

THE STATUS OF THE UNIVERSAL DECLARATION OF HUMAN RIGHTS IN NATIONAL AND INTERNATIONAL LAW

*Hurst Hannum**

CONTENTS

	<i>Page</i>
I. INTRODUCTION	289
II. THE UNIVERSAL DECLARATION IN NATIONAL LAW	292
A. <i>Reference to the Universal Declaration in National Courts</i>	292
1. <i>The Universal Declaration As a Rule of Decision</i>	296
2. <i>The Universal Declaration As an Aid to Constitutional or Statutory Interpretation</i>	298
3. <i>Judicial Rejection of the Universal Declaration As Relevant to Interpretations of Domestic Law</i>	311
B. <i>Influence of the Universal Declaration on Legislative and Administrative Acts</i>	312
III. STATUS OF THE UNIVERSAL DECLARATION IN CUSTOMARY INTERNATIONAL LAW	317
A. <i>Views of the International Court of Justice</i>	335
B. <i>The Content of Customary Law Evidenced in the Declaration</i>	340

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C. The Universal Declaration of Human Rights as Reflecting General Principles of International Law 351

IV. CONCLUSION 352

ANNEX 1 355

CONSTITUTIONAL PROVISIONS REFERRING TO THE STATUS OF INTERNATIONAL LAW, INCLUDING REFERENCES TO THE UNIVERSAL DECLARATION OF HUMAN RIGHTS . . . 355

ANNEX 2 377

NATIONAL CASES CITING THE UNIVERSAL DECLARATION OF HUMAN RIGHTS . . 377

ANNEX 3 392

INTERNATIONAL INSTRUMENTS REFERRING TO THE UNIVERSAL DECLARATION OF HUMAN RIGHTS 392

I. INTRODUCTION

The Universal Declaration of Human Rights¹ 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. 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. For example, it has been observed that not a single state party to the African Charter on Human and Peoples' Rights permits an individual to rely directly upon the Charter in domestic judicial proceedings.² Further, despite the fact that many states are now parties to the major human rights treaties, many are not. As of June 30, 1994, neither the Covenant on Civil and Political Rights nor the Covenant on Economic, Social and Cultural Rights had been ratified by countries such as China, Cuba, Ghana, Indonesia, Kuwait, Liberia, Malaysia, Myanmar, Pakistan, Saudi Arabia, Singapore, South Africa, Thailand, and Turkey; Haiti,

¹ Universal Declaration of Human Rights, G.A. Res. 217, U.N. GAOR, 3d Sess., U.N. Doc. A/810 (1948).

² See T. ORLIN, HUMAN RIGHTS DEVELOPMENTS IN AFRICA, THE BANJUL CONFERENCE OF THE AFRICAN ASSOCIATION OF INTERNATIONAL LAW 12 (1990).

Mozambique and the United States have ratified only the Covenant on Civil and Political Rights, while Greece, Guinea-Bissau, Honduras, Ireland, Solomon Islands and Uganda are parties only to the Covenant on Economic, Social and Cultural Rights.³

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 by the U.N. General Assembly.⁴ 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 more than 100 countries which participated in the 1993 U.N. 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."⁵ The normative provisions of the Declaration are specifically cited in the Vienna

³ *Human Rights, International Instruments: Chart of Ratifications as at 30 June 1994*, Secretariat—Centre for Human Rights, U.N. Doc. ST/HR/4/Rev.10 (1994).

⁴ See *infra* Annex 3 (listing 48 such instruments).

⁵ *Vienna Declaration and Programme of Action*, World Conference on Human Rights, 22d plen. mtg. (June 25, 1993), pmb., ¶¶ 3, 8, U.N. Doc. A/CONF.157/24 (Part 1) at 20-46 (1993), reprinted in 32 I.L.M. 1661 (1993) [hereinafter *Vienna Declaration*]. 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." *Id.* ¶¶ 4, 5. Numerous articles have addressed the issue of "cultural relativity" in human rights; compare Bilahara Kausikan, *Asia's Different Standard*, 92 FOREIGN POL'Y 24 (1993) with Aryeh Neier, *Asia's Unacceptable Standard*, 92 FOREIGN POL'Y 42 (1993).

Declaration in connection with the rights to seek and enjoy asylum,⁶ the right to education,⁷ the prohibition against torture,⁸ and the activities of nongovernmental organizations.⁹ In early 1994, the U.N. General Assembly created the position of High Commissioner for Human Rights, “[e]mphasizing the need to observe the Universal Declaration of Human Rights”¹⁰ 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.”¹¹

In light of this reaffirmation of the importance of the Universal Declaration of Human Rights, the present article on the Declaration’s status in national and international law seems particularly timely. The article first surveys references to the Universal Declaration in national courts, where it has been variously utilized as a rule of decision or as a significant interpretative guide to the meaning of domestic constitutional or statutory provisions. It next considers the place of the Declaration as part of customary international law, drawing upon the statements of governments, legal scholars, the International Court of Justice, and other international bodies. This section also discusses more specifically those provisions of the Declaration which seem to be widely accepted as constituting customary norms, and it briefly considers the Declaration as a general principle of international law. A short conclusion follows.

⁶ *Vienna Declaration*, *supra* note 5, at ¶ 8 (the Conference “stresses the importance” of the Declaration).

⁷ *Id.*, ¶ 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.”).

⁸ *Id.*, ¶ 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 . . .”).

⁹ *Id.*, ¶¶ 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.”).

¹⁰ G.A. Res. 48/141, U.N. GAOR, 48th Sess., 85th plen. mtg., pmbll., at 1, U.N. Doc. A/Res/48/141 (1994).

¹¹ *Id.*, ¶ 3(a).

II. THE UNIVERSAL DECLARATION IN NATIONAL LAW

The international community, led by the United Nations, has accomplished a great deal in developing minimum, universally applicable human rights standards. Numerous international mechanisms exist to assist in the implementation and enforcement of these standards,¹² although the persistence of human rights violations around the world attests to the difficulty of matching the reality to the ideal. But no matter how effective international procedures may become, it is *national* governments that are ultimately responsible for guaranteeing human rights within their territory. The relevance of the Declaration to national law and practice thus must be the starting point for any analysis of the Declaration's impact.

A. Reference to the Universal Declaration in National Courts

The mere fact that a state has accepted certain international obligations in the field of human rights does not automatically imply that those obligations have binding domestic effect. Most states adhere to a dualist conception of the relationship between international and domestic law, and non-self-executing treaties may enjoy no greater status as domestic law than does the Universal Declaration.¹³ The United Kingdom is no doubt the most influential jurisdiction to adopt this approach, and British courts have consistently held that ratified treaties, such as the European Convention on Human Rights, do *not* form part of the domestic law of the U.K.¹⁴ Indeed,

¹² See generally GUIDE TO INTERNATIONAL HUMAN RIGHTS PRACTICE (Hurst Hannum ed., 2d ed. 1992).

¹³ A useful brief survey of state practice in determining the relationship between international and national law is ERICA-IRENE A. DAES, STATUS OF THE INDIVIDUAL AND CONTEMPORARY INTERNATIONAL LAW: PROMOTION, PROTECTION AND RESTORATION OF HUMAN RIGHTS AT NATIONAL, REGIONAL AND INTERNATIONAL LEVELS 1-14 (New York: United Nations, 1992).

¹⁴ This is a fundamental principle of British law. See, e.g., *Chundawadra v. Immigration Appeal Tribunal*, 1988 Imm. AR 121 (C.A. 1987), and citations therein; statement of the Under-Secretary of State for the Home Office, 42 PARL. DEB., H.C. (6th ser.) 297-8w (1983). A recent decision by the Court of Appeal does cite both the European Convention and the Covenant on Civil and Political Rights extensively in considering the scope of freedom of expression. Although noting that "Article 10 [of the European Convention] has not been incorporated into English domestic law," the court goes on to state that the article may be used "for the purpose of the resolution of an ambiguity in English primary or subordinate legislation . . . when considering the principles upon which the Court should act in exercising

most references to the Universal Declaration in British judicial opinions simply cite—and then reject—arguments in pleadings that the Declaration is a source of law.¹⁵ The new governments in the Russian Federation and Ukraine have even granted their constitutional courts the authority to declare treaties to be unconstitutional, thus underscoring the supremacy of national law over at least conventional international law.¹⁶ Of course, non-ratification of major international human rights treaties by many countries, as well as the absence of any regional human rights instrument in Asia and the Pacific, makes reliance on conventional obligations problematic in many instances.

In some systems, general or customary international law may be more easily implemented in national law than non-self-executing treaties. Whether the Universal Declaration is considered to be customary law itself or only evidence of custom, its contribution to the content of those obligations is evident. Under article 9 of the Austrian constitution, for example, “generally accepted principles of international law” are part of municipal law, although this provision does not extend to treaty law.¹⁷

Article 25 of the German Basic Law provides: “The general rules of public international law shall be an integral part of federal law. They shall take precedence over the laws and shall directly create rights and duties for the inhabitants of the federal territory.” The Constitution of the Netherlands includes a similar provision in article 93, with an additional reference to “resolutions of international institutions which may be binding on all persons

a discretion, e.g. whether or not to grant an interlocutory injunction . . . [or] when the common law . . . is uncertain.” *Derbyshire County Council v. Times Newspapers Ltd.*, 1991 slip. op. at 19-20. The opinion does not, however, mention the Universal Declaration of Human Rights.

¹⁵ See, e.g., *Alexander v. Wallington Gen. Comm’rs*, 1993 S.T.C. 588 (C.A. 1993) (“I need not take up time going through those grounds [alleging violations of the Universal Declaration of Human Rights] individually, since there is nothing in any of them.”); *R. v. London Borough of Barnet ex parte Islam and Quraishi*, 1989 Q.B. 2181 (1991); *R. v. Immigration Appeal Tribunal ex parte Minta*, 1990 Q.B. 1248 (1991); *R. v. Secretary of State for the Home Dept. ex parte Ruddock*, [1987] All E.R. 518 (Q.B. 1986); *Wheeler v. Leicester City Council*, [1985] 1 App. Cas. 1054, (C.A. 1985).

¹⁶ See Igor Lukashuk, *The Russian Constitutional Court and International Law*, 2 INT’L AFF. 63 (Moscow 1993).

¹⁷ It should be noted that a very early case, in part relying on the fact that Austria had not yet been accepted as a member of the United Nations, refused to recognize that the Universal Declaration of Human Rights had been incorporated into national law. Judgment of Oct. 5, 1950, VfGH (Austrian Const. Ct.), Z1.B. 106/50.

by virtue of their contents after they have been published.”

However, a 1957 decision of the German Federal Administrative Court, which deemed the Universal Declaration to have “programmatic importance,” nevertheless held that its provisions “are not general rules of international law and do not therefore, according to art. 25 of the Basic Law, form part of Federal law.”¹⁸ More recent German decisions acknowledge the formative impact of the Declaration on the crystallization of customary rules,¹⁹ and courts have occasionally referred to the Declaration in considering alleged violations of rights.²⁰

An interesting analytical framework developed by Martin Scheinin distinguishes among *rules*, which he defines as legal absolutes which must be applied in an “either-or” fashion if they conflict; *principles*, which are still legal norms but are relative and may be weighed in a manner which will optimize the application of each principle; and *standards*, which are relevant considerations outside the formal legal framework, i.e., which are “‘taken into account’ in legal decision-making but . . . are not ‘applied’ as legal norms.”²¹

Most national courts appear to be reluctant to utilize international norms as rules of decision when those norms are inconsistent with national executive or legislative action. One recent analysis identified three primary ways through which courts defer to governments rather than applying international norms:

First, courts tend to interpret narrowly those articles of their national constitutions that import international law into the local systems, thereby reducing their own opportunities to interfere with governmental policies in the light of international law. Second, national courts tend to interpret interna-

¹⁸ Judgment of June 29, 1957, BVerwG (Highest Admin. Ct.), 5 BVerwGE 153. *See also* 3 BVerwGE 171 (1956), 52 BVerwGE 313 (1977).

¹⁹ *Cf.* Judgment of Sept. 27, 1988, BVerwG (Highest Admin. Ct.), BVerwGE 1 C 20.88, *reprinted in* 3 INFORMATIONSBRIEF FÜR AUSLÄNDERRECHT 91 (1989).

²⁰ *See, e.g.*, Judgment of May 4, 1971, BVerfG (Fed. Const. Ct.), 31 BVerfGE 58, art. 16, *reprinted in* 72 I.L.R. 295 (Basic Right to Marry Case); Judgment of April 22, 1968, (Admin. Ct., Frankfurt), 1968 DVBl 472, art. 15, *reprinted in* 60 I.L.R. 207 (Iranian Naturalization Case); Judgment of July 12, 1955, BGH (Fed. Sup. Ct.), 8 NJW 1365, *reprinted in* 22 I.L.R. 524 (Extradition of Greek National (Germany) Case).

²¹ *See* MARTIN SCHEININ, IHMISOIKEUDET SUOMEN OIKEUDESSA [HUMAN RIGHTS IN FINNISH LAW] 353-55 (Jakaja: Akateem Inen Kirjakauppa, 1991) (English summary).

tional rules so as not to upset their governments' interests, sometimes actually seeking guidance from the executive for interpreting treaties. Third, courts use a variety of 'avoidance doctrines', either doctrines that were specifically devised for such matters, like the act of state doctrine, or general doctrines like standing and justiciability, in ways that give their own governments, as well as other governments, an effective shield against judicial review under international law.²²

The Universal Declaration thus may be utilized by a national court in different ways: It may provide 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 Austria and Tanzania, for example. The Declaration may be utilized to interpret or inform conventional or domestic law which deals with human rights, as is the case in, e.g., Belgium, the Netherlands, India, Sri Lanka, and the United States.²³ The Declaration may be deemed to be evidence of governmental policy which the court must (or may) respect; in many countries, for example, courts are obliged to interpret domestic statutes to be consistent with international obligations or principles of foreign policy whenever possible.²⁴ Finally, of course, courts may explicitly or implicitly reject the relevance of the Declaration to domestic law; such opinions

²² Eyal Benvenisti, *Judicial Misgivings Regarding the Application of International Law: An Analysis of Attitudes of National Courts*, 4 EUR. J. INT'L L. 159, 161 (1993).

²³ See, e.g., *Filartiga v. Peña-Irala*, 630 F.2d 876 (2d Cir. 1980); *W.M.K. Silva v. Piyasena Senaratne*, S.C. App. No. 7 of 1988 (Sri Lanka); Gordon Christenson, *Using Human Rights Law to Inform Due Process and Equal Protection Analyses*, 52 U. CIN. L. REV. 3 (1983).

²⁴ See, e.g., *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 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*, 1980 A.I.R. (S.C.) 470, 473 (India); *Jeremy McBride & L. Neville Brown, The United Kingdom, the European Community and the European Convention on Human Rights*, 1981 Y.B. EUR. L. 167, 177.

frequently cite the purely political or non-self-executing nature of the Declaration or the supremacy of national law.

1. *The Universal Declaration As a Rule of Decision*

Few national courts are willing to overturn inconsistent domestic law based on rights found in an international source such as the Universal Declaration of Human Rights. The Declaration is nonetheless frequently cited in support of judicial decisions which uphold a particular right guaranteed under domestic constitutions or statutes. Thus, even in jurisdictions in which domestic law is subordinate to customary international law, instances in which the latter is utilized explicitly to overrule the former are rare.

