

## Abstract

*The Universal Declaration of Human Rights has been the foundation of much of the post-1945 codification of human rights, and the international legal system is replete with global and regional treaties based, in large measure, on the Declaration. Pending universal ratification of the Covenants and other treaties, it is to the Universal Declaration of Human Rights that most people will look to find the minimum rights to which they are entitled. This article sets out the status of the Declaration in national and international law, and gives examples of international and national provisions protecting the right to health. Legally, politically, and morally, the Universal Declaration remains even more significant today than when it was adopted a half-century ago.*

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*La Déclaration Universelle des Droits de l'Homme a servi de fondation à beaucoup des codifications des droits humains après 1945, et le système légal international regorge de traités mondiaux et régionaux basés, en grande partie, sur cette Déclaration. En attendant la ratification universelle des Conventions et autres traités, c'est vers la Déclaration Universelle des Droits de l'Homme que la plupart des gens se tourneront pour trouver quels sont leurs droits minimums. Cet article expose le statut de la Déclaration dans les législations nationales et internationales, et donne des exemples de dispositions nationales et internationales protégeant le droit à la santé. Légalement, politiquement et moralement, la Déclaration universelle est encore plus significative aujourd'hui que lors de son adoption il y a un demi-siècle.*

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*La Declaración Universal de Derechos Humanos ha sido el cimiento de una buena parte de la codificación de los derechos humanos después de 1945, y el sistema legal internacional está lleno de tratados mundiales y regionales basados, en gran medida, en la Declaración. Mientras la ratificación universal de las Convenciones y de otros tratados sigue pendiente, la gran mayoría de personas recurren a la Declaración Universal de Derechos Humanos en busca de sus derechos mínimos. Este artículo presenta el estatuto de la Declaración en las legislaciones nacionales e internacionales, y da ejemplos de provisiones internacionales y nacionales que protegen el derecho a la salud. En términos legales, políticos y morales, la Declaración Universal se mantiene hoy en día más viva que cuando se adoptó hace medio siglo.*

# THE UDHR IN NATIONAL AND INTERNATIONAL LAW

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**T**he Universal Declaration of Human Rights has been the foundation of much of the post-1945 codification of human rights, and the international legal system is replete with global and regional treaties based, in large measure, on the Declaration.<sup>1</sup> Initially adopted only as “a common standard of achievement for all peoples and all nations,” the Declaration today exerts a moral, political, and legal influence far beyond the hopes of many of its drafters.

The Universal Declaration has served directly and indirectly as a model for many domestic constitutions, laws, regulations, and policies that protect fundamental human rights. These domestic manifestations include direct constitutional reference to the Universal Declaration or incorporation of its provisions; reflection of the substantive articles of the Universal Declaration in national legislation; and judicial interpretation of domestic laws (and applicable international law) with reference to the Universal Declaration.

Many of the Universal Declaration’s provisions also have become incorporated into customary international law, which is binding on all states. This development has been confirmed by states in intergovernmental and diplomatic settings, in arguments submitted to judicial tribunals, by the actions of intergovernmental organizations, and in the writings of legal scholars.

Most states are now bound by one or more multilateral conventions concerning human rights, but the existence of such conventional obligations does not necessarily diminish the importance of the Universal Declaration of Human Rights. Further, despite the fact that many states are now parties to the major human rights treaties, many are not. As of 1997, neither the Covenant on Civil and Political Rights nor the

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Covenant on Economic, Social and Cultural Rights had been ratified by countries such as China, Cuba, Ghana, Indonesia, Liberia, Malaysia, Myanmar, Pakistan, Saudi Arabia, Singapore, South Africa, and Turkey. Haiti, Mozambique, Thailand and the United States have ratified only the Covenant on Civil and Political Rights, while Guinea-Bissau and Solomon Islands are parties only to the Covenant on Economic, Social and Cultural Rights.<sup>2</sup>

The Universal Declaration remains the primary source of *global* human rights standards, and its recognition as a source of rights and law by states throughout the world distinguishes it from conventional obligations. Virtually every international instrument concerned with human rights contains at least a preambular reference to the Universal Declaration, as do many declarations adopted unanimously or by consensus of the UN General Assembly. Of course, where provisions of the Declaration have been replicated in subsequent treaties or constitutions, it may be these instruments which are cited by judges rather than the Declaration itself. In other jurisdictions, the Universal Declaration of Human Rights may be even more easily invoked as a source or evidence of customary international law than a corresponding treaty provision.

