The Universal Declaration of Human Rights -- Only a Foundation

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Human rights is a relatively new term, with its beginning stage of use occurring in 1945 after the end of the Second World War (Morsink, 1999). This catastrophic event, in which barely any corner of the world had escaped unscathed, provided a catalyst for peoples and governments everywhere to create a mechanism by which to prevent a recurrence. The result of this effort to create a more stable and peaceful world order culminated in 1948 with the Universal Declaration of Human Rights (Morsink, 1999).

The Universal Declaration was nothing short of a revolution in thought—instead of each nation being the master of its own domain, universal principles or rules now appeared. A set of guidelines sanctioned by a higher authority, at least in theory, would inhibit nations from violating the agreed upon human rights. No longer could a nation simply do what it wanted to its own citizens or those of other nations. The Universal Declaration would set minimum standards of conduct for governments all over the world (Economist 1998; Press, 2000).

In spite of efforts before the Universal Declaration to establish a mode standard of conduct applicable to every individual and government, no prior document could match the Universal Declaration in scope or participation. The development and eventual fruition of the Universal Declaration exemplifies how individuals and groups from diverse backgrounds mutually produced an extraordinary document that transcends customary borders. While many nations violate human rights contained in the declaration, pressure for countries to adhere to the declaration exists. Individuals or governments who ignore or violate human rights can face diminished reputations and scorn (Economist, 1998). Even with its shortcomings, the Universal Declaration of Human Rights certainly ranks as one of the most esteemed accomplishments in political, social, economic and cultural history.

This article explains that the concept of human rights emanates from all corners of the world, not just the Western world. Although not all countries existing in 1948 voted to approve the Universal Declaration of Human Rights, no country voted against the declaration. Some countries abstained from voting because they disapproved of particular sections of the document. Despite the significance of a universal set of human rights, the declaration has

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ly formed a beginning point for infusing human rights into everyday life. A multitude of human rights documents have expanded upon the declaration to form a broad body of human rights principles applicable to governments and individuals everywhere.

The first part of the article presents a brief explanation of provisions contained within the Universal Declaration of Human Rights. The next section traces historical beginnings of human rights to 1945, with a subsequent section detailing events after 1945 up to the adoption of the Universal Declaration of Human Rights by the United Nations. The last part of the article explains essential terminology used in describing human rights instruments that have been drafted after the declaration.

Three Generations of Human Rights

A brief summary of the Universal Declaration of Human Rights reveals three distinct sets, or generations, of human rights. The first set or generation lists political and individual freedoms (Reichert, 2001). The right to a fair trial, freedom of speech and religion, freedom of movement and assembly, and guarantees against discrimination, slavery and torture fall within these political and civil human rights (United Nations, 1948, Articles 2-15). These rights are often referred to as negative rights in that they restrict the role of government. In other words, government or other authority shall refrain from doing a certain act. This shall not set of guidelines emphasizes non-interference by government, or a negative position.

Another set of human rights in the declaration embodies so-called positive rights (Reichert, 2001). This set of rights attempts to ensure each resident of a country an adequate standard of living based on the resources of that country. Under this second set of human rights, everyone “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.” In addition, “motherhood and childhood are entitled to special care and assistance” and everyone has the right to a free education at the elementary level (United Nations, 1948, Articles 16-27). These rights are termed positive in that governments and individuals must take action to preserve these rights. In other words, governments shall provide these rights.

Of course, the distinction between negative and positive human rights can be viewed as contrived. If governments shall not restrict free speech or discriminate against gender or race, who monitors whether government satisfies these negative rights? Obviously governments must affirmatively act to prevent violations of free speech and discrimination. That requires positive acts on the part of government. Still, whether contrived or not, in discussions about human rights, a distinction between negative and positive human rights continues to exist.

A last set of human rights involves collective rights among nations. This set of rights is the least developed among the three types of human rights.
Under the 1948 declaration, everyone "is entitled to a social and international order in which the rights and freedoms" listed in the document can be fully realized (United Nations, 1948, Article 28). Essentially, promotion of collective human rights requires intergovernmental cooperation on world issues, like environmental protection and economic development. One group of countries should not dictate conditions to another group when these conditions would inhibit the growth or prosperity of the other group. Industrialized countries should not take advantage of less economically developed countries by exploiting resources. The third set of human rights indicates that solidarity among nations and individuals forms a core value of the declaration.