Under article 10 of the Italian Constitution, domestic law is to conform to generally recognized principles of international law. Italian courts have taken a relatively broad view of this mandate in the field of human rights, holding that the Universal Declaration "is more than a mere declaration of intent from the point of view of Italian municipal law. On the contrary, it is a general principle of law which must be held to have become part of our law not only by virtue of Article 10 of the Constitution . . . but also by virtue of the express, though also indirect, recognition accorded to it . . . [in the law which incorporated the European Convention on Human Rights into domestic law], a convention which in turn refers to the 1948 United Nations Declaration in its preamble."²⁵

As noted above, article 9 of the Austrian Constitution provides that generally accepted principles of international law are part of municipal law. One assumes that this would mean that the Declaration could be invoked as a binding norm in national courts, although an early decision by the Constitutional Court (before Austria became a member of the United Nations) held that the Declaration "has not yet been incorporated in the national law of Austria."²⁶ There have been no subsequent relevant

²⁵ Judgment of Feb. 1, 1962 (Ministry of Home Affairs v. Kemali), Cass. [Ct. of Last App.], *Foro It.* LXXXVII (1962), Part I, at 190, (1962), *reprinted in* 40 *I.L.R.* 191, 195; *accord.*, Judgment of July 27, 1959 (Fallimento Ditta Maggi v. Ministry of Fin.), Trib. [Ct. of First Instance], *Foro It.* LXXXV (1960), I, col. 505, *reprinted in* 28 *I.L.R.* 607, 609 (both the Declaration and the European Convention "have been made applicable in Italy by Italian municipal legislation").

²⁶ VfGH (sole ct. for const. matters), 1950 VfSlg 2030, *reprinted in* 1950 *Y.B. OF HUM. RTS.* 28.

decisions, and Austrian courts tend to refer to the European Convention on Human Rights (which enjoys constitutional status) rather than to the Universal Declaration if a question of compatibility with international human rights norms arises.²⁷

The High Court of Tanzania recently referred to article 7 of the Universal Declaration, "which is part of our Constitution," in overturning as unconstitutional a norm of Tanzanian customary law which discriminated against women.²⁸ In Chile, the Declaration, "as a declaration of Customary International Law, has validity in the Chilean legal order based on its automatic incorporation into that legal order,"²⁹ and it has been cited by Chilean courts in several instances.³⁰

Article 34 of the Lithuanian Law on the Legal Status of Foreigners states that the rights and freedoms in the law "may be restricted only in accordance with the grounds specified in the Universal Declaration of Human Rights" and the two Covenants.³¹

With respect to Canada, one knowledgeable scholar has recently concluded that, "[i]n general, Canadian case law suggests that the adoption theory governs the relationship between municipal law and customary international law [and that the latter therefore prevails over inconsistent domestic law]. There is, however, no clear statement to this effect from the Supreme Court."³² Another observer, however, has found no judicial decision since the adoption in 1982 of the Canadian Charter of Rights and Freedoms which has held that Canada's obligations under international human rights law have been incorporated into domestic law and asserts that, in any event, customary

²⁷ The status of treaties in Austria depends on action of the legislature, which determines 1) whether the treaty is self-executing or must be first "transformed" into domestic law, and 2) whether a "political" or "law-amending" treaty (under article 50 of the Constitution) is to be given constitutional or only ordinary statutory status.

²⁸ *Ephrahim v. Pastory & Kaizilege*, reprinted in 87 I.L.R. 106, 110 (High Ct. 1990) (Tanz.).

²⁹ Letter from Ambassador Roberto Garretón Merino, Human Rights Advisor, Ministry of External Relations, to the author, Oct. 14, 1993, at 1.

³⁰ *Id.* at 2, citing LAURITZEN CON FISCO, REVISTA DE DERECHO Y JURISPRUDENCIA, v. L II, 2d part, 1st sec., at 478 (1955); CAMPORA, REVISTA DE DERECHO DE CONCEPCIÓN, no. 102, at 755, 796, 797 (1957).

³¹ Quoted in PAP NEWS WIRE, Sept. 20, 1991.

³² ANNE F. BAYEFSKY, INTERNATIONAL HUMAN RIGHTS LAW, USE IN CANADIAN CHARTER OF RIGHTS AND FREEDOMS LITIGATION 5 (Toronto: Butterworths, 1992).

law would not prevail over a conflicting statute or constitutional provision or "well-established rules of the common law."³³

2. The Universal Declaration As an Aid to Constitutional or Statutory Interpretation

As noted above, international law, whether conventional or customary, can have a number of different effects in domestic law, depending on the domestic legal system. A strictly dualist system would hold international law to be largely irrelevant to domestic law, at least insofar as international norms would have no impact on the legality and enforcement of domestic law. Purely monist systems would treat international and domestic law as equivalent sources of rights and obligations, with conflicts resolved either by recourse to a hierarchical structure in which international, constitutional, and statutory norms are ranked, or a temporal one, where the most recent law prevails.

Many systems distinguish between the impact of international conventional law and international customary law, although the relative weight of each varies. In common law jurisdictions, for example, treaty law has no domestic effect unless the treaty is self-executing or has been incorporated into domestic law; in theory, at least, customary international law may automatically become part of domestic common law, although it is not always clear which norm will prevail in the event of conflict. Many civil law systems adopt the opposite approach, in which properly ratified treaties may be incorporated into domestic law, but international custom cannot be invoked to trump a domestic constitutional or statutory provision.

Most courts do not clearly articulate the influence of international norms, such as those found in the Universal Declaration, on their decisions. Even where one finds explicit statements rejecting the Declaration as a source of binding law, human rights norms nevertheless may influence a court's interpretation of domestic norms. The following survey of judicial opinions which refer to the Universal Declaration of Human Rights (as opposed to international law in general or treaty law) represents the range of often unclear judicial treatment of the Declaration in national courts.

The Universal Declaration (and the Covenants) clearly influenced the drafters of the Canadian Charter of Rights and Freedoms, and the Declaration

³³ WILLIAM A. SCHABAS, *INTERNATIONAL HUMAN RIGHTS LAW AND THE CANADIAN CHARTER 17, 22* (Toronto: Carswell, 1991).

has been cited numerous times to interpret Canadian law.³⁴ The Canadian Supreme Court has stated:

Canada's international human rights obligations should inform not only the interpretation of the content of the rights guaranteed by the Charter but also the interpretation of what can constitute pressing and substantial s.1 objectives which may justify restrictions upon those rights. Furthermore, . . . the fact that a value has the status of an international human right, either in customary international law or under a treaty to which Canada is a State Party, should generally be indicative of a high degree of importance attached to that objective.³⁵

However, "there are no examples of cases in which a customary human right actually served the function which the court, in theory, has permitted."³⁶

Several Indian cases have specifically referred to the Universal Declaration, which was adopted the year before the Indian constitution and is widely held to have provided the model for the latter's human rights guarantees. "The [Universal] Declaration [of Human Rights] may not be a legally binding instrument but it shows how India understood the nature of Human Rights" at the time the constitution was adopted.³⁷ Thus, although the Supreme Court has stated that the Declaration "cannot create a binding set of rules" and that even international treaties "may at best inform judicial institutions and inspire legislative action,"³⁸ constitutional interpretation in India may be strongly influenced by the Declaration.³⁹ At the same time,

³⁴ *Id.* at 47 (counting at least 42 such citations).

³⁵ *Slaight Communications, Inc. v. Davidson*, [1989] 1 S.C.R. 1038.

³⁶ Anne Bayefsky & Joan Fitzpatrick, *International Human Rights Law in United States Courts: A Comparative Perspective*, 14 MICH. J. INT'L L. 1, 35 (1992).

³⁷ *Kesavananda Bharati v. State of Kerala*, 1973 A.I.R. (S.C.) 1461, 1510 (India) (holding that the constitutional power of amendment does not extend to altering the basic structure, including the guarantee of fundamental rights, of the Indian constitution). *See also, e.g.*, *Bombay Educ. Soc'y v. State of Bombay*, 1954 Bom. 1333; *Maneka Gandhi v. Union of India*, 1978 A.I.R. (S.C.) 597.

³⁸ *Jolly George Vargheese*, 1980 A.I.R. (S.C.) at 474 (India).

³⁹ For example, a recent case which overturned a conviction based on circumstantial evidence cited articles 3 and 10 of the Universal Declaration, the latter in support of the principle that the right to defense includes the right "to effective and meaningful defence at

an early Indian case made clear that the Universal Declaration of Human Rights cannot be taken into account where it conflicts with clear provisions of the Indian Constitution.⁴⁰

The approach of Sri Lankan courts is similar. "The Court will respect the [Universal] Declaration [of Human Rights] and the Covenants but their legal relevance here is only in the field of interpretation."⁴¹ Two Sri Lankan cases discuss the jurisprudence of the European Commission and Court of Human Rights interpreting the scope of governmental liability for torture and ill-treatment;⁴² the relevant Sri Lankan and European provisions exactly duplicate article 5 of the Universal Declaration of Human Rights. Most cases which raise constitutional rights issues do not, however, include references to the Declaration.

There have been some references to international human rights treaties in Australian judicial decisions,⁴³ although treaties are non-self-executing unless formally incorporated through legislation. Most references to the Universal Declaration, as opposed to the Covenant on Civil and Political Rights or other treaties, have been minimal and relatively insignificant,⁴⁴ and the Universal Declaration of Human Rights inexplicably was not among the five international instruments specifically referenced to define "human rights" when a new Australian Human Rights and Equal Opportunity

the trial." *Kishore Chand v. State of Himachal Pradesh*, [1991] 1 S.C.J. 68, 76.

⁴⁰ *Biswambhar Singh v. State of Orissa*, [1957] A.I.R. (Orissa) 247, *reprinted in* 24 I.L.R. 425.

⁴¹ *Visvalingan v. Liyange*, (1982) F.R.D. (2) 529 (Sri Lanka). *See, e.g.*, *W.M.K. Silva v. Piyasena Senaratne*, S.C. App. No. 7 of 1988 (Sri Lanka); *Chelliah v. Paranage*, 2 Sri Lanka Law Reports 132 (1982) (constitutional guarantee of right to personal liberty "is based upon Article 9 of the Universal Declaration of Human Rights"); *Perera v. Attorney-General*, S.C. Nos. 107-109/86, slip op. (1986) (unreported) (Sri Lanka) (referring to the permissible limitations on rights contained in art. 29 of the Universal Declaration in interpreting constitutional guarantee of freedom of speech).

⁴² *See Velmurugu v. Attorney-General*, 1 Sri Lanka Law Reports 406 (1981); *Thadchanamoorthi v. Attorney-General*, F.R.D.(1) 129 (Sri Lanka).

⁴³ *See, e.g.*, *J. v. Lieschke*, 162 C.L.R. 447 (Austl. 1987); *Koowarta v. Bjelke-Petersen*, 153 C.L.R. 168 (1983-85); *Austl. v. Tasmania*, 158 C.L.R. 1 (Austl. 1983); *Dowal v. Murray*, 143 C.L.R. 410 (Austl. 1978). These and other relevant cases are discussed in Michael D. Kirby, *Implementing the Bangalore Principles on Human Rights Law*, 106 S. AFR. L. J. 484, 495-503 (1989).

⁴⁴ *See, e.g.*, *Dowal*, 143 C.L.R. at 590 (Declaration cited to show that children are an international concern).

Commission was created.⁴⁵ However, a subsequent law recognizing aboriginal land rights in Australia includes a preambular reference to Australia's "acceptance of" the Universal Declaration as one of the "international standards for the protection of universal human rights and fundamental freedoms."⁴⁶

Neither international treaties nor custom appear to be considered part of domestic law in New Zealand. Nevertheless, New Zealand courts have made it clear that international norms may influence the interpretation of domestic law:

International instruments, ratified or otherwise, whether they be covenants, conventions or declarations may be used in the interpretation of municipal legislation. International instruments may indicate legislative policy in regard to municipal law. Parliament may be presumed to legislate in accordance with its international obligations, though those obligations are of more moral force than legal force.⁴⁷

Thus, the Universal Declaration has been cited in support of a decision to overturn, for example, a regulation which discriminated between men and women in the payment of relocation expenses.⁴⁸

One of the most frequently cited references to the Universal Declaration in common law systems is that made by Lord Wilberforce in 1980 in a decision by the House of Lords involving the constitution of Bermuda. Noting that the Bermuda constitution "was greatly influenced" by the European Convention of Human Rights, Lord Wilberforce continued:

⁴⁵ See Human Rights and Equal Opportunity Commission Act of 1986, No. 125 of 1986, sec. 3. The five instruments referred to in the act are the ILO Discrimination (Employment and Occupation) Convention 1958 (No. 111), the International Covenant on Civil and Political Rights, and three U.N. General Assembly Declarations concerned, respectively, with the rights of children, mentally retarded persons, and disabled persons. A kind of savings clause in the act does add that "human rights" includes the rights and freedoms "recognised or declared by any relevant international instrument," which clearly would include the Universal Declaration of Human Rights.

⁴⁶ Native Title Act 1993, No. 110 of 1993, pmb.

⁴⁷ *Huakina Dev. Trust v. Waikato Valley Auth.*, [1988] 2 N.Z.L.R. 188, 217 (June 2, 1987) (High Ct., Admin. Div.).

⁴⁸ *Van Gorkom v. Attorney-General*, [1977] 1 N.Z.L.R. 535 (Feb. 10, 1977) (Sup. Ct.).

That Convention . . . was in turn influenced by the United Nations Universal Declaration of Human Rights of 1948. These antecedents . . . call for a generous interpretation, avoiding what has been called 'the austerity of tabulated legalism', suitable to give to individuals the full measure of the fundamental rights and freedoms [at issue in the present case].⁴⁹

While this dictum obviously falls far short of endorsing the substantive norms found in the Declaration, it has provided authority for constitutional interpretations that go beyond a narrowly domestic focus.

The Irish Constitution specifically prohibits the domestic application of any international agreement without the agreement of the parliament. Irish courts seem to have interpreted this injunction to include customary international law as well, although the Supreme Court has cited the opinion of Lord Wilberforce in the *Fisher* case⁵⁰ regarding the interpretative value of the Declaration. Relying on an earlier case which found that the European Convention on Human Rights was not part of domestic law,⁵¹ the Supreme Court concluded that the Universal Declaration is not part of domestic Irish law and cannot be invoked before the courts without distinguishing between customary and conventional law.⁵² Concurring opinions in two more recent Supreme Court cases cite provisions of the Declaration in support of their conclusions regarding the scope of constitutional rights,⁵³ but it does not appear that the Declaration has had a significant impact on Irish law to date.

The Supreme Court of Botswana has noted, "The antecedents of the Constitution of Botswana with regard to the imperatives of the international community could not have been any different from the antecedents found by Lord Wilberforce in the case of Bermuda"⁵⁴ [The Universal Declara-

⁴⁹ *Minister of Home Affairs v. Fisher*, [1980] App. Cas. 319, 328-29 (P.C., 1979).

⁵⁰ *Id.*

⁵¹ *In re O Laighléis*, [1960] I.R. 93 (Ir. S. C.).

⁵² *In re Woods*, [1970] I.R. 154, 165 (Ir. S.C. 1967), *excerpted in* 53 I.L.R. 552.

⁵³ *Eastern Health Bd. and TM and AM v. An Bord Uchtala*, 1992 No. 101 (Ir. S.C. 1993) (O'Flaherty J., conc.) (citing art. 25 of the Declaration as evidence of the definition of rights of the child); *In re R. Ltd.*, [1989] I.R. 126, (Ir. S. C.) (Walsh, J., conc., joined by Griffin and Hederman, JJ.) (citing art. 10 of the Declaration and other international instruments in support of conclusion that the public administration of justice is a "fundamental principle").

