

THE LEGACY OF THE UNIVERSAL DECLARATION OF HUMAN RIGHTS

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The Universal Declaration of Human Rights embodies three essential features: (1) it articulated shared, universal values; (2) it identified and strengthened the significance of the individual as a subject of international law, and (3) it declared and emphasized the responsibilities of states towards individuals. Furthermore, it set the agenda for the future towards further standard-setting.

The following fifty years of development of an international rights protection regime placed the emphasis on a two-part strategy: the proliferation and elaboration of standards, and the universal ratification of those standards.

The success of what might be called, the Universal Declaration's "platform of action", has been considerable. In particular: six major human rights treaties have been adopted; no state is left outside the system, that is, has failed to ratify any of these treaties¹; and the cultural relativism argument, (the argument that there are no shared, universal human rights), has largely been kept at bay².

At the same time, the Universal Declaration's platform of action, widespread, universal ratification of human rights treaties, has not been achieved without a cost. The costs have been in particular: serious reservations attached to many ratifications, and gross levels of non-compliance with the treaties' terms.

The shortfalls are so significant, that the system relies on non-compliance in order to carry on. As the Independent Expert reported to the UN Human Rights Commission in March 1998: "the present reporting system function[s].. only because of the large-scale delinquency of States which either d[o]...not report at all, or report...long after the due date. If many were to report, significant existing backlogs would be exacerbated,

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1. Although there are approximately 30 of the 185 UN member states which have ratified only one or two of the treaties.

2. While the 1993 Vienna Declaration on Human Rights, and the subsequent products of the Conference on Population and Development in Cairo, the World Summit for Social Development in Copenhagen, and the Beijing World Conference on Women, introduced and elaborated the role of 'national particularities' in defining human rights standards in general, the treaty provisions still stand.

and major reform would be needed even more urgently."³ Specifically, as of August 1998 there were 1100 overdue reports. Expunging the current backlog IF those reports were to be submitted, would take between 3.5 and 7.5 years. With respect to individual communications, the secretariat reported to the meeting of Chairpersons of the Treaty Bodies this past September, that the Human Rights Committee has a backlog of over 1,000 pieces of unattended correspondence, 10% of which will reveal, on their estimate, actual cases. Of the 92 states parties to the Optional Protocol of the Civil and Political Covenant, 36 states or 40% have never been subject to a single complaint. With respect to reservations, states such as the United States, the U.K. and France, have vigorously disputed the treaty bodies' role in pronouncing upon the compatibility of reservations with the object and purpose of the treaties, despite the fact that States parties refuse to take up the subject themselves. In other words, almost universal ratification was achieved because the costs associated with the accompanying obligations were so small.

Hence, the next 50 years of the international protection of human rights requires a new platform of action, founded still on those three early principles set by the Universal Declaration, universality, individual rights, state responsibility, but with a newly articulated agenda. The move must be towards implementation or enforcement. But what does that mean? Where are we headed? There are some clearly visible trends which provide two general answers.

Firstly, there is, and will continue to be, growing emphasis on individual empowerment. This means increasing rights to complain to an international remedial body, and ultimately likely amalgamation of such complaint processes into an international court of human rights, complete with hearings, legal aid and binding decision-making authority.

Evidence of this trend can be found in a number of developments:

- (A) the growth and elaboration of further optional complaint protocols to the human rights treaties. The Commission of the Status of Women is currently drafting an optional complaints procedure to the Women's Discrimination Convention. The Commission on Human Rights has before it a draft optional complaints protocol to the Economic Covenant. A working group of the Human Rights Commission is considering a draft optional protocol to the Torture Convention concerning on-site visits or monitoring.
- (B) increasing ratification and usage of existing optional protocol complaint schemes. 65% of states parties to the Civil and Political Covenant, for example, now accept the complaints procedure.

3. U.N. Commission on Human Rights, 1998, paras. 48-52.

- (C) elaboration of more sophisticated regional individual complaint processes. The European Court of Human Rights has now been substantially reformed into a standing tribunal as of November 1st of this year. A protocol establishing an African Court on Human and Peoples' Rights was adopted by the O.A.U. earlier this year and has 30 signatures to date, although not yet in force.⁴
- (D) the increase of international criminal judicial processes, specifically, the two ad-hoc international criminal tribunals and the International Criminal Court, and
- (E) expansion of international fora accepting individual complaints, such as working groups on specific rights. The Working Group on Arbitrary Detention in 1997 communicated 26 cases to 20 governments, and the Working Group on Enforced and Involuntary Disappearances in 1997 received 180 new cases. This was in addition to the total number of cases being kept under active consideration by the Working Group as of the end of 1997, 45,000 cases from 63 countries.

