nations, Article 62 (2).

This review is not limited to compliance with treaties a nation has ratified. A higher threshold for election has made it possible to defeat or block the candidacies of Belarus (2007), Sri Lanka (2008), Azerbaijan (2009), Iran (2010), Syria (2011), and Sudan (2012). However, China, Saudi Arabia and Libya were each elected as part of closed regional slates, despite their bad human rights records and strong opposition from some countries and human rights NGOs. Any Council member found to systematically violate human rights can be expelled by a two-thirds vote of the General Assembly; Libya's membership was suspended by a General Assembly vote in March 2011.

Treaty Monitoring Bodies. In addition to the Human Rights Council, each U.N. human rights covenant and convention has its own treaty monitoring body, usually consisting of elected independent experts "serving in their own capacity" rather than as representatives of U.N. state parties. Parties to the conventions are required to submit regular reports on their fulfillment of the conventions, and the monitoring bodies review these reports. Each monitoring body also often writes general comments that offer their interpretations of the meaning and application of the convention to particular issues related to the convention they oversee.

Special Appointees. With the mandate or authority of the Human Rights Council, the U.N. Secretary-General may appoint Special Rapporteurs, Special Representatives and Advisors, to investigate and advise on specific human rights issues, including human rights concerns in particular countries or thematic issues. The number of rapporteurs, representatives, and advisors varies; at the beginning of 2013 there were 37.

International Criminal Court. Genocide scholar Rudolph Rummel (1994) estimated that, by 1987, 169 million had died by genocide and other government-sanctioned killings during the twentieth century. Soldiers killed during war are not included. That estimate did not include the 800,000 to 1,000,000 who died in the 1994 Rwandan genocide.

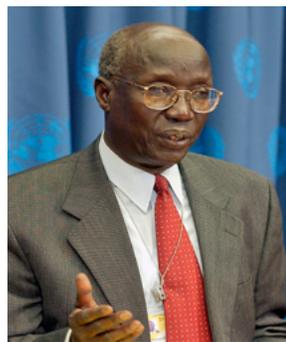
During the Cold War, the U.N. was mute in the face of repeated genocides and related atrocities, as in Indonesia (1965-66), East Pakistan (1971), Cambodia (1975-1979), and Kurdistan (late 1980s). With the end of the Cold War, the U.N. finally began to respond to punish and prevent these atrocities in the 1990s. Beginning in 1993, the

Security Council created several special courts to prosecute those responsible for genocide, crimes against humanity, and ethnic cleansing. The *International Criminal Tribunal for the Former Yugoslavia* was the first, created in 1993. The *International Criminal Tribunal of Rwanda* followed in 1996. Three other special courts – for Indonesia, Sierra Leone, and Cambodia -- were created after 2000 for genocide and related crimes in those countries.

A main problem with these special courts is that they were created only after a genocide or mass killing had occurred. The U.N. Security Council had to create each one after the crimes and make arrangements for funding. Doing so required extensive preparation time and was often politically difficult. For these reasons, the need for a permanent international criminal court seemed clear. It was also hoped that the existence of a permanent court could help deter these crimes.

A draft treaty for such a court had been written as early as 1951, but the Cold War halted all efforts to create it. Finally, after the Cold War had ended, U.N. members met in Rome in July 1998 and adopted the *Rome Statute of the International Criminal Court* by a vote of 120 yes, 7 no, with 21 abstentions. Unlike most conventions, the Rome Statute states, “No reservations may be made to this Statute” (Article 120), so any State ratifying the Rome Statute must accept all of its provisions. The International Criminal Court (ICC) started operating on July 1, 2002, after the required 60 states had ratified the treaty. It is charged with investigating and prosecuting the four crimes of genocide, crimes against humanity, war crimes, and aggression (although it does not yet have authority over the crime of aggression). As of 2013, 122 states have ratified the ICC.