Reference to three generations, or sets of human rights, may actually inhibit understanding of those rights and the concept of indivisibility. With three different sets of rights, an issue can easily arise as to priority of rights. Are political and civil rights more important than economic, social and cultural rights or international solidarity? Can human rights even be logically separated into different sets? Unfortunately, the notion of different sets of human rights continues to exist. A better approach is to avoid reference to different sets, and acknowledge that human rights are equally important.

**Historical Beginnings of Human Rights**

The Universal Declaration of Human Rights did not arise out of a vacuum. Early civilization produced religious codes that established standards of conduct for fairly homogenous groups within limited territorial jurisdictions (National Coordination Committee for UDHR50, 1998). By requiring humans to treat fellow humans with dignity and help provide for each other's needs, many religions are precursors to human rights (p. 1). In varying degrees, Judaism, Christianity, Buddhism, Confucianism and Islam all stress what would now be called human rights. These religions emphasize the necessity of fairness from political authorities and the distribution of economic resources to those in need (Ife, 2001; Laquer & Rubin, 1979; McKinney & Park-Cunningham, 1997; van Wormer, 1996; Wronka, 1998).

In ancient times, philosophers had written about equality and justice. Over two thousand years ago, philosophers, including Plato and Socrates, explored the realm of basic, inalienable rights of man, which in those times literally meant man (Wronka, 1998). Women's rights as human rights came much, much later (Reichert, 1996, 1998). The Greek philosopher Aristotle wrote that an unjust man is a man who is not content to have an equal share with others (Wronka, 1998, p. 43). Since the unjust thing is the unequal thing, it is obvious that there must be a mean between greater and less inequality. If then the unjust is the unequal, the just is the equal. The Romans developed *The Twelve Tables*, which stresses the necessity for a proper trial, the presentation of evidence and proof, and the illegality of bribery in judicial proceedings (Wronka, 1998, p. 46).
In 1215, a cornerstone of human rights came into existence when English nobles, bishops and archbishops forced [the then reigning] King John to end his abuses against his subjects. The subjects drafted a document known as the Magna Carta, which King John signed. The Magna Carta prohibited a sovereign taking of property without due process and detention without a legal judgment by peers—the forerunner of trial by jury. The document also highlighted the importance of family and provided for safety from abusive treatment.

Another concept behind the development of human rights is natural law, which holds that a certain order in nature provides norms for human conduct. St. Thomas Aquinas wrote that natural law was humanity’s “participation” in the comprehensive eternal law (Hall, 1992, p. 581). People could grasp certain self-evident principles of practical reason, which corresponded to the various goods toward which human nature inclined. Natural law was a standard for human laws: unjust laws in principle did not bind in conscience. During the 17th century, European philosophers advocated for what they viewed as the natural rights of the citizens—the idea that people by their nature have certain basic rights that precede the establishment of any government (Hall, 1992, p. 590). Two early modern political philosophers, Thomas Hobbes and John Locke, explored the theme of natural rights. Hobbes and Locke stated that the source of natural law was not a set of naturally ordered ends of human well being and fulfillment, but an innate desire for self-preservation (Hall, 1992, p. 581). Out of this theme, Hobbes and Locke erected a new doctrine known as natural rights. The desire for self-preservation in a state of nature led to the establishment of a social contract, the foundation of civil society. The fundamental duty of government, according to Locke, became the protection of rights to life, liberty and property. This concept of natural rights went beyond theoretical views of man and society and aimed to establish actual rules of conduct. Initially, these natural rights focused on freedom of the press, with subsequent attention to freedom of thought in politics and religion. Abolition of slavery and a more humane treatment of criminals also formed part of the natural rights movement (Rawls, 1993).

Uprisings in the late 18th century against government and royalty in France and the American colonies engendered considerable discussion as to how nations should treat citizens. Until this period, privileged males occupied center stage in discussion about concepts of human rights, with most, if not all the rights being solely for men. However, in 1787, philosopher Condorcet published a treatise on the rights of women, holding that women had the same natural rights as men (Staub-Bernasconi, 1998). During the French Revolution of 1789, women were extremely active in the fight against an old feudal regime. Women led demonstrations that forced the king from his palace at Versailles. Women’s groups in Paris demanded the same political rights as men, as well as change in marriage laws, and improvements in women’s social conditions.