⁵⁴ *Referring to Minister of Home Affairs v. Fisher*, [1980] App. Cas. 319 (P.C. 1979).

tion] must have formed part of the backdrop of aspirations and desires against which the framers of the Constitution of Botswana formulated its provisions."⁵⁵ However, a 1985 decision which considered whether a particular form of corporal punishment violated the constitutional prohibition against inhuman or degrading punishment did not refer to the Declaration, although it did cite the European Convention of Human Rights and South African and Zimbabwean judicial decisions.⁵⁶

A Nigerian High Court decision stated that "[i]n as much as and for as long as the Federal Government of Nigeria remains . . . [committed to] the Universal Declaration of Human Rights, for so long would Nigerian courts protect and vindicate fundamental human rights entrenched in the Declaration."⁵⁷ However, no case in which the Universal Declaration has been utilized explicitly to interpret Nigerian law has been found in the course of research for the present article. Similarly, an exhaustive survey (as of 1984) of Zambian judicial decisions concerned with civil liberties included no references to the Universal Declaration, either positive or negative.⁵⁸

Several recent decisions of the Zimbabwe Supreme Court have made extensive use of international and comparative materials to interpret provisions of the Zimbabwe Constitution,⁵⁹ but none specifically cites the Universal Declaration of Human Rights, despite the fact that the constitution's Declaration of Rights "is modelled on" the Universal Declaration.⁶⁰

Although it does not specifically refer to the Universal Declaration of Human Rights, the Supreme Court of Namibia has noted that the "freedoms and rights [in the Namibian Constitution] are framed in a broad and ample style and are international in character. In their interpretation they call for

⁵⁵ Attorney General v. Unity Dow, Ct. App. No. 4/91, slip. op., at 52 (1991) (Bots.).

⁵⁶ See *State v. Petrus*, [1985] LRC (Const.) 699, 714 (1983) (Bots.).

⁵⁷ *Nolokwu v. Comm'r of Police*, [High Ct.] (Nigeria) (Agbakoba J.), reported in *LAW OF HABEAS CORPUS 96* (Chief Gani Fawehinmi ed., 1986).

⁵⁸ See *MUNA NDULO AND KAYE TURNER, CIVIL LIBERTIES CASES IN ZAMBIA* (Oxford: African Law Reports, 1984).

⁵⁹ See, e.g., *Catholic Comm'n for Justice and Peace in Zimb. v. Attorney-General*, 1993 (4) SA 239 (ZS); *State v. A Juvenile*, 1990 (4) SA 151 (ZS); *State v. Ncube*, 1987 Zimb. L. Rep. 246, [1988] L.R.C. (Const.) 442.

⁶⁰ Welshman Ncube, *The Constitutional Recognition and Popular Enjoyment of Human Rights in Zimbabwe*, 5 ZIMBABWE L. REV. 54, 88 (1987).

the application of international human rights norms."⁶¹ The court cites with approval the observations of Lord Wilberforce noted above, but, although Namibian courts have adopted a broadly comparative approach in defining constitutional rights and "the emerging consensus of values in the civilised international community (of which Namibia is part),"⁶² they have not relied on the Universal Declaration in recent decisions.

Provisions of the Universal Declaration (and the Covenants and European Convention) have been referred in several Mauritius cases, although Mauritius follows the basic common law principle that international law (apparently both conventional and customary law) has no domestic effect unless it has been specifically adopted through the normal legislative process.⁶³

Until very recently, the United States had not ratified most of the major international human rights treaties, and customary international law has thus been the major source of rights to which U.S. plaintiffs seeking to challenge practices on other than constitutional grounds have appealed. As a result, the Universal Declaration of Human Rights has perhaps been referred to more frequently by U.S. courts than by courts in any other jurisdiction.

A 1988 survey of U.S. cases identified five references to the Universal Declaration by the U.S. Supreme Court; sixteen references by federal courts of appeal; twenty-four references by federal district courts; one reference by a bankruptcy court; and a number of references by state courts in California, New York, Oregon, Washington, and West Virginia.⁶⁴ Of course, some of

⁶¹ *Minister of Defence v. Mwandighi*, 1992 (2) SA 355, 362 (Sup. Ct. 1991) (Namibia), *reprinted in* 91 I.L.R. 341. The Court observes later that "international human rights instruments" are the source "from which many of its [the Constitution's] provisions were derived." *Id.* at 363.

⁶² *Ex parte Attorney General: In re Corporal Punishment by Organs of the State*, 1991 (3) SA 76, 86 (Sup. Ct. 1991) (citing, *inter alia*, cases from Zimbabwe and Botswana and the European Convention on Human Rights, but not the Declaration, in holding corporal punishment to be unconstitutional).

⁶³ *See, e.g., Roussety v. Attorney General*, [1967] The Mauritius Reports 45 (High Ct.) (Mauritius), *reprinted in* 44 I.L.R. 108, 130: "The stipulations of international obligations, *unless enacted into laws by Parliament*, cannot, in principle, be enforced in municipal courts." (emphasis in original).

⁶⁴ BETH ANDRUS, *THE UNIVERSAL DECLARATION OF HUMAN RIGHTS 1948-1988: HUMAN RIGHTS, THE UNITED NATIONS AND AMNESTY INTERNATIONAL* 10-11 (Amnesty International-U.S.A. Legal Support Network, 1988). A May 1994 Lexis computer search for all U.S. cases which referred to the Universal Declaration yielded a total of 94 federal and state cases. *See Annex 2, infra.*

those references are in dissenting opinions or may be marginal to the decision in the case, but they do reflect the attention paid by both lawyers and judges to the Declaration as a potential source of rights. The government of the United States has cited the Declaration as evidence of the scope of international legal obligations in briefs before domestic courts.⁶⁵

As noted in the oft-cited case of *The Paquete Habana*, "international law is part of our [U.S.] law, and must be ascertained and administered by the courts of justice of appropriate jurisdiction, as often as questions of right depending upon it are duly presented for their determination [W]hen there is no treaty, and no controlling executive or legislative act or judicial decision, resort must be had to the customs and usages of civilized nations."⁶⁶ Thus, customary international law is generally considered to form part of federal common law, although there is some scholarly disagreement as to the impact of the *Paquete Habana's* reference to "controlling executive or legislative act." Only "self-executing" treaties are directly enforceable as part of domestic U.S. law.

According to the reporters of the *Restatement (Third) of the Foreign Relations Law of the United States*, the binding character of the Universal Declaration of Human Rights "continues to be debated" in the United States.⁶⁷ Nevertheless, although the approach of the Court of Appeals in the *Filartiga* case⁶⁸ has occasionally been questioned,⁶⁹ recent U.S. cases seem to accept *Filartiga's* methodology of establishing customary international law and defining the "law of nations."⁷⁰ Indeed, a recent case brought against an Ethiopian torturer merely concluded in a rather cursory fashion that "United States law . . . includes customary international law as part of U.S. common law," and that "acts of prolonged arbitrary detention, torture, cruel, inhuman and degrading treatment, claimed by plaintiffs

⁶⁵ See, e.g., Memorandum for the United States as Amicus Curiae at 9, *Filartiga v. Peña-Irala*, 630 F.2d 876 (No. 79-6090) (2d Cir. 1980).

⁶⁶ 175 U.S. 677, 700 (1900).

⁶⁷ RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES § 701, n.6 (1987).

⁶⁸ 630 F.2d 876 (2d Cir. 1980).

⁶⁹ See, e.g., the opinions of Judges Bork and Robb in *Tel-Oren v. Libyan Arab Republic*, 726 F.2d 774 (D.C. Cir. 1984).

⁷⁰ The statute under which the complaint in *Filartiga* was brought gives a federal remedy to any alien who claims to be a victim of a tort "committed in violation of the law of nations or a treaty of the United States." 28 U.S.C. § 1350 (1994).

constitute violations of the 'law of nations.' ”⁷¹ Another District Court recently observed that “in an appropriate case, the . . . [Universal] Declaration [of Human Rights] cited by the defendant might properly supply the rule of decision to be applied to particular facts,” although it rejected the defendant’s argument in that case that international law protected him from expatriation.⁷²

While one may therefore conclude that the Universal Declaration of Human Rights is now widely accepted in the United States as one of the sources of evidence of customary international law, there remain very few cases in which international human rights law (as defined in the Declaration and other instruments) has been used by a court to strike down an existing statute or practice. One such case is *Fernandez v. Wilkinson*,⁷³ in which a federal District Court overturned an alien’s indefinite detention specifically because it violated international law. The case was subsequently affirmed on constitutional rather than international grounds by the Court of Appeals,⁷⁴ which nonetheless found it proper “to consider international law principles for notions of fairness as to [the] propriety of holding aliens in detention.”⁷⁵

The U.S. Supreme Court has spoken with confusing voices in the context of interpreting the Constitution’s prohibition against cruel and unusual punishment. In *Thompson v. Oklahoma*, the plurality opinion (by Justice Stevens) reaffirmed “the relevance of the views of the international community in determining whether a punishment is cruel and unusual.”⁷⁶

⁷¹ *Abebe-Jiri v. Negewo*, No. 1:90-CV-2010-GET at 7 (N.D. Ga. Aug. 1993). The Court cited the Covenant on Civil and Political Rights and the Convention against Torture, the first of which had been ratified by the United States, in order to define torture and cruel, inhuman, and degrading treatment. *Id.* at 7-8. No authority was offered for the conclusion that prolonged arbitrary detention violates customary law, although the phrase would appear to be drawn from the RESTATEMENT.

⁷² *United States v. Schiffer*, 836 F. Supp. 1164, 1171 (E.D. Pa. 1993). The Court observed that, since it was not a treaty, the Declaration “at best serves as evidence of ‘international common law,’ or customary international law,” citing *Filartiga*. *Id.* at 1170.

⁷³ 505 F. Supp. 787 (D. Kan. 1980), *aff’d on other grounds sub nom. Rodriguez-Fernandez v. Wilkinson*, 654 F.2d 1382 (10th Cir. 1981).

⁷⁴ *Rodriguez-Fernandez v. Wilkinson*, 654 F.2d 1382 (10th Cir. 1981).

⁷⁵ *Id.* at 1390. A different Court of Appeals later specifically declined to follow the Tenth Circuit’s reasoning in *Rodriguez-Fernandez*. *Jean v. Nelson*, 727 F.2d 957, 964 n.4, 974-75 (11th Cir. 1984), *aff’d*, 472 U.S. 846 (1985).

⁷⁶ 487 U.S. 815, 831 n.31 (1988). Justice O’Connor’s concurring opinion agreed with this approach.

A year later, a different plurality took the opposite view, in an opinion by Justice Scalia which emphasized that "it is American conceptions of decency that are dispositive, rejecting the contention of petitioners and their various amici (accepted by the dissent . . .) that the sentencing practices of other countries are relevant."⁷⁷

In Norway, neither the constitution nor statutory law contains a general rule regarding the position of treaties in Norwegian law. In addition, "[t]he Supreme Court has never found any conflict existing between Norwegian law and a human rights convention and has therefore not come to any decision as to which rule takes precedence in the event of a conflict."⁷⁸ The court has adopted the position that "Norwegian law must as far as possible be presumed to be in accordance with treaties by which Norway is bound,"⁷⁹ but the Universal Declaration does not appear to have been relied upon by Norwegian courts to interpret fundamental rights.

A government commission recently proposed that the two Covenants and the European Convention on Human Rights be incorporated by statute into Norwegian law, but it emphasized that "[i]t must be a basic condition for incorporation that Norway is *bound* by the convention."⁸⁰ The commission observed that "it is neither necessary nor appropriate to incorporate [into domestic law] unwritten rules of international law concerning human rights,"⁸¹ appearing to leave little room for use of the Declaration either in interpreting Norwegian law or defining customary international law.

Neither international treaties nor instruments such as the Declaration become part of Swedish domestic law unless they are formally incorporated by statute. However, both the Swedish Supreme Court and Supreme Administrative Court have adopted the principle that "domestic legislation is to be interpreted in the light of . . . [Sweden's] international obligations. In other words, the interpretation should be 'biased' in favour of the human rights instruments."⁸²

⁷⁷ *Stanford v. Kentucky*, 492 U.S. 361, 369 n.1 (1989).

⁷⁸ Lovgivning om menneskerettigheter (NOU 1993: 18), English summary at 193 [hereinafter Lovgivning].

⁷⁹ [1984] Norwegian Supreme Court Reports 1175, 1179-80, *quoted in* Lovgivning, *supra* note 78.

⁸⁰ Lovgivning, *supra* note 78, at 195 (emphasis in original).

⁸¹ *Id.*

⁸² *Core Document forming Part of the Reports of States Parties: Sweden*, para. 70, at 12, U.N. Doc. HRI/CORE/1/Add.4 (1992).

Article 93 of the Dutch Constitution states, "[p]rovisions of treaties and of resolutions of international institutions, which may be binding upon all persons by virtue of their contents shall become binding after they have been published." Dutch courts have consistently held that the Universal Declaration of Human Rights does not fall within this provision since it "is not based on a power conferred by or under treaty to take binding decisions for the Netherlands, but it is evidently based on the power to make recommendations conferred on the General Assembly in Chapter IV of the Charter of the United Nations."⁸³ Nonetheless, Dutch courts have referred occasionally to provisions of the Declaration as an additional aid to statutory interpretation.⁸⁴

An important Swiss government report states that the Universal Declaration of Human Rights has had "considerable influence as much on the juridical as on the political level."⁸⁵ However, the Declaration is rarely cited directly by domestic courts,⁸⁶ although Swiss courts do refer to provisions of the European Convention on Human Rights.

As in most civil law systems, only ratified treaties have an impact in domestic courts under French constitutional law. Thus, customary international law is rarely considered by either administrative or constitutional

⁸³ Judgment of Nov. 7, 1984 (*X v. Inspector of Direct Taxes*), HR [High Ct.], [1985] N.J. No. 247, [1985] BNB No. 43. *See also, e.g.*, Judgment of Mar. 16, 1978, (*A. Koning v. State Secretary of Transp. and Water Management*), Afd. Rechtspr. [Admin. Ct. of First Instance], [1979] AB No. 198; Judgment of Dec. 27, 1967 (*Stichting Communicatie Belangen Nederland v. State-Secretary for Transp. and Water Management*), Royal Decree No. 18; *In re Beck*, [1949] NJ No. 437 (Spec. Ct. Cass), *reprinted in* 16 I.L.R. 279 ("It was even doubtful [in 1949] whether its [the Universal Declaration] contents could be considered as a formulation of general principles of law recognized by civilized nations in the sense of Article 38, paragraph I, sub-section 3, of the Statute of the International Court of Justice.").

⁸⁴ *See, e.g.*, Judgment of Feb. 13, 1991, Rb. (Amsterdam) [Dist. Ct.], [1991] NJ 488; Judgment of Aug. 16, 1984, Rb. (Amsterdam) [Dist. Ct.], [1985] NJCM Bull. 648; Judgment of Nov. 23, 1977, HMG [Mil. Ct. App.], [1978] NYIL 315.

⁸⁵ *Rapport sur la politique de la Suisse en faveur des droits de l'homme*, 1982 FEUILLE FÉDÉRAL 753, 778-79. The Universal Declaration is the only document annexed to this significant report, although Switzerland at the time was party to the European Convention on Human Rights and was actively considering ratifying the two Covenants (which it did in 1992).

⁸⁶ Among the few cases which make specific reference to the Declaration are decisions of the Federal Tribunal in 108 ATF Ia 277 and 104 ATF Ia 92, and a decision of a cantonal administrative court in Argovie, [1983] AGVE, No. 13, at 321.

courts and would not, in any event, prevail over inconsistent domestic law.⁸⁷ With respect to the Universal Declaration in particular, the doctrine that is most often traced to the *Elections de Nolay* case⁸⁸ has been reiterated consistently in French courts:

[T]he mere publication of the text of the Universal Declaration of Human Rights in the Official Journal of 9 February 1949, does not permit classifying [the Declaration] among those diplomatic texts which, having been ratified and published according to law, have an authority superior to that of domestic law according to the terms of article 55 of the Constitution of 4 October 1958.⁸⁹

However, a recent case decided by the Cour de Cassation, rather than the Conseil d'Etat, does cite the Declaration as helping to define "the French conception of international public order."⁹⁰ More common is the simple citation of the Declaration by the Cour de Cassation as one among other sources which supports existing constitutional principles.⁹¹ Despite these occasional references, however, the Universal Declaration has not played a significant role in French jurisprudence.