Despite controversy over many issues, the 100 countries which participated in the 1993 UN World Conference on Human Rights reaffirmed "their commitment to the purposes and principles contained in the Charter of the United Nations and the Universal Declaration of Human Rights" and emphasized that the Declaration "is the source of inspiration and has been the basis for the United Nations in making advances in standard setting as contained in the existing international human rights instruments."<sup>3</sup> The normative provisions of the Declaration are specifically cited in the Vienna Declaration in connection with the rights to seek and enjoy asylum, the right to education, the prohibition against torture, and the activities of nongovernmental organizations.<sup>4,5,6,7</sup> In early 1994, the UN General Assembly created the position of High Commissioner for Human Rights, "[e]mphasizing the need to observe the Universal Declaration of Human Rights" and directing that the High Commissioner "[f]unction within the framework of the Charter of the United Nations,

the Universal Declaration of Human Rights,...[and] other international instruments of human rights and international law.”<sup>8,9</sup>

### **Status of the Universal Declaration in Customary International Law**

It is, of course, unanimously agreed that the Universal Declaration of Human Rights was not viewed as imposing legal obligations on states at the time of its adoption by the General Assembly in 1948.<sup>10</sup> In the oft-cited words of Eleanor Roosevelt, Chair of the UN Commission on Human Rights during the drafting of the Declaration, and a United States representative to the General Assembly when the Declaration was adopted:

In giving our approval to the declaration today, it is of primary importance that we keep clearly in mind the basic character of the document. It is not a treaty; it is not an international agreement. It is not and does not purport to be a statement of law or of legal obligation. It is a declaration of basic principles of human rights and freedoms, to be stamped with the approval of the General Assembly by formal vote of its members, and to serve as a common standard of achievement for all peoples of all nations.<sup>11</sup>

The status of the Declaration when it was adopted in 1948 is described by the United Nations as that of “a manifesto with primarily moral authority,” the first of “four stages in the generation of the document the General Assembly has called the International Bill of Human Rights.”<sup>12,13</sup> The subsequent three documents — the International Covenant on Civil and Political Rights, its Optional Protocol, and the International Covenant on Economic, Social and Cultural Rights — were consciously adopted as legally binding treaties open for ratification or accession by states, in contrast to the more political or hortatory Declaration.<sup>14,15</sup>

With time, the Universal Declaration has itself acquired significant legal status. Some see it as having given content to the Charter pledges, partaking therefore of the binding character of the Charter as an international treaty. Others see both the Charter and the Declaration as contributing to the development of a customary law of human rights binding on all states.<sup>16</sup>

It is clear that principles initially considered by the international community to be "only" goals or aspirations can develop into binding norms over time, if they become accepted as customary international law. During the 1993 World Conference on Human Rights, Malta called on all states "to implement and enforce in a concrete manner the principles and purposes of the *UN Charter and the Universal Declaration of Human Rights*," thus implying equality between the two documents and the binding nature of both (emphasis in original).<sup>17</sup> On the twentieth anniversary of the adoption of the Declaration, a major international conference of nongovernmental organizations proclaimed unequivocally that the Universal Declaration "constitutes an authoritative interpretation of the Charter of the highest order, and has over the years become part of customary international law."<sup>18</sup> A governmental conference held in the same year, at which 84 states were represented, observed that the Declaration "constitutes an obligation for the Members of the international community," although there was no elaboration of the precise nature of this obligation.<sup>19</sup> The International Law Institute adopted a declaration in December 1969 which affirms that there is an "obligation" on states to guarantee respect for human rights that flows from the recognition of human dignity in the UN Charter and the Universal Declaration of Human Rights.<sup>20,21</sup> In 1994, the International Law Association observed that the Declaration "is universally regarded as an authoritative elaboration of the human rights provisions of the United Nations Charter and concluded that "many if not all of the rights elaborated in the...Declaration...are widely recognized as constituting rules of customary international law."<sup>22</sup>