One of the most outspoken advocates for women’s rights during the French Revolution was Olympe de Gouges. Two years after the revolution, she
published a declaration on the rights of women and demanded the same rights for women as men. In 1793, a backlash occurred, and the French government beheaded Olympe de Gouges and banned further political activity by women. The tragic irony in the beheading of de Gouges becomes evident within the context the French Declaration of the Rights of Man and Citizen adopted by the French government in 1789 (Staub-Bernasconi, 1998). That declaration referred only to men and specified numerous negative rights, including freedom from excessive punishment, freedom of thought and religion, and freedom to speak, write and print. Only later would women be specifically recognized as entitled to basic human rights and freedoms.

At the time of the French revolution, the U. S. colonists had recently completed their own uprising against the British. Out of this revolt came various documents expounding on the rights of man, including the Declaration of Independence and later the U.S. Constitution. The Declaration of Independence held certain rights, life, liberty and the pursuit of happiness, as self-evident. A key part of the U.S. Constitution, placed immediately after articles defining the mechanical functioning of the newly formed U.S. government, became known as the Bill of Rights (U.S. Constitution, 1787). The Bill of Rights consists of amendments to the body of the Constitution and specifies certain civil and political rights. For instance, in the first amendment of the Bill of Rights, government shall make no law respecting an establishment of religion or prohibiting the free exercise of religion (U. S. Constitution, 1787, Amend. I). Government may not abridge the freedom of speech, or of the press; or the right of the people peaceably to assemble. The people also have the right to petition the Government for a redress of grievances. Other amendments guarantee the right of the people not to be subjected to unreasonable searches (Amend. IV), and cruel and unusual punishment (Amend. VIII). Nobody has to testify against herself or himself and government may not take “life, liberty, or property, without due process of law” (Amend. V).

The Bill of Rights in the U.S. Constitution took a major step in defining and limiting government action in political and civil matters. However, what the Bill or Rights and the U.S. Constitution omitted were guarantees of economic and social needs. It took another revolution of sorts to focus on this aspect of the human existence.

In the late 18th and early 19th centuries, the age of industrialization began in England, Europe and the United States. In these parts of the world, people left their agricultural based activities to find work in factories, often working long hours in unsanitary conditions. Factory owners frequently exploited their workers, paying them little for their efforts. Children, too, would work at an early age in the factories. Of course, many accepted these circumstances as the normal course of events for that time period. Opposition, though, to exploitation of labor in the industrialized world began to emerge in the middle of the 19th century. Karl Marx and Friedrich Engels produced the Communist
Manifesto in opposition to what they saw as exploitation of the working class by owners of factories and other means of production (Wronka, 1998). The manifesto outlined the class struggle against capitalists and the eventual takeover of the means of production by workers. While many of the predictions of Marx and Engels never came about, the underlying theme of their writings resulted in greater attention to the less economically fortunate of the world.

In the late 19th century, governments in Europe began to support the development of social welfare as social activists recognized the inadequacy of an individual response to broad economic problems, like massive poverty (Wronka, 1998). At this time, social workers began to join together, to share ideas and experience, to develop their practice and to express a collective response to the issues they encountered.

The First World War and its aftermath in the early 20th century led to a greater attention on the interdependence of humankind. A shared desire to condemn warfare and develop institutional frameworks for international cooperation took form. Establishment of the League of Nations and the International Labor Organization and the inception of social welfare organizations, such as the International Conference of Social Welfare, supported this new mood of international, regional and national collaboration. Among social workers, the establishment of intergovernmental organizations, such as the International Committee of Schools of Social Work and International Permanent Secretariat of Social Workers, paralleled this collaboration. During this period, social work organizations began to establish the basis for a social work profession and create social work values for their practice. This international promotion of social work formed a key concept that social work values could transcend borders, a notion that would manifest itself in the drafting of the Universal Declaration a few years later. However, while concepts of human rights underpinned the value base of social work, no formal teaching on human rights issues occurred (Center for Human Rights, 1994).

In spite of recognition about the dangers of war, especially after the immense destruction of the First World War, European countries almost immediately became embroiled again in armed battle. The budding international organizations had limited support and no real enforcement powers. For instance, the League of Nations encountered obstacles from the onset because the United States withdrew its membership (Alexander, 1996). The League became little more than a forum in which European countries could discuss world issues. Enforcement of decisions remained absent.