Under article 68 of the Belgian Constitution, treaties which may bind individuals in Belgium must be approved by both houses of the legislature. They occupy a status superior to ordinary statutes but inferior to the

⁸⁷ See generally, J. Rideau, *Problématique générale des rapports entre droit Constitutionnel et Droit international*, in DROITS CONSTITUTIONNELS ET DROITS DE L'HOMME, RAPPORTS FRANÇAIS PRÉSENTÉS AU IIÈ CONGRÈS MONDIAL DE L'ASSOCIATION INTERNATIONALE DE DROIT CONSTITUTIONNEL, PARIS/AIX-EN-PROVENCE, 31 août-5 septembre 1987 (Paris: Economica, 1987) at 205-48; L. PHILIP, L'AFFIRMATION DES DROITS DE L'HOMME DANS LES CONSTITUTIONS ET LES TRAITÉS INTERNATIONAUX 249-267.

⁸⁸ Judgment of Apr. 18, 1951, (*Elections de Nolay*), Conseil d'Etat (Highest Admin. Ct.).

⁸⁹ Judgment of Nov. 23, 1984, (*Roujansky case*), Conseil d'Etat (Highest Admin. Ct.) (author's translation). Numerous other cases citing the Declaration to the same effect are listed in Annex 2, *infra*.

⁹⁰ Judgment of May 28, 1991, (*Huston*), Cass. Civ. 1e.

⁹¹ For a more complete and nuanced account of the status of the Declaration in French jurisprudence, see Emmanuel Decaux, *La Place de la Déclaration Universelle des Droits de l'Homme dans la Jurisprudence Interne Française* (unpublished paper presented to an international law colloquium in Siena, June 1993, excerpt on file with author).

Constitution.⁹² Although the Universal Declaration was printed in the official government journal, the *Moniteur Belge*, this publication has not endowed it with the force of law. The Declaration "is limited to proposing a common ideal to be reached, does not have the force of law and could not modify existing rules of positive law."⁹³ Nevertheless, several early lower court cases relied on the Declaration at least as an interpretative guide.⁹⁴ Similarly, a military court considering whether it was legal to punish a war criminal stated that it was "guided by the Universal Declaration of Human Rights," citing article 5.⁹⁵

Article 31 of the Argentine Constitution establishes the supremacy of the constitution over international law, although properly ratified treaties have a status equal to that of ordinary legislation and will prevail if they conflict with prior legislation.⁹⁶ In determining whether or not the cancellation of a trade union election constituted an impermissible intervention which infringed the complainants right of freedom of association, the Argentine Supreme Court has observed that "none of the mentioned international norms [ILO conventions, the Covenant on Civil and Political Rights, and the Universal Declaration] is self-executing, and the duty of the state was to pass necessary domestic legislation to implement them Thus it is the domestic law . . . that should be interpreted rather than international legislation."⁹⁷ Nevertheless, Argentine courts have referred to the Universal Declaration (and other international instruments) on several occasions in support of particular constitutional interpretations.⁹⁸

⁹² See *Belgian State v. S.A. Fromagerie Franco-Suisse Le Ski*, Cour de Cassation (First Chamber), May 27, 1971, *Pasicrisie belge*, 1971, I, 886, *reprinted in* 1972 C.M.L.R. 330.

⁹³ *M. v. United Nations and Belgium*, Ct. App. of Brussels, *Pasicrisie belge*, 1972, I, 971, *reprinted in* 69 I.L.R. 139, 143; *accord.*, *De Meyer v. Etat Belge*, *Ministre de la Famille*, Council of State, *Pasicrisie belge*, 1966, IV, 97, *reprinted in* 47 I.L.R. 196.

⁹⁴ For summaries of these cases in United Nations, see 1956 Y.B. HUM. RTS. 16-23; 1957 Y.B. HUM. RTS. 16-17.

⁹⁵ *Auditeur Militaire v. Krumkamp*, Mil. Ct. of Brahant, *Pasicrisie belge*, 1950, III, 35-40, *reprinted in* 17 I.L.R. 388, 390.

⁹⁶ See, e.g., Judgment of Apr. 18, 1985, (Telesud), CNFed. (Fourth Chamber) [Ct. App. in admin. matters], *reprinted in* 89 I.L.R. 80.

⁹⁷ *Juarez v. Ministerio de Trabajo*, CSJN [Sup. Ct.], S.C.J. 63, L. XXII (1989), slip op. at 16.

⁹⁸ See, e.g., *Arena v. Autoridades administrativas del Servicio Penitenciario Federal*, CFed. [Fed. Ct. App.], S.C.A. 531, L.XXII (1989) at 6131; *Fernandez v. Sanatoria Gumes S.A.*, F.249 XXI (1988); *Molteni v. Estado Nacional*, M.282.XXII (1989) at 2926; *Claramonte v. Mayo*, S.C.C. 759, L.XXII (1989) at 89; *Juarez v. Ministerio de Trabajo*, S.C.J. 63, L.XXII,

3. *Judicial Rejection of the Universal Declaration As Relevant to Interpretations of Domestic Law*

As in the United Kingdom, rules of customary international law automatically form part of the common law in Hong Kong, unless they conflict with existing law.⁹⁹ A 1983 case reiterated the general position of Hong Kong courts that, "however laudable the rule proclaimed in such a declaration [as the Universal Declaration] may be, it does not, unless expressly enacted as such, become the law of this colony."¹⁰⁰

Like many other states, Israel distinguishes between treaty law and customary international law; only the latter is automatically utilized by the courts, as treaties are non-self-executing unless they are incorporated into domestic law by the legislature. With some exceptions,¹⁰¹ the Israeli Supreme Court seems to have adopted a very narrow view of what constitutes customary law; for example, it has found that the Fourth Geneva Convention of 1949 does not reflect customary international law, although the Court conceded that the 1907 Hague Regulations do reflect customary law and were therefore part of domestic law.¹⁰² "[T]he views of an ordinary majority of states are not sufficient; the custom must have been

slip op. at 15, 16, 18, 19.

⁹⁹ See, e.g., Nihal Jayawickrama, *Hong Kong and the International Protection of Human Rights*, in *HUMAN RIGHTS IN HONG KONG* (Raymond Wicks ed., Hong Kong: Oxford University Press 1992); Roda Mushkat, *International Human Rights Law and Domestic Hong Kong Law*, in *HONG KONG'S BILL OF RIGHTS, PROBLEMS AND PROSPECTS* 25 (Raymond Wacks ed., Hong Kong: University of Hong Kong Faculty of Law 1990).

¹⁰⁰ *In re Wong and Ng*, Dec. 16, 1983 and Jan. 13, 1984, [1984] HKLR 71, 74-75 (High Ct. 1983-1984). The court's cursory dismissal of the argument is criticized in W.S. Clarke, *Mssrs. Wong and Ng and the Universal Declaration of Human Rights*, 15 H.K. L.J. 137 (1985).

¹⁰¹ See, e.g., the opinions of Cohn, J., in *American European Beth-El Mission v. Minister of Social Welfare*, 21 (2) Piskei-Din 325 (Sup. Ct. 1967), reprinted in 47 I.L.R. 205, 208 (the rights set forth in the Universal Declaration and Covenant on Civil and Political Rights "are today the heritage of all enlightened peoples whether or not they are members of the United Nations and whether or not they have already ratified the Convention [sic] of 1966, since they have been formulated by legal experts from all corners of the world and decided upon by the General Assembly"); Kurtz and Letushinsky v. Kirschen, 21 (2) Piskei-Din 20 (Sup. Ct. 1967), reprinted in 47 I.L.R. 212.

¹⁰² See *Ayyub v. Minister of Defence*, 33 (2) Piskei-Din 113 (Sup. Ct. 1979), cited in *Benevenisti*, *supra* note 22, at 178.

accepted by an overwhelming majority at least."¹⁰³ A military court, speaking in an early case challenging Israeli actions in the Occupied Territories, proclaimed that "[i]t is settled law that . . . the Universal Declaration of Human Rights . . . [does] not extend to the population of the State so long as . . . [it has] not been affirmed by the legislative body, the Knesset It is well known that the Declaration . . . [and Security Council resolutions] have therefore declaratory value only and that they assist the General Assembly, the Security Council and the other organs of the United Nations in their work, but that is all."¹⁰⁴

B. 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. Of course, the mere recitation of norms may not necessarily reflect an honest intention to adhere to them. In addition, hortatory constitutional references may be of little value if they are not judicially enforceable. For example,

[t]he major weakness of human rights regimes in Africa [and elsewhere] relates to unenforceability of such rights by individuals in the event of violations. Courts, with a few exceptions, demonstrate striking timidity *vis-a-vis* enforcing human rights claims against governments In situations where human rights are tagged in the preambular language of the Constitution such as in Seychelles, Cameroon and Senegal, the efficacy of such rights is not always immediate.¹⁰⁵

In this respect, the provisions of the constitutions of Portugal, Romania, Sao Tomé and Principe, and Spain are of particular interest, since each directs its

¹⁰³ Abu Aita v. Minister of Defence, 33 (2) Piskei Din 113 (Sup. Ct. 1979), *quoted in* Benvenisti, *supra* note 22, at 178.

¹⁰⁴ Military Prosecutor v. Halil Muhamad Mahmoud Halil Bakhis, June 10, 1968, 1 Selected Judgments of the Mil. Cts. in the Administered Territories 371 (Mil. Ct. 1971), *reprinted in* 47 I.L.R. 484, 486.

¹⁰⁵ Kivutha Kibwana, *Development of Democratic Culture and Civil Society in Africa: An Analysis of Relevant Constitutional Initiatives and Models*, 6 LESOTHO L.J. 13, 44 (1990).

country's courts to "interpret" constitutional norms in conformity with the Universal Declaration.¹⁰⁶

As noted above, many constitutions have been directly inspired by the Universal Declaration. 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."¹⁰⁷ 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 (later Zaire) (1964 and 1967), Republic of the Congo (1963), Dahomey (1964 and 1968), Equatorial Guinea (1968), Gabon (1961), Guinea (1958), Ivory Coast (1960), Madagascar (1959), Mali (1960), Mauritania (1962), Niger (1960), Rwanda (1962), Senegal (1963), Somalia (1979), Togo (1963), and Upper Volta (1960 and 1970).¹⁰⁸ Among constitutions currently in force, the Declaration is specifically referred to in those of Afghanistan, Benin, Burkina Faso, Burundi, Cambodia, Chad, Comoros, Côte d'Ivoire, Equatorial Guinea, Ethiopia (1991 Transitional Charter), Gabon, Guinea, Haiti, Malawi, Mali, Mauritania, Nicaragua, Niger, Portugal, Romania, Rwanda, Sao Tomé and Príncipe, Senegal, Somalia, Spain, and Togo.¹⁰⁹

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."¹¹⁰ Article 15 of the Constitution of Antigua was largely inspired by the European Convention, which "was itself largely based on the Universal Declaration."¹¹¹ The President of Kazakhstan stated that the civil rights provisions in the draft constitution adopted by that country in 1992

¹⁰⁶ PORTUGUESE CONST., art. 16(2); ROMANIAN CONST., art. 20(1); SAO TOMÉ AND PRÍNCIPE CONST., art. 17(2); SPANISH CONST., art. 10(2).

¹⁰⁷ Jayawickrama, *supra* note 99, at 160.

¹⁰⁸ UNITED NATIONS, UNITED NATIONS ACTION IN THE FIELD OF HUMAN RIGHTS 17 (New York: United Nations, 1974).

¹⁰⁹ Annex 2, *infra* (fully citing these provisions).

¹¹⁰ Letter from Judith S. Jones-Morgan, Crown Counsel, Attorney General/Minister of Justice and Information, St. Vincent and the Grenadines, to the author (Aug. 31, 1993) (ref. no. JIC/815).

¹¹¹ Judgment of May 19, 1975, Attorney-General v. Antigua Times, Ltd., Jud. Comm. P.C., reprinted in 60 I.L.R. 135, 137.

"were based on the Universal Declaration of Human Rights and on the constitutional experience of both Western and Oriental nations."¹¹²

Indian courts have stated that the Indian Constitution "has embodied most of the articles contained in the Declaration."¹¹³ 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."¹¹⁴

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.¹¹⁵ 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.¹¹⁶

The constitution of Germany (adopted in 1949) makes no specific reference to the Universal Declaration, but article 1(2) states, "The German people . . . acknowledge inviolable and inalienable human rights as the basis of every community, of peace and of justice in the world." The preamble to the 1977 constitution of the Swiss canton of Jura cites the Universal Declaration of Human Rights as a source of inspiration.

International human rights norms were precedents for many Chilean constitutional rights, as set out in the legislative history of the 1975 commission which drafted the constitution; among the sources explicitly

¹¹² *Nazarbayev Has Presented a New Draft Constitution to Members of Parliament*, NEZAVISIMAYA GAZETA at 1, as reported in RUSSIAN PRESS DIGEST, June 2, 1992.

¹¹³ *Bombay Educ. Soc'y v. State of Bombay*, 1954 Bom. 1333, 1350.

¹¹⁴ CHINA INSTITUTE OF INTERNATIONAL AFFAIRS, CHINA AND THE UNITED NATIONS 185-86 (New York: Manhattan Publishing Co., 1959).

¹¹⁵ See the paper presented by Mr Justice Dumbutshena (Chief Justice of Zimbabwe) at the Harare Colloquium, *infra* note 270, at 23.

¹¹⁶ See, e.g., art. 1 of the Charter (corresponding to art. 1 of the Universal Declaration), art. 3 (corresponding to art. 2 of the Universal Declaration), art. 16 (art. 4), art. 22 (art. 23), art. 24 (art. 24), and art. 29 (art. 26).

recognized was the Universal Declaration of Human Rights.¹¹⁷

The impact of the Universal Declaration on legislative bodies also should not be underestimated. References to international or universal human rights contained in national laws have frequently inspired demands that human rights promises be kept. Successful demands for democratic reforms in previously repressive or non-participatory political systems, particularly in eastern Europe, the states of the former U.S.S.R., and Africa, must inevitably lead to the revision of laws and constitutions. The status of the Universal Declaration of Human Rights as a fundamental statement of rights, either binding on a state as customary law or serving as an inspiration for interpreting domestic law, may be of even greater importance as democratic reforms are consolidated.

A prime example of the direct influence of the Universal Declaration is the Canadian Charter of Rights and Freedoms. "Almost every article of the Charter . . . will be seen to have some major or minor connection with the large network of international human rights instruments on the one hand, or general international human rights law, at the customary law or general principles level, on the other."¹¹⁸

Many more examples of similarity between the normative provisions of the Universal Declaration of Human Rights and national legislation could doubtlessly be identified. In any event, it is clear that the Declaration has had tremendous influence on national formulations of human rights standards; its political, in addition to purely juridical, importance can hardly be questioned.

As important as judicial enforcement or constitutional provisions may be, the first line of human rights protection is the executive branch of government.¹¹⁹ Administrative policies and enforcement of domestic law may

¹¹⁷ See, e.g., Judgment of July 19, 1988, *Szurgelies and Szurgelies v. Spohn*, Sup. Ct., 256 Fallos del Mes 390, reprinted in 89 I.L.R. 44, 54; Judgment of July 21, 1988, *Skrabs v. Kriegler*, Sup. Ct. (unpublished), reprinted in 89 I.L.R. 59, 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.

¹¹⁸ Maxwell Cohen & Anne Bayefsky, *The Canadian Charter of Rights and Freedoms and Public International Law*, 6 CANADIAN BAR REV. 265, 268 (1983). The article identifies the Universal Declaration as the "most important" of the "general principles that have emerged" from U.N. and other resolutions. *Id.* at 271.

¹¹⁹ Of course, "human rights" are promoted by an extremely broad range of domestic legislative, judicial, and administrative institutions. For a survey of such institutions, see *Further Promotion and Encouragement of Human Rights and Fundamental Freedoms*,

either reinforce or undermine the norms of international human rights.