### **The Content of Customary Law Evidenced in the Declaration**

Those who urge acceptance of the Declaration *in toto* as customary law are in a clear minority, and there is insufficient state practice to support such a wide-ranging proposition at this date. However, there would seem to be little argument that many provisions of the Declaration today do reflect customary international law. "Few claim that any state that violates any provision of the Declaration has violated

international law. Almost all would agree that some violations of the Declaration are violations of international law."<sup>23</sup> Almost no state has specifically rejected the principles proclaimed in the Universal Declaration, and the Declaration constitutes a fundamental part of what has become known as the International Bill of Human Rights.<sup>24,25</sup>

Even if the Universal Declaration does not rise to the level of customary international law, it is impossible to ignore its political as well as its moral influence on the conduct of international relations. As amply demonstrated by, for example, the practice of states that are members of the Organization on Security and Cooperation in Europe (OSCE), an explicitly political commitment to promote and protect human rights can be as significant as formal legal obligations, provided that it is accompanied by meaningful oversight. The 1975 Helsinki Final Act of the Conference on Security and Cooperation in Europe (as the OSCE was then known) commits the participating states, *inter alia*, "to act in conformity with the purposes and principles of the Charter of the United Nations and with the Universal Declaration of Human Rights," and the International Court of Justice relied heavily on the Helsinki Final Act in identifying as customary international law the prohibition of the use of force and the principle of nonintervention.<sup>26,27</sup> The commitment to conform to the Universal Declaration has been regularly reiterated in subsequent CSCE/OSCE documents.

Similarly, the work of UN organs such as the Commission on Human Rights is largely grounded in the norms of the Universal Declaration of Human Rights. For example, examination of communications which allege "a consistent pattern of gross violations of...human rights" under ECOSOC Resolution 1503 are organized according to articles of the Declaration.<sup>28,29</sup>

## **Influence of the Universal Declaration at the National Level**

The Universal Declaration has had tremendous influence on national formulations of human rights standards; its political, in addition to purely juridical, importance can hardly be questioned.

### **Response to the Universal Declaration in National Courts**

The Universal Declaration has been utilized by national courts in different ways. It has provided a rule of decision binding on the court, where it is found to constitute or reflect customary international law in a system in which international law has direct applicability, as is the case in, for example, Austria and Tanzania. The Declaration may be utilized to interpret or inform conventional or domestic law which deals with human rights, as is the case in Belgium, the Netherlands, India, Sri Lanka, and the United States.<sup>30</sup> The Declaration may be deemed to be evidence of governmental policy which a court must (or may) respect.<sup>31</sup> Finally, of course, courts may explicitly or implicitly reject the relevance of the Declaration to domestic law; such opinions frequently cite the purely political or nonself-executing nature of the Declaration or the supremacy of national law.

### **Influence of the Universal Declaration on Legislative and Administrative Acts**

The Universal Declaration has served as a model or inspiration for numerous constitutional and legislative provisions. The provisions of the constitutions of Portugal, Romania, Sao Tomé and Príncipe, and Spain are of particular interest, since each directs its country's courts to "interpret" constitutional norms in conformity with the Universal Declaration.<sup>32</sup>