In 1939, the Second World War began involving even more countries and areas of the world. Even before the end of this war in 1945, many groups devoted attention to notions of human rights (Morsink, 1999; Wronka, 1998). Wartime conferences in London, Moscow, the United States and Yalta by major countries aligned against Germany issued declarations about the failure of the League of Nations. They emphasized the need to develop a "United
Nations" to maintain international peace and security. In 1941, U.S. President Franklin D. Roosevelt enunciated four freedoms: freedom of speech and expression, freedom of worship, freedom from want (i.e., economic security) and freedom from fear (e.g., international peace). Three years later, President Roosevelt asked Congress to explore the means for implementing an Economic Bill of Rights, including the rights to a useful and remunerative job; sufficient income to provide adequate food, clothing and recreation; decent home; medical care; retirement, disability and unemployment security; and good education. All of these concepts contributed to the soon to be Universal Declaration of Human Rights (Morsink, 1999; Wronka, 1998).

Construction of the Universal Declaration of Human Rights might appear to have been primarily a European and United States project. However, this was not the case. Other regions of the world had developed their own laws, principles, religions that, in many ways, had much in common with concepts eventually included in the Universal Declaration. For instance, in China, elements of classical Confucian thought formed a basis for modern human rights doctrines (Ganjian & Gang, 1995, p. 36). In South America, 19th century movements led by Simon Bolivar and others provided later impetus for contributions to human rights principles. In the Soviet Union, the Soviet Constitution of 1936 contained numerous references to civil, political, economic and social rights (Wronka, 1998).

Indigenous peoples, such as the Native Americans, also contributed concepts of freedom, peace and democracy to the development of human rights (Wronka, 1998 p. 70). However, during the 19th century, European countries and, to a lesser extent the United States, began massive colonization of indigenous peoples in Africa and parts of Asia. The degree of political and civil freedom varied according to the colonizers. In Australia and the United States, the new citizens began a massive decimation of indigenous populations, the idea being that these populations were inferior and had little to contribute to the needs of a modern, western country (Alexander, 1996; Brown, 1970; Hughes, 1987). Unfortunately, colonization and expulsion of indigenous peoples did much to silence the voices of these groups.

**Developments after 1945**

The Second World War ended in Europe in May 1945 with the defeat of Germany and in August 1945 with the defeat of Japan. Devastation from the war had become so great that, at its end, individuals and governments from every corner of the globe realized a repeat would probably spell the end of humankind. The search for universal principles of conduct now began in earnest.

Until 1945, the notion of state sovereignty dominated international relations (Economist, 1998). Within its borders, a state controlled its own affairs. A state generally did not interfere in the affairs of another state; states did to
their own nationals as each saw fit. Of course, this respect for non-interference in the affairs of other states did not prevent colonizing and destruction of other peoples who had no defined national boundaries. African, American, Australian and other aborigines generally found themselves on the losing end of better-armed westerners who arrived from European nations to expand their own sovereign reach.

After the end of the Second World War, however, the concept that a state or nation had total control over its own affairs mellowed. Extreme nationalism gave way to a more global consciousness where the international community would not remain silent when egregious abuses occurred within a particular country. The primary issue then became one of defining rights, abuses and other universal principles by which every country would subscribe.

In June 1945, in San Francisco, the United States, Soviet Union, France, Cuba, Chile, Panama and many other countries laid the groundwork for the creation of a United Nations (Morsink, 1999). The United Nations Charter pledges the organization to reaffirm faith in fundamental human rights, and Article I of the Charter cites “promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion” (Economist, 1998, p. 10). As part of this Charter, participants agreed to establish a Commission of Human Rights. Before the creation of this commission in 1946, the term human rights had not been a commonly used expression. While the development of human rights principles had been occurring for centuries, the actual use of the term human rights only found expression in 1945.

A universal declaration of rights ranked high on the agenda of this new organization known as the United Nations. However, many governments were reluctant to accept detailed provisions concerning human rights. The Soviet Union had its Gulags, or labor camps for those who spoke against the government; the United States had its numerous racial problems; the Europeans had their colonial empires (Buergenthal, 1988). All of these circumstances could be viewed as contrary to human rights principles. Consequently, establishing a strong international mechanism for protecting human rights could work against the interests of these major blocs. Certainly, the Soviets did not want human rights inspectors examining their labor camps and the dissidents inhabiting the camps. The United States did not want human rights examiners questioning near apartheid conditions, especially in the South. And European countries had no interest in allowing human rights monitors checking out exploitative activities in their African and Asian colonies.