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.¹²⁰ 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 the 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." This is similar to the influence exercised by such widely recognized principles as the Standard Minimum Rules for the Treatment of Prisoners and other major U.N. declarations and guidelines covering a wide range of subjects, such as the administration of criminal justice, children, and the rights of those with mental or physical disabilities.¹²¹

Governments may proclaim their adherence to the Declaration in political, as opposed to juridical, contexts, as when the Polish Ministry of Education explicitly committed itself "to respect in full the spirit and letter of the Constitution of the Republic of Poland and the Universal Declaration of

Including the Question of the Programme and Methods of the Work of the Commission; Alternative Approaches and Ways and Means within the United Nations System for Improving the Effective Enjoyment of Human Rights and Fundamental Freedoms: National Institutions for the Protection and Promotion of Human Rights: Updated Report of the Secretary-General, Commission on Human Rights, U.N. ESCOR, 45th Sess., U.N. Doc. E/CN.4/1989/47 (1988).

¹²⁰ Cf. the Declaration adopted in October 1991 by the member states of the Commonwealth in Harare, Zimbabwe, reprinted in *Letter Dated 22 November 1991 from the Permanent Representative of Zimbabwe to the United Nations Addressed to the Secretary-General*, U.N. GAOR, 46th Sess., 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;" the decision by twelve aid-donor nations to condition further aid to Kenya on improvements in human rights. N.Y. TIMES, Nov. 27, 1991, at 1, col. 5.

¹²¹ See generally J. Toman, *Quasi-Legal Guidelines and Standards for Protecting Human Rights*, in *GUIDE TO INTERNATIONAL HUMAN RIGHTS PRACTICE* (Hurst Hannum ed., 2d ed. 1992).

Human Rights," when questioned about religious instruction in schools.¹²² Similarly, the German Government refers to the Declaration as a "political milestone of outstanding importance and a fundamental source of inspiration," although it does not recognize that the Declaration itself has binding legal effect.¹²³

Although the Swiss government does not always clearly distinguish among the legal, political, and moral obligations imposed on states by the Universal Declaration of Human Rights, it has stated that the Declaration "represents an indispensable reference instrument and forms the basis of . . . [Swiss] interventions designed to promote respect for human rights or to condemn their violation, wherever these violations occur."¹²⁴ In U.N. debates over humanitarian intervention, Zimbabwe has referred to "the rights of States, as enshrined in the Charter, and the rights of individuals, as enshrined in the Universal Declaration of Human Rights Zimbabwe supports very strongly both the Universal Declaration of Human Rights and the Charter on these issues."¹²⁵ Such pronouncements obviously may form the basis of domestic political demands by those directly affected by a state's policies, as well as the foundation for a pro-human rights foreign policy.

III. 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 1948.¹²⁶ In the oft-cited words of Eleanor Roosevelt, Chairman of the U.N. Commission on Human

¹²² Rzeczpospolita No. 185, Aug. 10, 1990, at 2, quoted in *Ministry of Education Statement*, POLISH NEWS BULLETIN, Aug. 10, 1990.

¹²³ Letter from Dr. Reinhard Hilger, Auswärtiges Amt, to the author (Sept. 9, 1993).

¹²⁴ *Statement of Blaise Schenk, head of the Swiss delegation, to the Plenary Session of the Vienna Meeting of the Conference on Security and Cooperation in Europe*, Dec. 9, 1988, at 2 (text provided by the Department of Foreign Affairs) (author's translation).

¹²⁵ *Provisional Verbatim Record of the Three Thousand and Forty-Sixth Meeting*, at 131, U.N. Doc. S/PV.3046 (1992), cited in FREDERIC L. KIRGIS, JR., *INTERNATIONAL ORGANIZATIONS IN THEIR LEGAL SETTING* 861 (St. Paul: West Publishing Co., 2d ed. 1993).

¹²⁶ 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 7 (1989).

Rights during the drafting of the Declaration and a U.S. 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.¹²⁷

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,"¹²⁸ the first of "four stages in the generation of the document the General Assembly has called the International Bill of Human Rights."¹²⁹ The subsequent three documents—the International Covenant on Civil and Political Rights, its Optional Protocol,¹³⁰ and the International Covenant on Economic, Social and Cultural Rights—were consciously adopted as legally binding treaties open for ratification or accession by states,¹³¹ in contrast to the more political or hortatory Declaration.

¹²⁷ Quoted in 5 MARJORIE M. WHITEMAN, DIGEST OF INTERNATIONAL LAW 243 (Washington, D.C.: Dept. of State Publication # 7873, 1965). Cf. 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, (Ir. S.C. 1950).

¹²⁸ UNITED NATIONS, THE INTERNATIONAL BILL OF HUMAN RIGHTS 1 (New York: U.N. Dept. of Public Information, 1988).

¹²⁹ *Id.*

¹³⁰ Supplemented by a Second Optional Protocol concerning abolition of capital punishment.

¹³¹ As of June 30, 1994, there were 126 parties to the Covenant on Civil and Political Rights, 78 of which also had accepted the right of individual petition set forth in the Optional Protocol; 129 states had ratified the Covenant on Economic, Social and Cultural Rights. A Second Optional Protocol to the Covenant on Civil and Political Rights, abolishing the death penalty, had been accepted by 22 states.

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.¹³²

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. Proving the existence of a norm of customary international law requires proof of an identifiable state practice, accompanied by evidence that states recognize the practice as obligatory, i.e., legally binding. In the words of the International Court of Justice, "not only must the acts concerned amount to a settled practice, but they must also be such, or be carried out in such a way, as to be evidence of a belief that this practice is rendered obligatory by the existence of a rule of law requiring it. The need for such a belief, i.e., the existence of a subjective element, is implicit in the very notion of the *opinio juris sive necessitatis*."¹³³

One leading scholar concludes from his examination of the Court's opinions concerning human rights that "[o]ver the years, the Court has inquired into the existence of state practice and of *opinio juris* with varying degrees of detail ranging from the specific . . . to the brief and conclusory."¹³⁴ The Court's more recent approach, he continues, "accords limited significance to state practice, especially to inconsistent or contrary practice, and attributes central normative significance to resolutions both of the United Nations General Assembly and of other international organizations The burden of proof to be discharged in establishing custom in the field of human or humanitarian rights is thus less onerous than in other fields of international law."¹³⁵

¹³² LOUIS HENKIN, *THE AGE OF RIGHTS* 19 (New York: Columbia University Press, 1990).

¹³³ North Sea Continental Shelf Cases (FRG/Denmark; FRG/Netherlands), 1969 I.C.J. 3, 44 (Judgment of Feb. 20).

¹³⁴ THEODOR MERON, *HUMAN RIGHTS AND HUMANITARIAN NORMS AS CUSTOMARY LAW* 108 (Oxford: Clarendon Press, 1989).

¹³⁵ *Id.* at 113. See generally his discussion of the evolving nature of the Court's treatment of customary law. *Id.* at 106-14.

Whatever approach is adopted, it is clear that determining whether or not a particular customary law norm exists may draw upon a wide variety of sources. According to Brownlie, those sources include "diplomatic correspondence, policy statements, press releases, the opinions of official legal advisers, official manuals on legal questions, . . . executive decisions and practices, . . . comments by governments on drafts produced by the International Law Commission, state legislation, international and national judicial decisions, recitals in treaties and other international instruments, a pattern of treaties in the same form, the practice of international organs, and resolutions relating to legal questions in the United Nations General Assembly."¹³⁶

A similar listing by the influential *Restatement (Third) of the Foreign Relations Law of the United States* places somewhat more emphasis on the normative value of treaties and resolutions of international organizations:

Practice accepted as building customary human rights law includes: virtually universal adherence to the United Nations Charter and its human rights provisions, and virtually universal and frequently reiterated acceptance of the Universal Declaration of Human Rights even if only in principle; virtually universal participation of states in the preparation and adoption of international agreements recognizing human rights principles generally, or particular rights; the adoption of human rights principles by states in regional organizations in Europe, Latin America, and Africa . . .; general support by states for United Nations resolutions declaring, recognizing, invoking, and applying international human rights principles in international law; action by states to conform their national law or practice to standards or principles declared by international bodies, and the incorporation of human rights provisions, directly or by reference, in national constitutions and laws; invocation of human rights principles in national policy, in diplomatic practice, in international organization activities and actions; and other diplomatic communications or action by states reflecting the view that certain practices violate international human rights

¹³⁶ IAN BROWNLIE, *PRINCIPLES OF PUBLIC INTERNATIONAL LAW* 5 (4th ed. 1990). See generally MERON, *supra* note 134.

law, including condemnation and other adverse state reaction to violations by other states.¹³⁷

The significance of at least some General Assembly resolutions also was noted by the International Court of Justice in the *Nicaragua* case:

The Court has . . . to be satisfied that there exists in customary international an *opinio juris* as to the binding character of such abstention [from the use of force]. This *opinio juris* may, though with all due caution, be deduced from, *inter alia*, the attitude of the Parties and the attitude of States towards certain General Assembly resolutions, and particularly resolution 2625 (XXV) entitled "Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations". *The effect of consent to the text of such resolutions cannot be understood as merely that of a "reiteration or elucidation" of the treaty commitment undertaken in the Charter. On the contrary, it may be understood as an acceptance of the validity of the rule or set of rules declared by the resolution by themselves.*¹³⁸

The Court went on to cite as additional evidence of U.S. acceptance of the norm in question U.S. support for, *inter alia*, the Final Act of the Conference on Security and Cooperation in Europe, a document which the participating states specifically stated "does not affect their rights and obligations, nor the corresponding treaties and other agreements and arrangements."¹³⁹ "Accep-

¹³⁷ RESTATEMENT, *supra* note 67, § 701, n.2 (1987).

¹³⁸ Military and Paramilitary Activities in and Against Nicaragua (Nicar. v. U.S.) (Merits), 1986 I.C.J. 14, 99-100 (Judgment of June 27) (emphasis added) [hereinafter Military and Paramilitary Activities]. It might be noted that Resolution 2625 contains no reference to the Universal Declaration, although "human rights" is mentioned four times. At the same time, however, one might certainly argue that the Declaration is one of "such resolutions" which may themselves constitute statements of rules accepted by states.

¹³⁹ Conference on Security and Cooperation in Europe: Final Act, Aug. 1, 1975, Basket I, Part 1(a), *reprinted in* 14 I.L.M. 1292, 1296 (1975). Among the political commitments made by the CSCE states is that they "will act in conformity with the purposes and principles of the Charter of the United Nations and with the Universal Declaration of Human Rights. They will also fulfil their obligations as set forth in the international declarations and

tance of a text in these terms [agreeing to refrain in their international relations in general from the use of force] confirms the existence of an *opinio juris* of the participating States prohibiting the use of force in international relations."¹⁴⁰

A somewhat less traditional list of items of "evidence" which would support a finding that human rights are part of customary law is suggested by Schachter: the incorporation of human rights provisions in many national constitutions and laws; references in U.N. resolutions to the "duty" of states to respect the Universal Declaration of Human Rights; condemnations by international bodies of specific human rights violations as violations of international law; official statements criticizing other states for human rights violations; the dictum of the International Court of Justice in the *Barcelona Traction* case that obligations *erga omnes* include those derived "from the principles and rules concerning the basic rights of the human person;" and national court decisions which use the Universal Declaration as a source of standards for judicial decisions.¹⁴¹

Even if the question of "[w]hether human rights obligations have become customary law cannot readily be answered on the basis of the usual process of customary law formation,"¹⁴² there can be no question that, under whatever list of criteria one adopts, the Universal Declaration constitutes at least significant evidence of customary international law.

On the twentieth anniversary of the adoption of the Declaration, a major international conference of nongovernmental organizations proclaimed

agreements in this field, including inter alia the International Covenants on Human Rights, by which they may be bound." *Id.* at Principle VII.

¹⁴⁰ *Military and Paramilitary Activities*, 1986 I.C.J. at 100. 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." *Id.* at 107.

¹⁴¹ OSCAR SCHACHTER, *INTERNATIONAL LAW IN THEORY AND PRACTICE* 336 (Dordrecht: Martinus Nijhoff, 1991). However, another observer recently cautioned against the "confusion . . . caused by the very broad interpretation sometimes given to this element [of state practice] by including within it not only physical deeds but also various verbal acts, like unilateral declarations, resolutions or treaties. The misunderstanding resulting from such a broad interpretation arises from the fact that it neglects the very essence of every kind of custom, which for centuries has been based upon material deeds and not words. Or, to put it otherwise, customs arise from acts of conduct and not from promises of such acts." KAROL WOLFKE, *CUSTOM IN PRESENT INTERNATIONAL LAW* 41-42 (Dordrecht: Martinus Nijhoff, 1993) (footnotes omitted).

¹⁴² SCHACHTER, *supra* note 141, at 336.

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."¹⁴³ 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,"¹⁴⁴ although there was no elaboration of the precise nature of this obligation. 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 U.N. Charter and the Universal Declaration of Human Rights.¹⁴⁵ 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."¹⁴⁶

Several distinguished commentators have taken the position that the entire Universal Declaration now represents customary international law. One of the Declaration's principal drafters concludes that, since its adoption, "the Declaration has been invoked so many times both within and without the United Nations that lawyers now are saying that, whatever the intention of its authors may have been, the Declaration is now part of the customary law of nations and therefore is binding on all states. The Declaration has become what some nations wished it to be in 1948: the universally accepted interpretation and definition of the human rights left undefined by the

¹⁴³ Montreal Statement of the [Nongovernmental] Assembly for Human Rights (1968), reprinted in 9 J. INT'L COMM. JURISTS REV. 94 (1968).

¹⁴⁴ *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 43 (1988), U.N. Sales No. E.88.XIV.1, para. 2. For other examples of endorsements of the Universal Declaration by governmental conferences, see Jayawickrama, *supra* note 99, at 156-57.

¹⁴⁵ See L'ANNUAIRE DE L'INSTITUT DE DROIT INTERNATIONAL: RÉSOLUTIONS 1957-1991, at 206.

¹⁴⁶ Resolution adopted by the International Law Association, reprinted in INTERNATIONAL LAW ASSOCIATION, REPORT OF THE SIXTY-SIXTH CONFERENCE, Buenos Aires, Argentina 1994 (forthcoming 1995).

Charter."¹⁴⁷ Waldock similarly concludes that the widespread recognition of the principles of the Declaration "clothes it, in my opinion, in the character of customary international law."¹⁴⁸ Sohn considers that the Declaration is not only "an authoritative interpretation of the Charter obligations but also a binding instrument in its own right."¹⁴⁹

After examining these and other opinions, Thornberry recently concluded that "[t]here is . . . strong evidence that the Universal Declaration has become part of customary international law, and that it is the most valid interpretation of the human rights and freedoms which the Members of the United Nations pledge to promote."¹⁵⁰ Alston stated in 1983 that "there is a large and growing body of evidence" to support the proposition that at least the first twenty-one articles of the Declaration are part of customary law.¹⁵¹ Robertson and Merrills agree that the Declaration, "by reason of its constant reaffirmation by the General Assembly and in numerous other texts, both international and national, can now, more than forty years on, be taken as a statement of customary international law, establishing standards which all States should respect."¹⁵² Bilder, in an opinion cited by the U.S. District Court in *Fernandez v. Wilkinson*,¹⁵³ also concludes that the "standards set by the Universal Declaration of Human Rights, although initially only declaratory and non-binding, have by now, through wide acceptance and recitation by nations as having normative effect, become

¹⁴⁷ John Humphrey, *The International Bill of Rights: Scope and Implementation*, 17 WM. & MARY L. REV. 527, 529 (1976). A later work by Humphrey emphasizes the point that the Declaration is now "binding on all states, including the states that did not vote for it in 1948." JOHN HUMPHREY, *NO DISTANT MILLENNIUM: THE INTERNATIONAL LAW OF HUMAN RIGHTS* 155 (Paris: Unesco, 1989).

¹⁴⁸ Humphrey Waldock, *Human Rights in Contemporary International Law and the Significance of the European Convention*, in *THE EUROPEAN CONVENTION OF HUMAN RIGHTS* 1, 15 (Brit. Inst. Int'l & Comp. L., Ser. No. 5, 1965).