Responsibility to Protect. When world leaders gathered at the U.N. for the 2005 World Summit, they adopted a new policy called “responsibility to protect.” They committed the U.N. to a policy of protecting populations that are threatened with genocide, crimes against humanity or ethnic cleansing when their own national governments cannot or will not do so. This policy, like the Vienna Declaration cited



Francis Deng

earlier, envisions limits to national sovereignty when there are massive human rights violations. Francis Deng is often cited as the father of this doctrine. In his role as the U.N.’s first *Special Rapporteur on the Human Rights of Internally Displaced Persons* in the 1990s, he became acutely aware that sometimes persecuted people within a country must have protection that can only be provided by outside nations or international bodies.⁸

The first obligation under the U.N.’s responsibility to protect is the prevention of these crimes, but the policy also obligates, when necessary, the use of “humanitarian intervention,” a term that refers to the U.N. or an appropriate regional organization (such as NATO or the African Union) intervening in a country with military force to protect people from these crimes. Humanitarian intervention, as previously practiced, had been criticized as motivated by neo-Colonialism, as a guise by powerful nations pursuing their own selfish interests, and for being applied only upon weak nations.⁹ The new “responsibility to protect” policy provides for the first time a guide for international behavior in the face of these crimes. Military intervention may be used only as a last resort, and only when prevention has failed and lesser measures have been examined carefully and found unlikely to succeed. Further, there must be “serious and irreparable harm occurring to human beings, or imminently likely to occur,” such as “large scale loss of life” or “large scale ethnic cleansing,” and only for the purpose of saving civilian lives. Military intervention is not to be used when there are lesser human rights violations, nor conducted unilaterally by a single nation.

The policy of “responsibility to protect” is still new, and only time will tell how well the U.N. and the regional bodies will meet this new commitment. However, it was used successfully to prevent further bloodshed in Kenya in late 2007, as the U.N. sent Kofi Annan to Kenya to negotiate a political solution between warring ethnic groups. The 2011 NATO-led intervention to end the killing of civilians by Libyan leader Muammar Gaddafi was also a successful application of this policy. However, in 2013, the

8 At the time of this writing (2013), Deng is the Ambassador to the U.N. of new nation of South Sudan.

9 See, for example, Susan Koshy, *From Cold War to Trade War: Neocolonialism and Human Rights*. Social Text, No. 58 (Spring, 1999), pp. 1-32.

policy has not yet ended the Syrian government's killing of its own people.

Millennium Development Goals. Article 25 of the UDHR states that, "Everyone has a right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing, and medical care and necessary social services . . . in circumstances beyond his control." Article 22 adds that these rights are to be realized "through national effort and international cooperation." The ICESCR uses similar wording. While economic rights are to be achieved by each state "to the maximum of its available resources" (ICESCR, Article 2), responsibility to achieve these rights is also international. Wealthier nations have a responsibility to help those nations that cannot fulfill these rights by themselves.

To fulfill this responsibility, when world leaders gathered in September 2000 for the Millennium Assembly, they adopted the United Nations Millennium Declaration, declaring that, among other things, "We will spare no effort to free our fellow men, women and children from the abject and dehumanizing conditions of extreme poverty." These words were soon followed by eight specific, measurable and time-bound Millennium Development Goals. As examples, they include, by 2015, to

- reduce by half the number of people who live on less than a dollar a day, who suffer from hunger, and who lack access to safe drinking water;
- reduce under-five child mortality by two-thirds and maternal mortality by three-quarters;
- insure that children everywhere, and regardless of gender, have access to full primary education.

In September 2010, the U.N. held a plenary meeting of the General Assembly to review the decade of efforts toward achieving these goals. While some progress was reported on each goal, a subtitle within the summary document calls it "A mixed story: successes, uneven progress, challenges and opportunities." The Millennium Development Goals Report 2013 details progress toward achieving each goal in each world region as of 2013.

III. International Humanitarian Law

The term "International Humanitarian Law" refers to the laws that govern the conduct of war and the treatment of prisoners and civilians. While human rights law and international humanitarian law have different historical origins, since the 1960's the two are increasingly considered together, as "international humanitarian law is increasingly perceived as part of human rights law applicable to armed conflict" (Dosweld-Beck, 1993). The evolution of international humanitarian law may be traced to 1859 when Henry Dunant, a young Swiss businessman, witnessed the Battle of



Henry Dunant

Solferino, Europe's bloodiest battle in more than half a century. Many wounded were left to die in misery, so Dunant spent several days organizing help for them. Deeply distressed by the anguish he had seen, he soon wrote A Memory of Solferino (1862). After describing in searing detail the horrors of Solferino, Dunant called for the creation of an international aid society and an international convention to care for the wounded and to protect them from further harm.

Dunant's book and campaign led to the creation of both the Convention for the Amelioration of the Condition of the Wounded in Armies in the Field (1864), called the First Geneva Convention, and the International Committee of the Red Cross (ICRC). This Geneva Convention required that those treating the wounded be regarded as neutral and not attacked.

They were to be recognized by a red cross displayed on their uniforms, ambulances, and hospitals. A red crescent was added as a second official designation of neutrality in 1929, and a red crystal (a hollow square standing on its corner) was added in 2005. The convention required that all wounded were to be treated, whether an enemy's or one's own.