Fortunately, an impetus for a more detailed and comprehensive set of rights than desired by the major blocs existed in the form of private institutions now commonly known as non-governmental organizations (NGO's) (Farer, 1989, p. 195). According to John Humphrey, first Director of the Division of Human Rights at the United Nations, without the efforts of a few
deeply committed delegates and representatives of 42 private organizations serving as consultants, human rights would have received only a passing reference. With promotion of human rights by the NGO's and dedicated countries, by 1947, the international consensus for human rights became an aggressive one.

The Commission on Human Rights held its first session in early 1947, electing Eleanor Roosevelt as president and Rene Cassin from France as vice-president. The member commission included representatives from Australia, Belgium, Byelorussia Soviet Socialist Republics, Chile, China, Egypt, France, India, Iran, Lebanon, Panama, Philippine Republic, United Kingdom, United States of America, Union of Soviet Socialist Republics, Uruguay and Yugoslavia. The commission drafted an initial document on human rights containing numerous articles on the rights and duties of individuals. The document covered political, social and economic rights, with differing viewpoints on how much influence should be extended to each set of rights. In June 1948, the commission completed the draft declaration, and the entire General Assembly of the United Nations began debating the draft (Morsink, 1999).

At the time the commission submitted its draft declaration on human rights to the General Assembly, the United Nations consisted of fifty-six countries. Most of these countries were located in North and South America, Europe, and the Soviet Union. A few Arabic countries were also members, but Africa and Asia had little representation because of colonization by European countries. Only later, beginning in the late 1950's, did colonized territories begin the path toward independence and membership in the United Nations.

In spite of this limited membership within the United Nations in 1948, a spirited debate surrounded the draft declaration. Many countries agreed to the necessity of enforcement provisions that would ensure compliance with human rights principles. Countries did not want an organization that would be as impotent as the League of Nations. Obtaining agreement that countries should give human rights more than lip service was perhaps the easiest point to discuss. The U. S. contingent focused on political and civil rights, desiring no guarantee to economic and social rights. This viewpoint simply matched common U. S. strains of thought about government and society: Nobody owes anybody a job, unemployment benefits or medical care. Why should governments be responsible for those items? Yet, government should stay out of religion, refrain from censorship, and ensure numerous other safeguards against governmental interference in the liberty of its citizens. On the other hand, the Soviet Union viewed free speech and other political rights, U.S. American style, as anathema to their society. Instead, distribution of economic and social benefits to all citizens was a priority. Other countries, like Saudi Arabia, weighed in with objections to provisions on the right to change religion and equal right to marry, believing this would conflict with marriage laws in most Muslim countries. The Union of South Africa objected to numerous provisions
in the draft document because those provisions could be used to attack its apartheid system of segregating citizens. Chile, often serving as a spokesperson for the Latin American contingent of the commission, believed that economic and social rights had to be assured, thereby making a return to fascism impossible.

The final draft of the document that would become the Universal Declaration of Human Rights bore the unmistakable stamp of the horrific experiences of the recent war. Rene Cassin, the French delegate, stated that "the last war had taken on the character of a crusade for human rights" and that the declaration was most urgently needed as a protest against oppression (Morsink, 1999, p. 37).

On December 10, 1948, the General Assembly of the United Nation adopted the Universal Declaration of Human Rights. The declaration passed unopposed but the entire Soviet bloc, Saudi Arabia and South Africa abstained from voting because of objections to certain provisions within the declaration (Morsink, 1999).

The Universal Declaration of Human Rights was not a legally binding document given the difficulty of enforcing it against powerful countries like the United States and the Soviet Union. Yet, it did set a common precedent for universal human rights. The significance of this step cannot be underestimated. From this point forward, human rights have made astonishing inroads into the vocabularies of social workers, philosophers, educators, political leaders, lawyers, and many other groups.

**Terminology of Human Rights Documents**

After the adoption of the Universal Declaration of Human Rights, numerous instruments have expanded upon particular sections and topics contained within the declaration. For instance, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, aim to make provisions of the declaration enforceable by countries that approved the covenants. However, to understand the significance of these and other documents relating to human rights, familiarity with human rights terminology becomes crucial. Significant terms include declaration, covenant, treaty, platform, ratification and customary international law. For purposes of understanding human rights, knowledge of the finer points of international law is not necessary. A brief introduction suffices for understanding the significance of a particular document and the legal standing of provisions contained in the document.