¹⁴⁹ Louis B. Sohn, *The Human Rights Law of the Charter*, 12 TEX. INT'L L.J. 129, 133 (1977).

¹⁵⁰ PATRICK THORNBERRY, *INTERNATIONAL LAW AND THE RIGHTS OF MINORITIES* 237-38 (Oxford: Clarendon Press, 1991).

¹⁵¹ Philip Alston, *The Universal Declaration at 35: Western and Passé or Alive and Universal*, 1982/31 I.C.J. REV. 60, 69 (1982).

¹⁵² A.H. ROBERTSON & J.G. MERRILLS, *HUMAN RIGHTS IN THE WORLD* 96 (Manchester: Manchester University Press, 3d ed. 1989); but see the authors' somewhat more nuanced statement, *infra* note 219.

¹⁵³ 505 F. Supp. 787 (D. Kan. 1980), *aff'd on other grounds sub nom. Rodriguez-Fernandez v. Wilkinson*, 654 F.2d 1382 (10th Cir. 1981).

binding customary law."¹⁵⁴

Although the Soviet Union was one of the countries that abstained in 1948 when the Declaration was adopted by the General Assembly, a leading Soviet jurist felt able to state forty years later that the "basic rights and freedoms proclaimed in the Universal Declaration are considered at present as juridically binding customary or treaty rules."¹⁵⁵ The subsequent Constitution of the Commonwealth of Independent States declares that the members "regard as a most important principle the pre-eminence of human rights, in accordance with the U.N. Universal Declaration of Human Rights and other generally recognized norms of international law."¹⁵⁶

Galindo Pohl, a Special Representative of the U.N. Commission on Human Rights, concluded as follows in one of his reports on the situation of human rights in Iran:

The rights and freedoms set out in the Universal Declaration have become international customary law through State practice and *opinio juris*. Even if the strictest approach is adopted to the determination of the elements which form international customary law, that is, the classical doctrine of the convergence of extensive, continuous and reiterated practice and of *opinio juris*, the provisions contained in the Universal Declaration meet the stringent standards of that doctrine

The Universal Declaration, as a projection of the Charter of the United Nations, and particularly as international customary law, binds all States.¹⁵⁷

Lallah, a prominent jurist from Mauritius and long-time member of the Human Rights Committee, agrees that the Universal Declaration "is

¹⁵⁴ Richard Bilder, *The Status of International Human Rights Law: An Overview*, in INTERNATIONAL HUMAN RIGHTS LAW & PRACTICE 1, 8 (James Tuttle ed., 1978).

¹⁵⁵ Vladimir Kartashkin, *The Universal Declaration and Human Rights in the Contemporary World*, 1988 SOVIET Y.B. INT'L L. 39, 50 (English summary).

¹⁵⁶ C.I.S. CONSTITUTION, sec. I, art. 3, *quoted in* SOVIET BUSINESS LAW REPORT, July 1991.

¹⁵⁷ U.N. Doc. E/CN.4/1987/23, at 4-5 (1987).

universally regarded as expounding generally accepted norms."¹⁵⁸

Some scholars have found the Declaration's norms even to constitute *jus cogens*. "[T]he Universal Declaration is now widely acclaimed as a Magna Carta of humankind, to be complied with by all actors in the world arena. What began as mere common aspiration is now hailed both as an authoritative interpretation of the human rights provisions of the U.N. Charter and as established customary law, having the attributes of *jus cogens* and constituting the heart of a global bill of rights."¹⁵⁹ One recent U.S. article posits that "[a]ll rights that have achieved universal recognition may be taken to be *jus cogens*," although the author goes on to say that "[t]he field occupied by such rights is . . . extremely narrow."¹⁶⁰

"Empiric studies of state practice are . . . of the highest importance in establishing whether a particular right has matured into customary law."¹⁶¹ Several states have publicly espoused the view that the Universal Declaration is binding as customary law, although formal governmental statements are difficult to find. For example, Finland has stated in the United Nations that even those states that have not ratified the Covenants

have already, as Members of the United Nations, pledged themselves to promote the enjoyment of human rights and fundamental freedoms. These rights and freedoms are defined in the Universal Declaration of Human Rights which, in the view of the Government of Finland, can be considered to constitute an obligation for the members of the international community. This is so, because it is generally

¹⁵⁸ Justice R. Lallah, in 2 JUDICIAL COLLOQUIUM IN BANGALORE, DEVELOPING HUMAN RIGHTS JURISPRUDENCE, THE DOMESTIC APPLICATION OF INTERNATIONAL HUMAN RIGHTS NORMS 33 (London, Commonwealth Secretariat, 1998) [hereinafter DEVELOPING HUMAN RIGHTS JURISPRUDENCE].

¹⁵⁹ Justice M. Haleem, *The Domestic Application of International Human Rights Norms*, in DEVELOPING HUMAN RIGHTS JURISPRUDENCE, *supra* note 158, at 97. An identical view is expressed in MYRES S. MCDUGAL, HAROLD LASSWELL & LUNG-CHU CHEN, HUMAN RIGHTS AND WORLD PUBLIC ORDER 274 (New Haven, CT: Yale University Press, 1980); *accord.*, Humphrey, *No Distant Millennium*, *supra* note 147, at 164. Ramcharan observes simply that "[s]ome provisions [of the Declaration] might even constitute norms of *Jus Cogens*." B.G. Ramcharan, *The Legal Status of the International Bill of Human Rights*, 55 NORDIC J. INT'L L. 366, 380 (1986).

¹⁶⁰ David F. Klein, *A Theory for the Application of the Customary International Law of Human Rights by Domestic Courts*, 13 YALE J. INT'L L. 332, 354 n.111 (1988).

¹⁶¹ MERON, *supra* note 134, at 94.

agreed upon that customary international law can come into being only if a great majority of States hold a common view to this effect. The existence of such a view in regard to the Universal Declaration of Human Rights has already been amply evidenced.¹⁶²

A similar statement, on behalf of the five Nordic countries of Denmark, Finland, Iceland, Norway, and Sweden, was made on the occasion of the fortieth anniversary of the Declaration by Sweden's Permanent Representative to the United Nations: "The [Universal] Declaration [of Human Rights] is generally recognized as having already become a part of universal international law. Therefore, the implementation of the principles of the Declaration is the responsibility of all Member States of the United Nations."¹⁶³

Several Latin American countries also have accepted that the Universal Declaration constitutes customary law. The Foreign Minister of Uruguay, for example, recently stated that the international obligation to guarantee and protect human rights is derived not only from international treaties but also from the U.N. Charter and the Universal Declaration, and that the obligation constitutes a peremptory norm of *jus cogens*.¹⁶⁴ Mexico¹⁶⁵ and Chile¹⁶⁶ also recognize that the Universal Declaration constitutes customary international law.

In denouncing human rights abuses by the Somoza regime in Nicaragua, the Presidents of Colombia and Venezuela expressly invoked the provisions of the Universal Declaration of Human Rights; Nicaragua accepted the relevance of the Declaration in its response, claiming that the Nicaraguan

¹⁶² *Statement by Finland in the Third Committee of the U.N. General Assembly*, Nov. 13, 1980, summarized in U.N. GAOR, 3d Comm., 35th Sess., 57th mtg., at 4, U.N. Doc. A/C.3/35/SR.57 (1980).

¹⁶³ *Statement of Jan K. Eliasson to the U.N. General Assembly*, Dec. 8, 1988 (text provided by the Permanent Mission of Sweden to the United Nations), at 2.

¹⁶⁴ *Statement of Héctor Gros Espiell to the 47th session of the U.N. General Assembly* (1992), reprinted in SERGIO ABREU BONILLA & ALEJANDRO PASTORI FILLOL, *URUGUAY Y EL NUEVO ORDEN MUNDIAL* 109, 113 (author's translation).

¹⁶⁵ Letter from Miguel Angel González Félix, Bureau of Human Rights and Drug Trafficking, Ministry of Foreign Relations, to the author, ref. no. DHN-1140, Sept. 7, 1993, at 1.

¹⁶⁶ Letter from Ambassador Roberto Garretón Merino, *supra* note 29, at 1.

Constitution was "in full accord" with the Declaration.¹⁶⁷

A Special Rapporteur appointed by the U.N. Commission on Human Rights stated that Bolivia's obligations to respect and promote human rights "exist as a direct consequence of the Charter of the United Nations and the Universal Declaration of Human Rights."¹⁶⁸ In its reply to the Rapporteur, the Government of Bolivia appeared to recognize that it had such "obligations deriving from the United Nations Charter and the Universal Declaration of Human Rights which Bolivia signed and ratified as a founder Member of the organization."¹⁶⁹

In 1977, the Yugoslav Constitutional Court stated that the Universal Declaration, along with the U.N. Charter and the Covenant on Civil and Political Rights, expressed generally recognized norms of international law.¹⁷⁰ Following the sweeping political changes in 1989, Czechoslovakia "acknowledged the protection of human rights and liberties as one of the norms of international *ius cogens* and recognized the humanitarian principles of the UDHR as the universal principles of international customary law."¹⁷¹ Azerbaijan "consider[s] the provisions of the Universal Declaration of Human Rights as a whole to reflect both municipal and customary international law."¹⁷²

Although there appear to be no formal statements concerning the matter, the Austrian Government also considers the Declaration "to be of international law and binding on all States. In fact States are consistently held responsible for infringements of the Universal Declaration of Human Rights within the framework of the United Nations General Assembly and Commission on Human Rights even if they have not ratified the two Human Rights Covenants."¹⁷³

Senegal, which refers specifically to the Declaration in its Constitution, believes that the Declaration has evolved into "a fundamental text, whose mandatory character as '*jus cogens*' is undeniable [T]he Universal

¹⁶⁷ See Ramcharan, *supra* note 159, at 373-74.

¹⁶⁸ Quoted in Ramcharan, *supra* note 159, at 375.

¹⁶⁹ *Id.* at 376.

¹⁷⁰ Decision of Mar. 16, 1977, *cited in* Benvenisti, *supra* note 22, at 165 n.28.

¹⁷¹ Letter from Jirí Michovsky, Director, Human Rights and Migration Department, Czech Ministry of Foreign Affairs, to the author, Aug. 11, 1993, at 2.

¹⁷² Letter from A. Salamov, Deputy Minister, Ministry of Foreign Affairs, to the author, ref. no. 3077/26, Oct. 7, 1993, at 2 (unofficial translation).

¹⁷³ Letter from Minister Nikolaus Scherk, Austrian Federal Ministry for Foreign Affairs, to the author, No. 2220.127/483-I.7/93, July 19, 1993.

Declaration of Human Rights is, at the very least, a customary rule of international law within the meaning of article 38, paragraph 1b, of the Statute of the International Court of Justice."¹⁷⁴

A somewhat similar view, although a bit less expansive, was put forward by the United States in the *Hostages* case before the International Court of Justice:

The existence of . . . fundamental rights for all human beings, nationals and aliens alike, and the existence of a corresponding duty on the part of every State to respect and observe them, are now reflected, *inter alia*, in the Charter of the United Nations, the Universal Declaration of Human Rights and corresponding portions of the International Covenant on Civil and Political Rights¹⁷⁵

The United States cited articles 3, 5, 7, 9, 12, and 13 of the Declaration as among the fundamental rights to which all individuals are entitled.¹⁷⁶

Despite this assertion in an international legal brief and the fact that U.S. administrations from both major political parties have supported the ideals of the Universal Declaration and the significance of the Declaration as an international standard, it would be misleading to conclude that there is agreement as to the precise extent of any legal obligations that might flow from the Declaration.¹⁷⁷ There has been no definitive official statement by the U.S. government either ascribing or denying customary law status to the entire Declaration; U.S. law does prohibit certain forms of economic and military assistance to any country "which engages in a consistent pattern of gross violations of internationally recognized human rights," but the relevant

¹⁷⁴ Letter from Mouhamed El Moustapha Diagne, on behalf of the Minister of State of the Senegalese Ministry of Foreign Affairs, to the author, No. 06214/M.A.E./DAJC/CONT, Aug. 16, 1993 (unofficial translation).

¹⁷⁵ Memorial of the United States (U.S. v. Iran), 1980 I.C.J. Pleadings 182 (Jan. 12, 1980) [hereinafter U.S. Memorial].

¹⁷⁶ *Id.* at 182 n.36, 183 n.42.

¹⁷⁷ See Christina M. Cerna, *The Normative Status of the Universal Declaration of Human Rights—The View from the United States*, in PROCEEDINGS AND COMMITTEE REPORTS OF THE AMERICAN BRANCH OF THE INTERNATIONAL LAW ASSOCIATION 1991-1992, at 66-73.

statutes do not refer specifically to the Universal Declaration.¹⁷⁸

A paper prepared for the Human Rights Committee of the American Branch of the ILA observes that, in the United States, "a majority of courts and most pronouncements of the executive branch reject" the view that the Universal Declaration represents customary international law,¹⁷⁹ although this conclusion is valid only if one considers the Declaration as a whole. Nonetheless, the Declaration has been utilized by a number of U.S. courts as evidence of the content of customary international human rights law, although to date no court has held that the Declaration per se constitutes international custom.

During the 1993 World Conference on Human Rights, Iceland noted that "[o]ne of the most important achievements of the United Nations has been the progressive development and codification of human rights. These agreements are today a part of international customary law."¹⁸⁰ Malta called on all states "to implement and enforce in a concrete manner the principles and purposes of the *U.N. Charter* and the *Universal Declaration of Human Rights*," thus implying equality between the two documents and the binding nature of both.¹⁸¹

The Government of Canada seems to view the Universal Declaration as an authoritative interpretation of the human rights obligations contained in the U.N. Charter, which are binding on states.

It is the view of the Canadian Government that the observance of human rights is obligatory under international law. The Canadian Government views the Universal Declaration

¹⁷⁸ See, e.g., Foreign Assistance Act of 1961 § 116, 22 U.S.C. § 2151n (1994), and other laws compiled in INTERNATIONAL HUMAN RIGHTS LAW GROUP, U.S. LEGISLATION RELATING HUMAN RIGHTS TO U.S. FOREIGN POLICY (4th ed. 1991).

¹⁷⁹ Cerna, *supra* note 177, at 46. A dissenting comment which views the Cerna report as "unusually negative" with respect to the normative status of the Declaration was filed by two committee members. See *id.* at 92-95.

¹⁸⁰ *Statement by Thorsteinn Pálsson, Minister of Justice of Iceland*, June 17, 1993 (on file with author). Although the Minister did not specify which agreements were part of customary law, his subsequent call for universal ratification of human rights treaties suggests that the non-treaty status of the Declaration would not preclude it from contributing to the development of that customary law.

¹⁸¹ *Statement of Joseph M. Fenech, Minister of Justice*, June 1993, at 3 (on file with author) (emphasis in original). 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. *Id.* at 16-17.

of Human Rights as a valid interpretation and elaboration of the references to human rights and fundamental freedoms in the Charter of the United Nations. Consequently, the obligation on states to observe the human rights and fundamental freedoms enunciated in the Declaration derives from their adherence to the Charter of the United Nations.¹⁸²

However, it has been suggested that Canada does not view the Declaration itself as creating any legally binding obligation in international (or, presumably, domestic) law.¹⁸³

Other states have concluded that at least some of the provisions of the Universal Declaration of Human Rights now constitute binding customary norms, although most have not been willing to identify specifically which provisions may be binding. For example, Denmark considers that "a large number of the human rights described in the Universal Declaration from the outset were, or later on have assume[d] the character of customary international law The fundamental legal basis for . . . [the place of human rights in Danish foreign policy] rests on the many international instruments which have been elaborated in the last decades, among which rank the Universal Declaration of Human Rights."¹⁸⁴ Guyana has stated that it "is supportive of the view expressed in the [Interim] Report of the 1992 [ILA] Cairo Conference that 'the Universal Declaration remains the primary source of global human rights standards' and that 'at the very least, the Universal Declaration constitutes significant evidence of customary international law.'"¹⁸⁵

Switzerland "believes that the Declaration of 1948 is being gradually transformed into an instrument of customary international law or, at least, that some of its principles are clothed in the character of customary

¹⁸² Letter from the Legal Bureau, Jan. 9, 1979, reprinted in *Canadian Practice in International Law*, 1980 CAN. Y.B. INT'L L. 326.