One author has estimated that "no fewer than 90 national constitutions drawn up since 1948 contain statements of fundamental rights which, where they do not faithfully reproduce the provisions of the Universal Declaration, are at least inspired by it."<sup>33</sup> Many African constitutions in the immediate post-independence period made explicit reference to the Universal Declaration of Human Rights, including those of Algeria (1963), Burundi (1962), Cameroon (1960), Chad (1960), Democratic Republic of the Congo (1964 and 1967), Republic of the Congo (1963), Dahomey (1964 and 1968), Equatorial Guinea (1968), Gabon (1961), Guinea (1958), Côte d'Ivoire (1960), Madagascar (1959), Mali (1960), Mauritania (1962), Niger (1960), Rwanda (1962), Senegal (1963), Somalia (1979), Togo (1963), and Upper Volta (1960 and 1970).<sup>34</sup>

Among constitutions currently in force, the Declaration

is specifically referred to in those of Afghanistan, Benin, Bosnia–Herzegovina, Burkina Faso, Burundi, Cambodia, Chad, Comoros, Côte d’Ivoire, Equatorial Guinea, Ethiopia (draft 1994 Constitution), Democratic Republic of the Congo, Gabon, Guinea, Haiti, Mali, Mauritania, Nicaragua, Niger, Portugal, Romania, Rwanda, Sao Tomé and Príncipe, Senegal, Somalia, Spain, Togo and Yemen.

The Ministry of Justice of St. Vincent and the Grenadines is perhaps typical in noting, “Most of the tenets contained in the Universal Declaration of Human Rights have been adopted in the Saint Vincent Constitution Order 1979.”<sup>35</sup> Article 15 of the Constitution of Antigua was largely inspired by the European Convention, which “was itself largely based on the Universal Declaration.”<sup>36</sup> The President of Kazakhstan has stated that the civil rights provisions in the draft constitution adopted by that country in 1992 “were based on the Universal Declaration of Human Rights and on the constitutional experience of both Western and Oriental nations.”<sup>37</sup>

Indian courts have stated that the Indian Constitution “has embodied most of the articles contained in the Declaration.”<sup>38</sup> The rights guaranteed under the constitution of Nepal also have significant similarities to many of the provisions of the Universal Declaration. Taiwan regards the Declaration as “a moral standard” and notes that its 1947 constitution “contained many features similar to the provisions of the Universal Declaration.”<sup>39</sup>

The fundamental rights set forth in the constitution of Zimbabwe are derived from the International Bill of Human Rights and the European Convention on Human Rights.<sup>40</sup> Chad has consistently reaffirmed “the attachment of the Chadian people to the principles of...the Universal Declaration of Human Rights” in the preambles to three previous constitutions and in the most recent National Charter (1991) and Transitional Charter (1993). On March 23, 1993, the National Sovereign Conference, which was convened to implement the transition to democratic government in Chad, adopted a Charter of Rights and Freedoms which to a great degree restates, often in identical language, the guarantees found in the Universal Declaration.<sup>41</sup> The preamble to the 1977 constitution of the Swiss canton of Jura cites the Universal Declaration of Human Rights as a source of inspira-



tion. International human rights norms were precedents for many Chilean constitutional rights. The legislative history of the 1975 commission which drafted the Chilean constitution sets out the Universal Declaration of Human Rights as one of the sources explicitly recognized.<sup>42</sup>

It is normally the executive branch, through its foreign ministry or its participation in international organizations, which proclaims the government's views on issues of international law. Even if states are not under a legal obligation to take human rights into account in the formulation of their foreign policies, the norms proclaimed in the Universal Declaration of Human Rights are increasingly utilized by governments in formulating foreign policy — including decisions regarding development assistance.<sup>43</sup> Defining the relevant "human rights" by reference to the most universal statement of human rights, the Universal Declaration of Human Rights, is preferable and less open to charges of "cultural imperialism" than would be the case if human rights were defined according to purely national norms or more detailed provisions of treaties to which all states do not yet adhere. In this respect, the influence of the Declaration goes beyond its status as law to encompass a continuing role as a "common standard of achievement."

### **The Right to Health**

With respect to the right to health, Article 25 of the Universal Declaration states that "[e]veryone has the 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, and the right to security in the event of...sickness [or] disability...or other lack of livelihood in circumstances beyond his control." Articles 23 and 24 set forth the right "to just and favorable conditions of work" and to "reasonable limitation of working hours," respectively. These provisions are considerably expanded in Article 12 of the Covenant on Economic, Social and Cultural Rights, under which states recognize "the right of everyone to the enjoyment of the highest attainable standard of physical and mental health" and have been further elaborated in subsequent human rights treaties.