**Declaration.** In respect to human rights documents, a declaration presents a formal and solemn non-binding statement listing general principles and broad obligations (Center for Human Rights, 1994, p. 14). For instance, the Universal Declaration of Human Rights contains many statements on human rights with the goal of encouraging countries to recognize human
rights. However, the declaration does not impose any specific requirement on a particular country or nation to actually comply with the declaration. The non-binding nature of a declaration may appear detrimental in promoting human rights. After all, words are cheap. However, a declaration does indicate a position on human rights issues. Any country signing a declaration definitely states to other countries that it intends to abide by the declaration and make efforts to put principles contained in the declaration into practice. By signing a declaration and making no effort to comply with the declaration, a country is, at a minimum, showing bad faith and running a risk of losing respect within the international community.

Afghanistan provides a recent example of the loss of respect resulting from a blind eye to human rights principles. Afghanistan belongs to the United Nations and has accepted principles contained in the Universal Declaration of Human Rights. Yet, among other human rights abuses, the Taliban government of that country openly placed restrictions on women that inhibited their education, employment and other benefits. Even after allowing for a culturally specific interpretation of human rights principles, Afghanistan clearly violated many provisions of the universal declaration. A direct consequence of those violations was a lack of international respect for the ruling government of Afghanistan. The vast majority of countries had no diplomatic relations with Afghanistan and entertained little contact with the country. This isolation and failure to at least acknowledge some provisions within the Universal Declaration worked to the detriment of most Afghan citizens. Declarations commonly address human rights issues and allow countries the opportunity to gather and discuss current areas of concern. Countries within the United Nations often schedule conferences on human rights topics with the goal of presenting a declaration on the various topics. These conferences can often be controversial, as conflict frequently arises among participants over particular language within the declaration. For instance, in a recent conference on racism, the United States objected to positions taken concerning Israel and walked out of the conference (Swarns, 2001).

The importance of declarations should not be underestimated, even if countries pay no more than lip service to statements within the declarations. By merely signing on to a specific position concerning human rights issues, a country and its government does indicate intent to follow that position. Individuals and groups can at least point to the declaration in shaping policies that their government should be pursuing.

Covenant, convention and treaty. In contrast to the non-binding nature of a declaration, the United Nations has adopted the use of various instruments that impose specific obligations on those countries signing and ratifying the instruments. Those instruments are known as covenants, conventions and treaties.

Generally, a covenant on human rights principles serves as a promise
between two or more countries that they will enforce provisions of the covenants with specific laws (Campbell Black, 1968). A convention is an international agreement that contains provisions to promote or protect specific human rights or fundamental provisions (Center for Human Rights, 1994, p. 14). Covenants and conventions relating to human rights documents generally require a specified number of countries to agree to the document before the document becomes effective. A treaty is much like a covenant or convention but may not require any specific number of signatures before becoming effective. Other than a declaration, human rights instruments generally are classified as a covenant or convention but would also fall within the definition of treaty.

A key distinction between a covenant, convention or treaty and a declaration is that of obligation. Countries signing a covenant, convention or treaty intend to bind themselves to provisions within the document, whereas countries signing a declaration merely indicate their intent to follow provisions within the declaration. The language of a covenant, convention or treaty generally imposes obligations upon a State or country to ensure and undertake certain human rights, whereas the language of a declaration focuses more on the need to recognize particular human rights.

**Accession and ratification.** When a country signs a human rights covenant or convention, that country must either accede to or ratify the covenant or convention before provisions within the document become a legally binding instrument in that country. The terms accession and ratification relate to the means by which a country expresses consent to be bound by the document, with technical distinctions between those terms best left to international lawyers.

In the United States, a treaty, including a covenant or convention, becomes legally binding upon its ratification, as opposed to accession. Under the U.S. Constitution, the President has the power, with the advice and consent of the Senate to make treaties, provided two-thirds of the Senate present concur with the treaty (U.S. Constitution, 1787, Article II). As noted above, a covenant or convention on human rights would be viewed as a treaty. Therefore, in the United States, before any human rights covenant or convention can become legally binding, a two-thirds majority of the U.S. Senate must vote for the covenant or convention. This required approval by the Senate can result in a President signing a human rights covenant or convention for consideration by the Senate, which might then delay approval of, or even refuse to approve, the document. For instance, in 1978, President Carter submitted the human rights document known as the International Covenant on Civil and Political Rights to the Senate. Yet, the Senate did not ratify the covenant until 1992 (Newman, Weisbrodt, Frank, & David, 1996). In some cases, a President may sign a treaty, but the Senate may never ratify the treaty. At the time President Carter submitted the covenant on civil and political rights to
the Senate, he also submitted the International Covenant on Economic, Social and Cultural Rights. However, the Senate has never ratified that covenant nor does ratification of that instrument by the Senate appear likely at this time.