Secondly, the importance of state-written self-pronouncements on their human rights records⁵, seems destined to be overshadowed by the increasing emphasis on internationally-based, independent, investigatory mechanisms.

Evidence of this trend can be found in the following developments:

- (A) increasing numbers of international investigatory, or monitoring bodies or functions, such as country-specific rapporteurs, and thematic rapporteurs seeking country-specific information. At the 1998 Human Rights Commission there were over 30 rapporteurs and special representatives, a little less than half on thematic subjects, and a few more on country-specific situations.
- (B) visits by some treaty bodies to states parties and requests by the Chairpersons of the treaty bodies to hold regional meetings. This past September the Chairpersons of the Treaty Bodies concluded that it would be desirable to meet occasionally outside New York and Geneva, in UN regional offices. Additionally, within the past year the Economic Committee sent representatives to the Dominican Republic, and
- (C) increasing solicitation of information from within the UN of human rights information from outside the UN. The Child Committee, for example, works closely to solicit information from the national level with the NGO Group for the Convention. CEDAW also increased its solicitation of information from NGOs by inviting them for the first time in 1998 to provide information during pre-sessional working groups.

4. Fifteen ratifications are needed.

5. In the form of state reports to treaty bodies.

If individual empowerment, and independent, international monitoring and analysis, is the two-part strategy for the next fifty years, what are the requirements of such a system? What would it take to succeed? The answer appears to include the following four conditions: *Firstly, objectivity of the international body.* It will be crucial that specific states are not the continual objects of investigation, while others in similar or worse circumstances are ignored. There would need to be clearly articulated and transparent criteria for selecting states for investigation, or alternatively to routinely monitor all states without exception. *Secondly, genuine shared values or a universal normative structure.* The willingness of states to implement negative decisions will depend to a considerable extent on their internalization of the result, that is, fostering a belief that implementation is in their own best interest, or compatible with their self-image and identity. *Thirdly, democratic government and participation.* Individual empowerment at the international level would threaten non-democratic societies. *Fourthly,* a willingness of an international institution to bring some form of *negative consequences* to bear on those states which do not comply. No stick, no compliance - at least not in our lifetimes, although the nature of those consequences would need to be tailored to the circumstances.

The question then is, what is necessary for achieving those four conditions? In the past the guiding principle was to achieve universal ratification and then push compliance. There seems to have been little attention paid, however, on how to shift gears, or to define the methodology for increasing performance rates. Answers have tended to focus on pleas for more resources, more meeting time, more staff, more publications, *and* better information flow, improved web sites, more media coverage. But greater resources will not be forthcoming from states who are reluctant to see the system work, be they either human rights violators or those which perceive it to be significantly biased (for example, anti-Western). And information flow to victims in non-democratic states will continue to be impeded.

Enhanced implementation therefore requires a more complex, multi-pronged approach, which might include the following elements:

- (A) Exposing and confronting the absence of objectivity or neutrality. This means, for example, requiring transparency, and the uniform application of grounds for requesting special reports, or similar terms and conditions in the appointment of country-specific investigators.
- (B) Debunking rhetorical distortions of human rights principles and precepts. For example, unmasking "Co-operation" when used to mean - not the desirability of communication and dialogue, but the illegitimacy of identifying specific violators, or "non-selectivity" when used to mean - not objectivity, but again non-selection of violators.
- (C) Nurturing shared values or universality, and refuting relativism unashamedly. Claims that culture, values, morality are relative can be contradicted by the qualifications from which relativists shrink,

concentration camps and gas chambers and genocide and slavery and apartheid and torture and rape...

- (D) Pressing the information flow through UN officers already in the field with access to the relevant authorities and communities, such as those in UNICEF, UNDP, or UNHCR. UNICEF and to some extent UNDP, are already seeking to press their goals through treaty obligations and implementation of the Child and Women's Discrimination Convention, and the Economic Covenant respectively.
- (E) Increasing the positive results and benefits of democratization.
- (F) Targeting resource increases with end goals clearly in mind - in other words, those recipients able to support the strategy of enforcement, such as, - information catalysts, individual communication systems, field missions.
- (G) Taking seriously, developing and applying the rod, at the very least, in the context of economic benefits or incentives for improving compliance with human rights standards.

The next fifty years of the international protection of human rights can move forward, therefore, if it begins with the principles of the Declaration and then redefines the Platform of Action accompanying those principles to meet the challenges of our age, namely, objective and verifiable facts and fact-finding, together with individual empowerment.