Equivalent provisions may be found in a number of na-

tional constitutions, often in the section devoted to fundamental rights. The “right” to health or protection of health is found in the constitutions of Belgium (art. 23.2), Kyrgyzstan (art. 34.1), Paraguay (art. 68), Peru (art. 7), Thailand (art. 52), and Togo (art. 34). Perhaps more realistically (and specifically), other formulations impose on the government an obligation to provide health care or health services, e.g., Armenia (art. 34), Cambodia (art. 72), Ethiopia (art. 41.4), Finland (art. 14a), Democratic Republic of Korea (art. 56), Kyrgyzstan (art. 34.2), Paraguay (art. 69), Thailand (art. 82), and Yemen (art. 54).

There is little domestic or international jurisprudence on the implementation of the right to health, and it is unlikely that health presently falls within the rights protected under customary international law. However, the Committee on Economic, Social, and Cultural Rights has identified the provision of “essential primary health care” as part of the “minimum core obligations” applicable to every party to the Covenant on Economic, Social and Cultural Rights.<sup>44</sup>

## Conclusion

There are today thousands of ratifications to the major human rights treaties. On the international plane, these treaties give rise to various reporting and other obligations; some (usually optional) provisions give individuals or nongovernmental organizations the right to petition international bodies for redress. On the domestic plane, the impact of such ratified treaties varies from minimal to significant. National courts themselves are often unclear as to the weight they give to treaty provisions, although courts are perhaps more likely to refer to ratified treaties than to other international instruments in the course of decisions. Nevertheless, the vast majority of the world’s population has no direct domestic or international redress for violations of human rights recognized under international conventions.

The most important multilateral treaty in the field of human rights is perhaps the UN Charter, under which all UN members pledge to take joint and separate action in cooperation with the United Nations to promote universal respect for, and observance of, human rights and fundamental freedoms.<sup>45</sup> Legally and politically, it is the Universal Declaration of Human Rights which defines the Charter’s human

rights provisions. As the primary source of the global consensus on human rights — which was reaffirmed at the 1993 World Conference on Human Rights — the Declaration represents the only common ground when states discuss human rights. Given the central importance of the Universal Declaration in the international human rights firmament, it is the first instrument that should be consulted when attempting to identify the contemporary content of international human rights law.

Pending universal ratification of the Covenants and other treaties, it is to the Universal Declaration of Human Rights that most people will look to find the minimum rights to which they are entitled. Legally, politically, and morally, the Universal Declaration remains even more significant today than when it was adopted a half-century ago.

\*This article is based on a report prepared by the author as Rapporteur of the Committee on the Enforcement of International Human Rights Law Association and published in *Georgia Journal of Comparative Law* 25(195/96)287.

## References

1. Universal Declaration of Human Rights, G.A. Res. 217, U.N. GAOR, 3rd Sess., U.N. Doc. A/810 (1948).
2. Secretariat-Centre for Human Rights, Human Rights International Instruments: Chart of Ratifications, as at December 21, 1997, U.N. Doc. ST/HR/4/Rev.16 (1997).
3. Vienna Declaration and Programme of Action, World Conference on Human Rights, 25 June 1993, U.N. Doc. A/CONF.157/23 (1993), Preamble, para. 3, 8, reprinted in: *International Legal Materials* 32(1993):1661. A small group of states, primarily Asian, did attempt to promote the view that the Declaration was less than universal and that human rights should be defined in a culturally sensitive manner. However, the first paragraph of the final Declaration states unambiguously, "The universal nature of these rights and freedoms is beyond question....While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms." *Ibid.*, para. 4, 5. Numerous articles have addressed the issue of "cultural relativity" in human rights; compare B. Kausikan, "Asia's Different Standard," *Foreign Policy* 92(1993):24 with A. Neier, "Asia's Unacceptable Standard," *Foreign Policy* 92(1993):42.
4. Vienna Declaration and Programme of Action, see note 3, para. 8. (the Conference "stresses the importance" of the Declaration).