¹⁸³ See BAYEFKY, *supra* note 32, at 15 n.66.

¹⁸⁴ Letter from Laurids Mikaelson, Head of Department, Danish Ministry of Foreign Affairs, to the author, 28.C.28.a/2, July 19, 1993.

¹⁸⁵ Comments by the Government of Guyana on the Status of the Universal Declaration of Human Rights in National and International Law, annexed to letter from Neville J. Bissember Jr., Ministry of Foreign Affairs, to the author, Sept. 24, 1993, at 2.

international law."¹⁸⁶ Although Australia has not analyzed the Declaration "with a view to ascertaining which parts of the Declaration actually reflect customary international law," this statement clearly suggests that at least some parts of the Declaration *do* reflect custom, according to the Australian government.¹⁸⁷ Although the Government of New Zealand regards the Declaration as primarily having "great moral force," it also now considers that, "over time, many of its provisions have come to be accepted as binding customary international law."¹⁸⁸

Two rapporteurs (from Jordan and Japan, respectively) for the U.N. Sub-Commission on Prevention of Discrimination and Protection of Minorities recently concluded, after a brief discussion of the Declaration's expanding influence, "The Declaration in its entirety or, at a minimum, a great number of the provisions contained therein are held to constitute general principles of law or binding rules of customary law."¹⁸⁹ They go on to cite articles 9, 13, and 15 of the Declaration to support their view that the practice of forced population transfer is a violation of human rights.¹⁹⁰

A Dutch scholar and former lawyer for Amnesty International believes that the proposition that the Universal Declaration in its entirety is customary law "may be somewhat of an overstatement. It seems doubtful whether an international tribunal would be willing to adopt such an approach . . . [T]he Universal Declaration may be used as important evidence for interpreting the U.N. Charter's human rights provisions and as important evidence of state practice for determining the existence of a rule of customary international law. But it does not, in itself and in toto, represent

¹⁸⁶ Letter responding to the ILA Committee on the Enforcement of Human Rights Law questionnaire from Mathias Krafft, Directorate for International Legal Affairs, Federal Department of Foreign Affairs, Aug. 14, 1989, ref. 0.713.22.(4). - GAM/TSA, Annex at 5 (author's translation) (references omitted).

¹⁸⁷ Letter from Christopher Lamb, Legal Adviser, International Organisations and Legal Division, Australian Department of Foreign Affairs and Trade, to the author, Sept. 10, 1993, at 1.

¹⁸⁸ Letter from the Minister of Foreign Affairs and Trade, Oct. 2, 1990, *quoted in* letter from F.A. Small, Director of the Legal Division for the Secretary of Foreign Affairs and Trade, to the author, Aug. 11, 1993, ref. 701/7/2/1, at 5-6.

¹⁸⁹ *The Realization of Economic, Social and Cultural Rights: The Human Rights Dimensions of Population Transfer, Including the Implantation of Settlers: Preliminary Report Prepared by Mr. A.S. Al-Khasawneh and Mr. R. Hatano*, Commission on Human Rights, Sub-Commission on the Prevention of Discrimination Protection of Minorities, U.N. ESCOR, 45th Sess., at 47, U.N. Doc. E/CN.4/Sub.2/1993/17 (1993).

¹⁹⁰ *Id.* at 48.

customary international law."¹⁹¹

Of course, not every state or scholar has been willing to ascribe legal content to any of the Declaration's provisions per se. The Minister for Foreign Affairs of Singapore, for example, while accepting that human rights is an appropriate international concern, went on to note at the 1993 Vienna World Conference on Human Rights:

Forty-five years after the Universal Declaration was adopted as a "common standard of achievement", debates over the meaning of many of its thirty articles continue. The debate is not just between the West and the Third World. Not every country in the West will agree on the specific meaning of every one of the Universal Declaration's thirty articles. Not everyone in the West will even agree that all of them are really rights.¹⁹²

Although China has described the Universal Declaration as a significant international document whose influence "has increased with the continuous enrichment and development of its original content,"¹⁹³ a more accurate summary of China's views as to the legal significance of the Declaration may be China's citation of article 29 of the Declaration (which states that rights may not be exercised "contrary to the purposes and principles of the United Nations") in support of its opinion that the U.N. Charter was "the sole standard by which to judge a country's approach to human rights."¹⁹⁴ In a speech to the Bundestag commemorating the fortieth anniversary of the Declaration, German Chancellor Kohl stated that the Declaration was not

¹⁹¹ MENNO T. KAMMINGA, *INTER-STATE ACCOUNTABILITY FOR VIOLATIONS OF HUMAN RIGHTS* 133 (Philadelphia: University of Pennsylvania Press, 1992).

¹⁹² *Statement by Mr. Wong Kan Seng, Minister for Foreign Affairs of the Republic of Singapore*, World Conference on Human Rights (Vienna Conference), June 16, 1993, at 2 (on file with author).

¹⁹³ *Statement of Ding Yuanhong, Deputy Permanent Representative of China to the U.N.*, at the U.N. General Assembly session celebrating the 40th anniversary of the Universal Declaration of Human Rights, *quoted in Human Rights Declaration Reflects World People's Aspirations, says Chinese ambassador*, XINHUA GEN. OVERSEAS NEWS SERVICE, Dec. 8, 1988.

¹⁹⁴ Tan Songqiu, Deputy Representative of China to the U.N. Commission on Human Rights, *quoted in China's Representative Addresses U.N. Human Rights Commission*, BBC SUMMARY OF WORLD BROADCASTS, Feb. 20, 1992, at FE/1309/A/1/1.

legally binding, although he then went on to say that members of the United Nations, by adopting the Declaration, have explicitly agreed to be guided by its "forceful and convincing principles."¹⁹⁵ A South African court recently stated that, "[h]owever laudable the ideals which have inspired the Universal Declaration of Human Rights . . . they do not form part of customary international law."¹⁹⁶

Similar hesitations may be found on the part of some international legal scholars. While noting the significant political and interpretative influence of the Declaration at both the national and international levels, a Rapporteur of the U.N. Sub-Commission on Prevention of Discrimination and Protection of Minorities concluded that the Declaration is only "of a quasi-legal significance as distinct from being the source and origin of legal rights and duties."¹⁹⁷ Similarly, a long-time member of the Committee on the Elimination of All Forms of Racial Discrimination views the Declaration as definitional, rather than imposing any direct obligation on states.¹⁹⁸

Finally, a few writers continue to reject the relevance of the Universal Declaration to their own societies, because of the Declaration's purportedly Western bias. Although this view has been consistently rejected in

¹⁹⁵ Statement by Chancellor Helmut Kohl, Deutscher Bundestag, 11. Wahlperiode, 117. Sitzung, Dec. 9, 1988, at 8569.

¹⁹⁶ *State v. Rudman, State v. Johnson, State v. Xaso, Xaso v. Van Wyk* No. [1989] 3 S.A. 368, 376. See also *State v. Petane*, [1988] 3 S.A. 51 (C) at 58G-J (casting doubt on the proposition that certain provisions of the Declaration had become customary law, citing the inconsistent practice of states); these decisions are discussed in JOHN DUGARD, *INTERNATIONAL LAW, A SOUTH AFRICAN PERSPECTIVE* 30-31 (1994). Dugard goes on to observe that, in the post-apartheid era, the Declaration "is destined to play a more constructive role: as an inspiration to the drafters of a South African Bill of Rights and as a guide to municipal courts in their interpretation of laws affecting human rights. As an authoritative statement of the international community, several of whose provisions have acquired the force of customary law, it is eminently suited for such a role." *Id.* at 205.

¹⁹⁷ ERICA-IRENE A. DAES, *FREEDOM OF THE INDIVIDUAL UNDER LAW, A STUDY ON THE INDIVIDUAL'S DUTIES TO THE COMMUNITY AND THE LIMITATIONS ON HUMAN RIGHTS AND FREEDOMS UNDER ARTICLE 29 OF THE UNIVERSAL DECLARATION OF HUMAN RIGHTS* 50 (New York: United Nations, 1990).

¹⁹⁸ Karl Joseph Partsch, *The Contribution of Universal International Instruments on Human Rights*, in *THE LIMITATION OF HUMAN RIGHTS IN COMPARATIVE CONSTITUTIONAL LAW* 65 (Armand de Mestral et al. eds., Québec: Eds. Yvon Blais, 1986). However, Partsch notes that "it is a matter of controversy whether and to what extent the *Universal Declaration* . . . refers to existing legal obligations under customary law." *Id.* at n.65 (emphasis in original).

international forums—most recently at the Vienna World Conference on Human Rights¹⁹⁹—it does retain some adherents.²⁰⁰

A. *Views of the International Court of Justice*

The International Court of Justice has addressed the status of the Declaration at least indirectly in several opinions. The principle that human rights obligations may be imposed upon states through customary international law was established in one of the Court's early cases, in which the Court observed that "the principles underlying the [Genocide] Convention are principles which are recognised by civilised nations as binding on States, even without any conventional obligation."²⁰¹ In the subsequent *Barcelona Traction* case, the Court clarified that

an essential distinction should be drawn between the obligations of a State towards the international community as a whole, and those arising vis-a-vis another State in the field of diplomatic protection. By their very nature the former are the concern of all States. In view of the importance of the rights involved, all States can be held to have a legal interest in their protection; they are obligations *erga omnes*.

Such obligations derive, for example, in contemporary international law, from the outlawing of acts of aggression, and of genocide, as also *from the principles and rules*

¹⁹⁹ The Vienna Declaration and Programme of Action states, inter alia: "All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. 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." *Vienna Declaration*, *supra* note 5, 273, at ¶ 5.

²⁰⁰ See, e.g., ISSA G. SHIVJI, *THE CONCEPT OF HUMAN RIGHTS IN AFRICA* 51 (London: Codesria Book Series, 1989) ("Even the Universal Declaration of Human Rights and other [sic] U.N. Covenants can, by no means be regarded as universal—the very debates challenging their universality prove this.") Shivji concludes that current human rights discourse in Africa is merely groping in the dark, "mindlessly reproducing imperialist and neo-colonial ideological domination." *Id.* at 110.

²⁰¹ Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, 1951 I.C.J. 15, 23 (Advisory Opinion of May 28).

*concerning the basic rights of the human person, including protection from slavery and racial discrimination.*²⁰²

The Universal Declaration of Human Rights was cited in support of the applicants in the *South West Africa* cases,²⁰³ although the Court, in a widely criticized opinion, ultimately rejected the applicants' standing to bring their claims.²⁰⁴ The dissenting opinion of Judge Tanaka more persuasively clarified the relationship among the U.N. Charter, the Universal Declaration, and the obligation to protect human rights:

From the provisions of the Charter referring to the human rights and fundamental freedoms it can be inferred that the legal obligation to respect human rights and fundamental freedoms is imposed on member States

Without doubt, under the present circumstances, the international protection of human rights and fundamental freedoms is very imperfect [However,] there is no doubt that these obligations are not only moral ones, and that they also have a legal character by the very nature of the subject-matter.

Therefore, the legislative imperfections in the definition of human rights and freedoms and the lack of mechanism for implementation, do not constitute a reason for denying their existence and the need for their legal protection

Furthermore, the Universal Declaration of Human Rights . . . although not binding in itself, constitute[s] evidence of the interpretation and application of the relevant Charter provisions.²⁰⁵

²⁰² *Barcelona Traction, Light & Power Co., Ltd.*, 1970 I.C.J. 3, 32 (Second Phase) (Judgment of Feb. 5) (emphasis added).

²⁰³ See *South West Africa*, 1962 I.C.J. 312, 323 (Preliminary Objections) (Judgment of Sept. 3) (U.N. Charter and Universal Declaration are "currently accepted international standards.").

²⁰⁴ *South West Africa*, 1966 I.C.J. 6 (Second Phase) (Judgment of July 18).

²⁰⁵ *Id.* at 289-90, 293 (Tanaka, J., dissenting). Judge Padilla Nervo also noted that "the international community has enacted important instruments which the Court, of course, must keep in mind, the Charter of the United Nations, . . . the Universal Declaration of Human Rights, . . . having all a bearing on the present case for the interpretation and application of the provisions of the Mandate." *Id.* at 467-68 (Padilla Nervo, J., dissenting).

Only four years later, the Court addressed the substance of the South African presence in Namibia (South West Africa) and stated clearly that “[t]o establish . . . and to enforce, distinctions, exclusions, restrictions and limitations exclusively based on grounds of race, colour, descent or national or ethnic origin which constitute a denial of fundamental human rights is a flagrant violation of the purposes and principles of the Charter.”²⁰⁶ Vice-President Ammoun relied specifically on the Universal Declaration in arriving at his conclusions that the right to equality is a binding customary norm:

The Advisory Opinion takes judicial notice of the Universal Declaration of Human Rights

Although the affirmations of the Declaration are not binding qua international convention . . . , they can bind States on the basis of custom within the meaning of paragraph 1(b) of [Article 38 of the Statute of the Court] . . . because they constituted a codification of customary law . . . or because they have acquired the force of custom through a general practice accepted as law.²⁰⁷

The Court’s acceptance of Judge Ammoun’s approach was evidenced a decade later in the *Hostages* case. In its judgment, the Court stated:

Wrongfully to deprive human beings of their freedom and to subject them to physical constraint in conditions of hardship is in itself manifestly incompatible with the principles of the Charter of the United Nations, *as well as with the fundamental principles enunciated in the Universal Declaration of Human Rights.*²⁰⁸

²⁰⁶ Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276 (1970), 1971 I.C.J. 16, 57 (Advisory Opinion of June 21).

²⁰⁷ *Id.* at 76 (Ammoun, J., separate opinion). Judge Ammoun’s conclusion appears to be more consistent than does that of the Court with Security Council Resolution 276, which was at issue in the case and which reaffirmed in its fourth preambular paragraph that South Africa’s actions in Namibia “constitute illegal acts and flagrant violations of the rights of the Namibians concerned, the Universal Declaration of Human Rights and the international status of the Territory.”

²⁰⁸ United States v. Iran, 1980 I.C.J. 3, 42 (Judgment of May 24) (emphasis added).

Although there were dissents to the Court's judgment, none clearly challenged the quoted language.

Individual judges have referred to the Universal Declaration in other cases, in each instance in support of their conclusion that a fundamental right or principle had been violated.²⁰⁹

Thus, the apparently unanimous view of the Court is that the Universal Declaration of Human Rights is a document of sufficient legal status to justify its invocation by the Court in the context of a State's obligations under general international law A . . . natural interpretation is that the Court was simply stating that the Declaration as a whole propounds fundamental principles recognised by general international law.

[In conclusion,] it appears, first, that fundamental human rights must under general international law be respected; [and] second, that it remains to be confirmed whether *all* the guaranteed rights under the Universal Declaration of Human Rights fall under that law (I suggest that they do, but that the content of some—socioeconomic rights, political rights—is not ripe for judicial determination at the universal level).²¹⁰

²⁰⁹ See, e.g., *Nottebohm*, 1955 I.C.J. 4, 63 (Second Phase) (Judgment of Apr. 6) (Guggenheim, ad-hoc J., dissenting) (refusal to recognize Liechtenstein's ability to exercise diplomatic protection "would be contrary to the basic principle embodied in Article 15(1) of the Universal Declaration of Human Rights"); *South West Africa*, 1962 I.C.J. 319, 379 (Preliminary Objections) (Judgment of Sept. 3) (Bustamente, J., separate opinion) ("[I]t must be recalled that the right of defence before the law is expressly mentioned in the [Universal] Declaration of Human Rights"); *Aegean Sea Continental Shelf*, 1978 I.C.J. 3, 641-42 (Judgment of Dec. 19) (Stassinopoulos, ad-hoc J., dissenting) ("the original source of general principles is to be found in the idea of freedom and democracy and, beyond that, in the Universal Declaration of Human Rights"); *Application for Review of Judgment No. 333 of the United Nations Administrative Tribunal*, 1987 I.C.J. 18, 173 (Judgment of May 27) (Evensen, J., dissenting) (citing articles 13 and 15 of the Declaration, which are "basic principles of law spelt out in the . . . Declaration"); *Applicability of Article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations*, 1989 I.C.J. at 211 (Evensen, J., separate opinion) (art. 16 of the Declaration "is a concrete expression of an established principle of human rights in the modern law of nations . . .").