The broader concern of the Geneva Convention was to reduce unnecessary suffering due to war. That concern has led to several later conventions and additions.

- In 1899, the Convention on the Laws and Customs of War on Land, also known as the Hague Convention, outlawed bullets that expand when they hit flesh, required the humane treatment of prisoners, and established the right of the ICRC to visit prisoners. It also created laws to protect civilians during war by forbidding the bombardment of undefended towns and requiring that the property of civilians in captured territories be protected. The Geneva and Hague conventions were soon extended to cover war at sea. In 1925, prohibitions were added against the use of chemical and biological weapons.
- The Third Geneva Convention (1929) added specific requirements on the treatment of prisoners. It required that they be registered with the ICRC, provided adequate food, shelter, and medical care, not be tortured, be allowed to send and receive mail, and that food parcels could be delivered to them.
- I. After World War II, the first three Geneva conventions were updated, and the new Fourth Geneva Convention (1949) expanded the protection of civilians under enemy occupation and effectively merged the Hague and Geneva Conventions. Today, almost every nation on earth -- 195 altogether -- has ratified the Geneva Convention. In 1977, a protocol was added to extend all the provisions of the Geneva Convention to civil wars, and that protocol has been ratified by more than 170 states, as well.

Beyond the Geneva and Hague Conventions, international humanitarian law now includes several treaties that outlaw specific weapons. These conventions were created because these weapons cause deaths and injuries long after conflicts have ended. Unexploded land mines have caused up to 7,000 deaths a year, and unexploded bombs, particularly from cluster bombs that scatter many small “bomblets,” are thought to kill and wound a similar number. An estimated 98% of the victims are civilian. Farmers tilling their fields and children who find these explosives are common victims. For these reasons, the following conventions have been adopted:

- The Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have

Indiscriminate Effects (1980) prohibits weapons that produce non-detectable fragments, restricts (but does not eliminate) the uses of mines and booby-traps, prohibits attacking civilians with incendiary weapons, prohibits blinding laser weapons, and requires the warring parties to clear unexploded ordinance at the end of hostilities. By 2013, 109 states have ratified this convention or some of its provisions.

- The Convention the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction (1997), also called the Chemical Weapons Convention (CWC), bans all chemical weapons. As of October 2013, the CWC has been ratified by 190 states. The Organization for the Prohibition of Chemical Weapons, which verifies adherence to the convention, including the destruction of chemical weapons, received the Nobel Peace Prize in 2013.
- The Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction (1997), also called the Ottawa Treaty or the Mine Ban Treaty, completely bans all anti-personnel land mines, and 161 states have ratified it.
- The Optional Protocol on the Involvement of Children in Armed Conflict (2000), an amendment to the Convention on the Rights of the Child (1989), forbids the enlistment of anyone under the age of 18 for armed conflict. It has been ratified by 151 states.
- The Convention on Cluster Munitions (2008) prohibits the use of bombs that scatter bomblets, many of which do not explode and remain dangerous long after a conflict has ended. Human Rights Watch played a major role in campaigning for this convention. As of 2013, 83 states have ratified it.

IV. The Regional Human Rights Systems

After the UDHR was adopted, three regional systems for advancing and protecting human rights were created. The first and most successful to date is that in Europe. The Council of Europe adopted the European Convention for the Protection of Human Rights and Fundamental Freedoms in 1950, and 47 countries of Europe are members. The

European Court of Human Rights was established in 1959.

The Organization of American States adopted the American Convention on Human Rights in 1969 and established the Inter-American Court on Human Rights in 1979. Twenty-one Central and South American nations are now parties of the Court.

The African Charter on Human and Peoples' Rights was adopted by the Organization of African Unity (now the African Union) in 1981 and has been ratified by all African states except of the new state of South Sudan. An African Court on Human and Peoples' Rights was created in 2004 and has now been ratified by 26 of the 54 African states. It is regarded as the weakest of the three regional court systems. It has rendered two decisions on petitions brought to it, but not yet tried a case. However, in March 2011, it issued an order that Libya must “immediately refrain from any action that would result in loss of life or violation of physical integrity of persons, which could be a breach of the provisions of the African Charter on Human and Peoples' Rights or of other international human rights instruments to which it is a party.”