5. Vienna Declaration and Programme of Action, see note 3, para. 11 ("States are duty-bound, as stipulated in the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights and in other international human rights instruments, to ensure that education is aimed at strengthening the respect of human rights and fundamental freedoms.")
6. Vienna Declaration and Programme of Action, see note 3, para. 22. (The Conference "urges all States to put an immediate end to the practice of torture and eradicate this evil forever through full implementation of the Universal Declaration of Human Rights as well as the relevant conventions.)
7. Vienna Declaration and Programme of Action, see note 3, para. 12-13. ("Non-governmental organizations and their members genuinely involved in the field of human rights should enjoy the rights and freedoms recognized in the Universal Declaration of Human Rights, and the protection of national law.")
8. United Nations, G.A. Res. 48/141, U.N. GAOR, 48th Sess., 85th plenary meeting, preambular, U.N. Doc. A/Res/48/141 (1994), p. 1.
9. *Ibid.*, para. 3(a), p. 1.
10. For a fascinating view of the process of drafting the Declaration, see A.J. Hobbins, "René Cassin and the Daughter of Time: The First Draft of the Universal Declaration of Human Rights," in: *Fontanus II*, at 7(1989). [EDITOR'S NOTE: See also R. Claude, B. Issel, "Health, Medicine and Science in the Universal Declaration of Human Rights," in this issue, pp. 126-143.]
11. Quoted in: M.M. Whiteman, *Digest of International Law* 5 (Washington, DC: Dept. of State Publication 7873, 1965), p. 243. Compare an early Irish Supreme Court case which observed: "This Declaration does not, however, purport to be a statement of the existing law of nations. Far from it....The Declaration, therefore, though of great importance and significance in many ways, is not a guide to discover the existing principles of international law." *State v. Tapley*, (1952) I.R. 62, Dec. 12, 1950.
12. United Nations, *The International Bill of Human Rights* (New York: United Nations Dept. of Public Information, 1988), p.1.
13. *Ibid.*
14. The International Covenant on Civil and Political Rights was supplemented in 1989 by a Second Optional Protocol aiming at the abolition of capital punishment.
15. As of October 16, 1998, there were 140 parties to the Covenant on Civil and Political Rights, 92 of which also had accepted the right of individual petition set forth in the Optional Protocol; 138 states had ratified the Covenant on Economic, Social and Cultural Rights. The Second Optional Protocol to the Covenant on Civil and Political Rights, abolishing the death penalty, had been accepted by 33 states. United Nations, *Multi-lateral Treaties Deposited with the Secretary General*, (ST/LEG/SEP/E) as available on <http://www.un.org/Depts/Treaty> on 10/22/98).
16. L. Henkin, *The Age of Rights* (New York: Columbia University Press, 1990), p. 19.
17. Statement of Joseph M. Fenech, Minister of Justice, June 1993, p. 3 (on file with author). The Minister also proposed creation of a World Court on

Human Rights, which would protect the rights set forth in the Universal Declaration for nationals of those states which had accepted its jurisdiction. *Idem* p.16–17.

18. Montreal Statement of the [nongovernmental] Assembly for Human Rights (1968), reprinted in: *Journal of International Commission of Jurists Review* 9(1968):94.

19. Declaration of Tehran, Final Act of the International Conference on Human Rights, U.N. Doc. A/CONF.32/41 (1968), reprinted in: *United Nations, Human Rights, A Compilation of International Instruments* (UN Sales No. E.88.XIV.1, 1988), para. 2, p. 43. For other examples of endorsements of the Universal Declaration by governmental conferences, see N. Jayawickrama, "Hong Kong and the International Protection of Human Rights," in: (ed.) Raymond Wicks, *Human Rights in Hong Kong* (Hong Kong: Oxford University Press, 1992), pp. 156-57.