Another point to note concerning a state’s acceptance of a covenant or convention involves the practice of some countries to place “reservations” on particular provisions within the document. A reservation expresses the intent of a state to modify or use a different standard from a particular provision of a covenant or convention. Under commonly accepted laws regarding treaties, a state may place a reservation on a treaty unless the treaty specifically prohibits or limits reservations (Vienna Convention, 1969, Article 19). In cases which the treaty does not prohibit or limit reservations, a State may place a reservation on the treaty provided the reservation is not incompatible with the object and purpose of the treaty.

Customary international law. In addition to a country acceding to or ratifying a covenant or convention on human rights, another process exists by which a country can be legally bound to follow human rights principles. This process is known as customary international law and essentially means that a particular rule has become so matter-of-fact all over the world that all countries should enforce the rule. Certain human rights, particularly some of those listed in the Universal Declaration, probably qualify as customary international law and, therefore could be enforceable in all countries. In the United States, a federal court held that a foreign national could sue in a U.S. court for civil damages allegedly caused from torture perpetrated by a Paraguayan national (Filartiga v. Pena-Irala, 1980). The court considered the human right to be free from torture as binding on all countries:

For although there is no universal agreement as to the precise extent of the “human rights and fundamental freedoms” guaranteed to all by the [United Nations] Charter, there is at present no dissent from the view that the guaranties include, at a bare minimum, the right to be free from torture. This prohibition has become part of customary international law, as evidenced and defined by the Universal Declaration of Human Rights. (p. 882)

The court did not indicate that all human rights contained in the Universal Declaration met the standard of customary international law. Rather, courts would need to examine the particular right at issue and then determine whether that right qualified as part of customary international law.

The intricacies of international law obviously exceed the scope of this article, however, human rights workers should understand the concept of customary international law and it applications to human rights principles. If virtually every country accepts a particular human right as being fundamental to the human existence, then that right could become part of customary inter-
national law and enforceable. From a human rights perspective, going to court to enforce a human right may appear distasteful. However, the point here is to recognize the importance of human rights and the reasons why those rights are basic to the human condition.

Conclusion
The Universal Declaration of Human Rights clearly set a milestone in the development of global humanity and common ground for existence. The declaration culminated from input by many different cultures and societies. This multiplicity of voices in drafting human rights instruments has continued after the adoption of the document.

Even though the Universal Declaration ranks as nothing short of miraculous, the declaration represents only an initial building block in the incorporation of human rights into everyday life. Subsequent documents relating to human rights continually appear, with high hopes of obtaining necessary approval from governmental and non-governmental forces.

Clearly the process of drafting and obtaining acceptance of a human rights document involves numerous factors. The initial wording of the document contains its own set of challenges, with some countries or groups wanting a particular wording to satisfy their own political or social agenda. After the inevitable tug of war over language of a covenant or convention comes the vote on the document. Will enough countries in the General Assembly of the United Nations vote to adopt the instrument? If so, then comes the subsequent process of putting the instrument into effect, which requires a specific number of countries accepting the instrument as the law of their lands. It is important to note that acceptance of the document as law does not prevent a country from placing reservations on the treaty. If a country wants to generally accept the treaty but does not like a particular provision, then that country may reserve enforcement of that provision. Finally, after ratification of the treaty, a country has to decide whether the treaty is self-implementing or requires specific legislation to implement the terms of the treaty. The United States has usually viewed U. N. treaties as requiring specific legislation to implement the treaty. In other words, an individual who might be affected by the treaty could not simply refer to the treaty in a court of law but would need to refer to specific legislation indicating the treaty applies. If that legislation does not exist, the individual could not rely on the treaty for legal support.

With all the ins and outs relating to human rights documents, a person might wonder how any document ever sees the light of day. Yet, substantial efforts in drafting new documents and revising existing documents continue as a means of improving political, social, economic and cultural situations around the world. This dedication by many individuals, groups and governments reveals an importance of basic principles to varying professions, directly and indirectly, related to human rights advocacy.
References


The Universal Declaration of Human Rights -- Only a Foundation


Latino Immigrants in the

Spring 2002