Two other regional organizations have taken significant steps regarding human rights since 2000, but do not yet have enforcement systems. The League of Arab States adopted the Arab Charter of Human Rights in 2004, updating an earlier version from 1994, and it entered into force in 2008. Also, the ten countries of the Association of Southeast Asian Nations (ASEAN) adopted the ASEAN Human Rights Declaration in November 2012. The Arab Charter has been criticized for its inclusion of Zionism as a form of racism; the ASEAN Declaration for the secrecy and lack of civic input in its drafting, and for containing clauses that could be used to undermine human rights, such as “the realization of human rights must be considered in the regional and national context” (Art. 7), or that human rights might be limited to preserve “public morality” (Art. 8).

V. The United States and the Human Rights Treaties

The American Declaration of Independence and Bill of Rights have inspired the ideals of equality, freedom and rights for over two centuries, so Americans have justifiable

pride in our contributions to human rights. Nevertheless, the United States' ratification of U.N. human rights treaties has been weak. In 1953, the Eisenhower administration, under pressure from isolationist forces, announced that the United States would not be a party to any U.N. human rights treaty. Given all her efforts, Mrs. Roosevelt was deeply hurt by this announcement, believing that the United States had abandoned its leadership role in the vital task of advancing human rights.

Because of this new policy, the United States did not help draft either the ICCPR or the ICESCR and was not among the 35 states that had ratified them when they entered into force in 1976. The U.S. finally ratified the ICCPR in 1992, but has not ratified the ICESCR.

A few other human rights conventions have been ratified. The U.S. ratified the *Convention on the Prevention and Punishment of the Crime of Genocide* in 1948 during President Truman's term. The *International Convention on the Elimination of All Forms of Racial Discrimination* and the *International Convention Against Torture and Other Cruel, Inhuman, and Degrading Treatment or Punishment* were each ratified during President Clinton's term in 1994. However, for each convention, the U. S. declared that these treaties are “not self-executing.” Under President Bush, the U.S. did not sign the *Declaration on Sexual Orientation and Gender Identity*, but did so shortly after President Obama was inaugurated.

The United States has not ratified many others. President Carter submitted the *Convention on the Elimination of All Forms of Discrimination against Women* for ratification in 1980, but the United States is still among the 13 U.N. states that have not done so. The U.S. stands with Somalia and South Sudan as the only three states that have not ratified the *Convention on the Rights of the Child*. Although the United States participated seriously in drafting the *Rome Statute of the International Criminal Court* and managed to improve many of its provisions, the U.S. cast one of the seven votes against it. President Clinton signed the Rome Statute for the United States shortly before he left office, but the second President Bush took the unusual action of nullifying the American signature in 2002. It has never been submitted to the Senate for ratification. In December 2012, The United States Senate failed to ratify the *Convention on the Rights of Persons with Disabilities*, with the 61 affirmative votes six short of

the two-thirds required for ratification. The U.S. has not signed or ratified the *International Convention for the Protection of All Persons from Enforced Disappearance* or the *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*. The U.S. was one of only four states to vote against the *Declaration on the Rights of Indigenous Peoples*. The U.S. is not a party to either the *Mine Ban Treaty* or the *Cluster Munitions Treaty*.

Why has the United States been reluctant to endorse these U.N. human rights treaties? In his farewell address, President George Washington warned against the dangers of “foreign entanglements,” setting a precedent of American wariness of becoming tied to the judgment and will of other nations. Separated by a broad ocean from the recurring wars that plagued Europe, Americans developed a strong desire to isolate the nation from the world’s troubles. In the twentieth century, this “American isolationism” became pronounced when the Senate rejected President Woodrow Wilson’s plea that the United States join the League of Nations; this isolationism remains strong. Also, “American exceptionalism” assumes that America is the leader of the free world in advancing freedom and democracy. However, that belief often has the corollary of “American unilateralism,” that America can intervene in other nations on its own, and in doing so must be immune from international law. Both of these have influenced American reluctance to participate in human rights covenants and conventions, and in the International Criminal Court. In the judgment of this author, this American reluctance has led to America abandoning its leadership in promoting human rights and has slowed the progress of human rights around the world substantially.

Conclusion

The struggle for human rights is not just against dictators and religious fanatics. Neither is it simply a struggle for advancing U.N. conventions and processes, as vital as these are. Unless citizens want their governments to support human rights, government leaders rarely will do so. Eleanor Roosevelt said that the ideals of the *Universal Declaration of Human Rights* will “carry no weight unless

the people know them, unless the people understand them, unless the people demand that they be lived” (Glendon, 2001, p. xix). Building a world that promotes and protects human rights is up to all of the world’s citizens.

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