20. *Ibid.*

21. See *L'Annuaire de l'institut de droit international: résolutions 1957-1991*, p. 206.

22. Resolution adopted by the International Law Association, reprinted in: "International Law Association, Report of the Sixty-Sixth Conference" (International Law Association, 1994), p. 29.

23. L. Henkin, see note 16. Accord, B. Graefrath, "Universal Declaration of Human Rights–1988," *GDR Committee for Human Rights Bulletin* 14:(1988):167–168. ("Undoubtedly, the Universal Declaration has contributed to the becoming customary law of some basic human rights."); J. Humphrey, "The International Bill of Rights: Scope and Implementation," *William & Mary Law Review* 17(1976):526,529 at 165 (citing socialist writers such as Tunkin, Pechota, and Kartashkin); B.G. Ramcharan, "The Legal Status of the International Bill of Human Rights," *Nordic Journal of International Law* 55(1986):366, 380, at 380 ("Some parts of the Universal Declaration...represent international customary law"); A.H. Robertson and J.G. Merrills, *Human Rights in the World* (Manchester: Manchester University Press, 3d ed. 1989), p. 27 ("[T]he impact of the Universal Declaration has probably exceeded its authors' most sanguine expectations, while its constant and widespread recognition means that many of its principles can now be regarded as part of customary law.")

24. Eight states (Byelorussian S.S.R., Czechoslovakia, Poland, Saudi Arabia, South Africa, Ukrainian S.S.R., U.S.S.R., and Yugoslavia) abstained in the 1948 vote on the Declaration, although some have since that time accepted the Declaration at least as a statement of principles. Iran has indicated that it does not consider itself bound by human rights provisions which conflict with Iran's interpretation of Islamic law. See, Report of the Human Rights Committee, 37 U.N. GAOR, Supp. (No. 40), U.N. Doc. A/37/40 (1982) p. 66-72 (remarks of the representative of Iran). However, the highest judicial officer in Iran, Mohammad Yazdi, publicly criticized a decision by the U.S. Supreme Court permitting the trial in the United States of persons kidnapped abroad as "contrary to the Universal Declaration of Human Rights." "Enlevement de personnes recherchées par la justice américaine: un responsable iranien menace Washington de réciprocité," *Le Monde*, June 28, 1992 [author's translation]. Also see the statement by the Minister of Foreign Affairs of Singapore, in the course of

a statement generally critical of the “universalist” approach to human rights: “No country has rejected the Universal Declaration of Human Rights.” Statement by Mr. Wong Kan Seng, World Conference of Human Rights, Vienna, June 16, 1993 (on file with author).

25. The other components of the International Bill of Human Rights are the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, and the latter’s first Optional Protocol.

26. Final Act of the Conference on Security and Cooperation in Europe, adopted Aug. 1, 1975, reprinted in: 14 *International Legal Materials* 1292, 1296 (1975).

27. *Military and Paramilitary Activities in and Against Nicaragua*, (Nicaragua v. U.S.) (Merits) 1986 *International Court of Justice*, 14, pp. 99-100 (Judgment of June 27). The Court again referred to the Helsinki Final Act in examining the principle of non-intervention, observing that “it can be inferred that the text [of the Helsinki Final Act] testifies to the existence...of a customary principle which has universal application,” p. 107.

28. Adopted 27 May 1970, 48 U.N. ESCOR, Supp. (No. 1A) 8, U.N. Doc. E/4832/Add.1 (1970).

29. See N.S. Rodley, “United Nations Non-Treaty Procedures for Dealing with Human Rights Violations,” in: (ed.) H. Hannum, *Guide to International Human Rights Practice* (2nd edition) (Philadelphia: University of Pennsylvania Press, 1992), pp. 60, 68.

30. See, for example, *Filartiga v. Peña-Irala*, 630F.2d 876 (2d Cir. 1980) (United States); *W.M.K. Silva v. Piyasena Senaratne*, S.C. App. No. 7 of 1988 (Sri Lanka); G. Christenson, “Using Human Rights Law to Inform Due Process and Equal Protection Analyses,” *University of Cincinnati Law Review* 52 (1983), p. 3.

31. See, for example, *Murray v. Schooner Charming Betsy*, 6 U.S. (2 Cranch) 64, 118 (1804); *R v. Miah*, [1974] 1 All E.R. 1110 (C.A. 1973) (citing the European Convention and the Universal Declaration in support of the presumption against retroactive laws); *Secretary of State for the Home Dept. v. Two Citizens of Chile*, 1977 Imm. AR 36 (1975) (“[T]he Universal Declaration of Human Rights cannot so far as the immigration appellate authority are concerned overrule the Immigration Act of 1971 and the Rules made thereunder, although they may well be of assistance in indicating the way in which the Act and Rules should be interpreted.”); *Jolly George Vargheese v. Bank of Cochin*, 1980A.I.R. (S.C.) 470, 473 (India); J. McBride and L.N. Brown, “The United Kingdom, the European Community and the European Convention on Human Rights,” *Y.B. European Law* (1982), pp. 167, 177.

32. Portuguese Constitution, article 16(2); Romanian Constitution, article 20(1); Sao Tomé and Principe Constitution, article 17(2); Spanish Constitution, article 10(2).

33. See, for example, N. Jayawickrama, see note 19, p. 25.

34. United Nations, *United Nations Action in the Field of Human Rights* (New York: United Nations, 1974), p. 17.

35. Letter to the author from J.S. Jones-Morgan, Crown Counsel, Attorney General/Minister of Justice and Information, St. Vincent and the

- Grenadines, 31 Aug. 1993, ref. no. JIC/815.
36. Attorney-General and Another v. Antigua Times Ltd., Judicial Committee of the Privy Council, reprinted in: *International Law Report* 60 (1975), pp. 135-137.
37. Nezavisimaya Gazeta, "Nazarbayev Has Presented a New Draft Constitution to Members of Parliament," *Russian Press Digest* (June 2, 1992), p. 1.
38. Bombay Education Society v. State of Bombay, 1954 Bom. 271, at 1350.
39. China Institute of International Affairs, *China and the United Nations* (New York: Manhattan Publishing Co., 1959), pp. 185-86.
40. See paper presented by Mr. Justice Dumbutshena (Chief Justice of Zimbabwe) at the Harare Colloquium, 1989 in: *Developing Human Rights Jurisprudence, a Second Judicial Colloquium on the Domestic Application of International Human Rights Norms* (London: Commonwealth Secretariat, 1989).
41. See, for example, article 1 of the Charter, which corresponds to Article 1 of the Universal Declaration, article 3 (corresponding to Article 2 of the Universal Declaration), article 16 (Article 4), article 22 (Article 23), article 24 (Article 24), and article 29 (Article 26).
42. See, for example, Szurgelies and Szurgelies v. Spohn, Supreme Court, 19 July 1988, 256 Fallos del Mes 390, reprinted in: *International Law Report* 89: 44, in note 54; Skrabs and others v. Kriegler, Supreme Court, 21 July 1988, reprinted in: *International Law Report* 89:59, in note 68. These decisions also make clear that international conventions have the same status as ordinary legislation and are therefore inferior to the fundamental norms expressed in the Chilean Constitution.
43. Compare, for example, the Declaration adopted in October 1991 by the member states of the Commonwealth in Harare, Zimbabwe, reprinted in: U.N. Doc. A/46/708 (1991), which noted that the benefits of development should be extended "within a framework of respect for human rights;" with the decision by twelve aid-donor nations to condition further aid to Kenya on improvements in human rights, *New York Times*, Nov. 27, 1991, p. 1, col. 5.
44. Committee on Economic, Social and Cultural Rights, General Comment No. 3 (1990), reprinted in: *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, U.N. Doc. HRI/GEN/1/Rev.3 (1997), para. 10.
45. See United Nations Charter, articles 55 and 56.