²¹⁰ Nigel S. Rodley, *Human Rights and Humanitarian Intervention: The Case Law of the World Court*, 38 INT'L & COMP. L. Q. 321, 326, 333 (1989) (emphasis in original).

Of course, courts or other bodies of limited jurisdiction (such as those created under the terms of a specific regional human rights convention) cannot avail themselves of provisions in the Universal Declaration of Human Rights in order to expand the scope of their own jurisdiction.²¹¹ At the same time, however, the African Commission on Human and Peoples' Rights is directed to "draw inspiration from international law on human and peoples' rights, particularly from . . . the Universal Declaration of Human Rights" in performing its functions.²¹² The Inter-American Court of Human Rights is granted jurisdiction to offer advisory opinions on the interpretation of not only the American Convention on Human Rights but also "of other treaties concerning the protection of human rights in the American states."²¹³ The Court has held that this power includes the ability to interpret the American Declaration on the Rights and Duties of Man, "whenever it is necessary to do so in interpreting" human rights treaties;²¹⁴ it might be presumed that the Court would adopt a similar position with respect to interpreting the Universal Declaration of Human Rights, should a proper case be presented to it.

²¹¹ Numerous decisions of the European Court of Human Rights, for example, recognize that the scope of rights protected under the European Convention on Human Rights is in many respects narrower than that set forth in the Declaration. *See, e.g.,* Kosiek v. F.R.G., 105 Eur. Ct. H.R. (ser. A) (1986); Glasenapp v. F.R.G., 104 Eur. Ct. H.R. (ser. A) (1986); X v. F.R.G., App. No. 165/56, 1 1956 Y.B. EUR. CONV. ON H.R. 203 (Commission admissibility decision).

²¹² African Charter on Human and Peoples' Rights, June 27, 1981, O.A.U. Doc. CAB/LEG/67/3 Rev. 5, art. 60 (entered into force Oct. 21, 1986).

²¹³ American Convention on Human Rights, Nov. 22, 1969, 9 I.L.M. 217, art. 64(1), (1970).

²¹⁴ *See* Inter-Am. Ct. H.R., Advisory Opinion OC-10/89 (1989), para. 44. The Court viewed the American Declaration as an authoritative interpretation of the OAS Charter, noting that "the Charter of the Organization cannot be interpreted and applied as far as human rights are concerned without relating its norms . . . to the corresponding provisions of the Declaration." *Id.* at para. 43. "The [OAS] General Assembly has also repeatedly recognized that the American Declaration is a source of international obligations for the member states of the OAS That the Declaration is not a treaty does not, then, lead to the conclusion that it does not have legal effect . . ." *Id.* at paras. 42, 47. The analogy to the Universal Declaration as an interpretation of the U.N. Charter is evident.

B. 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. Unless one wishes to interpret the proposed customary international law norm as merely expressing general agreement with the desirability of the principles in the Declaration, it would appear difficult to make the case that states recognize an international legal obligation to guarantee, e.g., periodic holidays with pay,²¹⁵ full equality of rights upon dissolution of a marriage,²¹⁶ or protection against unemployment.²¹⁷ Of course, states might be more willing to recognize the applicability of the entire Declaration if they are reminded of the uncertainty and discretion introduced into the rights therein articulated by article 29 of the Declaration.²¹⁸

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."²¹⁹ Almost no state has

²¹⁵ Universal Declaration of Human Rights, *supra* note 1, art. 24.

²¹⁶ *Id.*, art. 16(1).

²¹⁷ *Id.*, art. 23(1).

²¹⁸ Few human rights are absolute, although their restriction is permissible only within strict limits. See, e.g., *Symposium: Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights*, 7 HUM. RTS. Q. 1 (1985). Paragraph 2 of article 29 of the Declaration provides: "In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order, and the general welfare in a democratic society." See generally DAES, *supra* note 197.

²¹⁹ HENKIN, *supra* note 132. Accord, Bernard Graefrath, *Universal Declaration of Human Rights—1988*, 14 GDR COMM. FOR HUM. RTS. BULL. 167, 168 (1988) ("Undoubtedly, the Universal Declaration has contributed to the becoming customary law of some basic human rights."); Humphrey, *supra* note 147, at 165 (citing socialist writers such as Tunkin, Pechota, and Kartashkin); Ramcharan, *supra* note 159, at 380 ("Some parts of the Universal Declaration . . . represent international customary law."); ROBERTSON & MERRILLS, *supra* note 152, at 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."). See *supra* notes 184-191 and accompanying text.

specifically rejected the principles proclaimed in the Universal Declaration,²²⁰ and it constitutes a fundamental part of what has become known as the Universal Bill of Human Rights.²²¹

Even the International Law Commission, in a 1977 observation rightly criticized by Meron as being too conservative,²²² acknowledged that there were at least "a few customary international rules on the subject" of a state's treatment of its own nationals, although it did not identify even those "few" rules.²²³

The American Law Institute's *Restatement (Third) of the Foreign Relations Law of the United States* offers one of the most explicit and authoritative opinions as to the content of the customary international law of human rights, at least as of 1987. Section 702 of the *Restatement* provides:

A state violates international law if, as a matter of state policy, it practices, encourages, or condones (a) genocide, (b) slavery or slave trade, (c) the murder or causing the disappearance of individuals, (d) torture or other cruel, inhuman or degrading treatment or punishment, (e) prolonged arbitrary detention, (f) systematic racial discrimina-

²²⁰ Eight states (Belorussian 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*, U.N. GAOR, 37th Sess., Supp. (No. 40) at 66-72, U.N. Doc. A/37/40 (1982) (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." *Enlèvement de personnes recherchées par la justice américaine: un responsable iranien menace Washington de réciprocité*, LE MONDE, June 28, 1992 (author's translation). Also, the Minister of Foreign Affairs of Singapore, in the course of a statement generally critical of the "universalist" approach to human rights said that "[n]o 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).

²²¹ The other components of the Universal Bill of Human Rights are the International Covenant on Economic, Social and Cultural Rights, 993 U.N.T.S. 3, 6 I.L.M. 360 (1967), the International Covenant on Civil and Political Rights, 999 U.N.T.S. 171, 6 I.L.M. 368 (1967) and the latter's first Optional Protocol.

²²² MERON, *supra* note 134, at 91-92.

²²³ [1977] Y.B. Int'l L. Comm'n 46, U.N. Doc. A/CN.4/SER.A/1977/Add.1, Part 2.

tion, or (g) a consistent pattern of gross violations of internationally recognized human rights.

The prohibitions against slavery, arbitrary deprivation of life, torture, arbitrary detention, and racial discrimination are explicitly included in the Universal Declaration,²²⁴ as well as other international instruments, and the prohibitions against genocide and gross violations of human rights are certainly implicit in the Declaration's provisions.

It would be presumptuous in the context of the present article to pretend to undertake a comprehensive analysis of each of the rights set forth in the Universal Declaration. Nevertheless, the evidence of state practice uncovered in the course of research for this article suggests the following tentative conclusions with respect to the various articles of the Declaration.²²⁵

Articles 1, 2, 6, and 7 express the fundamental right of equal treatment and non-discrimination *with respect to guaranteed human rights* "without distinction of any kind." It would seem difficult to deny the widespread acceptance of such a right to equal treatment under the law, subject to the caveats below.²²⁶

Although rights set forth in the Declaration and recognized by the state may not be protected or implemented in a discriminatory manner, these provisions do not prohibit distinctions or discrimination on the grounds mentioned for other purposes. Thus, the right to drive a car or the obligation to pay taxes or the right to hold a job in the civil service *may* be conditioned on, e.g., linguistic ability or wealth, so long as the condition is rationally

²²⁴ See *supra* note 1, arts. 3, 4, 5, 7 and 9.

²²⁵ A useful article-by-article survey of the legislative history of the Declaration is THE UNIVERSAL DECLARATION OF HUMAN RIGHTS: A COMMENTARY (Asbjørn Eide et al. eds., Oslo: Scandinavian University Press, 1992). However, the editors and contributors specifically decline to address the issue of the status of the Declaration in customary law. See *id.* at 7-8. Although somewhat dated, also useful is the comparative survey of substantive rights in PAUL SEIGHART, THE INTERNATIONAL LAW OF HUMAN RIGHTS (Oxford: Clarendon Press, 1983).

²²⁶ See, e.g., Jayawickrama, *supra* note 99, at 162 (equality before the law); The Namibia Case, 1971 I.C.J. 16, 76 (Ammoun, J., separate opinion) ("One right which must certainly be considered a preexisting binding customary norm which the Universal Declaration of Human Rights codified is the right to equality, which by common consent has ever since the remotest times been deemed inherent in human nature."); United States v. Iran, 1980 I.C.J. at 42 (citing art. 7); MERON, *supra* note 134, at 95-96 (equality before the law and non-discrimination); Richard B. Lillich, *Civil Rights, in* 1 HUMAN RIGHTS IN INTERNATIONAL LAW 115, 133 (Theodor Meron ed., Oxford: Clarendon Press, 1984).

related to the right or obligation in question.

Of course, even with respect to protected rights, state practice does not support a conclusion that there is full compliance with the principle of equality. Women are prevented from exercising their human rights on an equal footing with men in many states; distinctions based on religious and political beliefs are found in many constitutions; and the effective guarantee of respective rights and obligations to the wealthy and the poor is often quite different.

One specific kind of discrimination, that based on race, is held by all commentators to be prohibited under customary international law, at least when it is pervasive.²²⁷

Article 3, guaranteeing "the right to life, liberty and security of person," may be too general to be a useful international norm, although protection of the right to life has been cited frequently as falling within customary international law. The prohibition against murder and causing "disappearances"²²⁸ is included in the *Restatement's* list, and the prohibition against the arbitrary deprivation of life has been referred to by many other commentators.²²⁹

²²⁷ See, e.g., *Barcelona Traction*, 1970 I.C.J. 3, 32 (freedom from racial discrimination has "entered into the body of general international law"); BAYEFSKY, *supra* note 183 (referring to U.S. courts); John Dugard, *Application of Customary International Law by National Tribunals*, 76 ASIL PROC. 245, 247 (1982); Krafft, *supra* note 186, at 5. As of June 30, 1994, there were 138 parties to the International Convention on the Elimination of All Forms of Racial Discrimination, Dec. 21, 1965, 660 U.N.T.S. 195 (entered into force Jan. 4, 1969).

²²⁸ The phenomenon of out-of-uniform government security forces of kidnapping, detaining, and (usually) torturing and killing those abducted, which first appeared on a widespread basis in Argentina in the 1970s, has become known as causing "disappearances." Each of the component parts of this practice undoubtedly violates human rights norms, and the combined practice has been condemned by the Organization of American States; see generally *Inter-American Convention on the Forced Disappearance of Persons*, signed June 9, 1994, reprinted in 33 I.L.M. 1529 (1994); Judgment of July 29, 1988, *Velásquez Rodríguez v. Honduras*, Inter-Am. Ct. H.R., Ser. C, No. 4. See also *Forti v. Suarez-Mason*, 594 F. Supp. 707 (N.D. Cal. 1988).

²²⁹ See, e.g., Jayawickrama, *supra* note 99 (right to life and liberty); *Statement by Minister for Foreign Affairs of Singapore, Wong Kan Seng*, at the Vienna World Conference on Human Rights, June 16, 1993, at 4 (even in context of defending cultural relativism, "[d]iversity cannot justify gross violations of human rights. Murder is murder whether perpetrated in America, Asia or Africa.") (on file with author); *Preliminary Report by the Special Representative of the Commission, Mr. Andres Aguilar, . . . on the Human Rights Situation in the Islamic Republic of Iran*, Commission on Human Rights, U.N. ESCOR, 41st Sess., paras. 14-15, 18, U.N. Doc. E/CN.4/1985/20 (1985) (right to life); BAYEFSKY, *supra*

The prohibition against slavery in *article 4* is also universally held to form part of customary law;²³⁰ it is further prohibited by a series of widely ratified conventions.²³¹

Article 5's prohibition against "torture or . . . cruel, inhuman or degrading treatment or punishment" is perhaps the most widely commented upon right in the Declaration (with the possible exception of the prohibition against racial discrimination). Its place in customary international law is confirmed by the *Restatement*, and many other sources could be cited.²³² The Vienna World Conference on Human Rights "reaffirm[ed] that under human rights law and international humanitarian law, freedom from torture is a right which must be protected under all circumstances."²³³

One of the most persuasive examinations of the evidence of the status of the prohibition against torture in customary international law is the U.S. case of *Filartiga v. Peña-Irala*,²³⁴ in which the Court of Appeals for the Second Circuit referred to the Universal Declaration, a number of other international instruments (most unratified by the United States), national statutes, U.S. government statements, and the opinions of legal experts.

The treaties and accords cited above, as well as the express foreign policy of our own government, all make it clear that international law confers fundamental rights upon all people

note 32, at 13-15 (citing U.S. judicial decisions that have recognized the right not to be murdered and the prohibition against causing disappearances); U.S. Memorial, *supra* note 175, at 182 (specifically citing art. 3); BELGIAN MINISTRY OF FOREIGN AFFAIRS, BELGIUM AND HUMAN RIGHTS ["VIEWS AND SURVEYS" NO. 190] (Ministry of Foreign Affairs: Brussels, 1981), at 20 ("Some rights, like the right to life, are fundamental and should receive identical acknowledgement everywhere."); *Barcelona Traction*, 1970 I.C.J. at 32 (genocide).

²³⁰ See, e.g., *RESTATEMENT*, *supra* note 67, § 710, n.2; Jayawickrama, *supra* note 99; *Barcelona Traction*, 1970 I.C.J. at 32 (prohibition against slavery has "entered into the body of general international law . . ."); Krafft, *supra* note 186.

²³¹ See *Slavery Convention*, Sept. 25, 1926, 60 L.N.T.S. 253 (entered into force Mar. 9, 1927); *Protocol Amending the Slavery Convention*, Dec. 7, 1953, 182 U.N.T.S. 51 (entered into force the same day); *Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery*, Sept. 7, 1956, 266 U.N.T.S. 3 (entered into force Apr. 30, 1957).

²³² See, e.g., *Preliminary Report . . . on . . . Iran*, *supra* note 229, at paras. 14-15, 18; Dugard, *supra* note 227, at 247; U.S. Memorial, *supra* note 175, at 182 n.36, 183 n.42; Krafft, *supra* note 186; Jayawickrama, *supra* note 99.

²³³ *Vienna Declaration*, *supra* note 5, at 22.

²³⁴ 630 F.2d 876 (2d Cir. 1980).

vis-a-vis their own governments. While the ultimate scope of those rights will be a subject for continuing refinement and elaboration, we hold that the right to be free from torture is now among them.²³⁵

Article 8's guarantee of an effective remedy before domestic courts for violations of human rights would seem to be an essential prerequisite to ensure the enjoyment of other human rights, but it is not generally included in lists of customary human rights and has not been the subject of significant domestic jurisprudence.²³⁶

The prohibition in *article 9* against arbitrary arrest, detention, or exile is included in the *Restatement* list only if it is "prolonged;" other commentators have not made such a fine distinction, although the definition of what is "arbitrary" obviously limits the norm's usefulness in all but the most blatant cases. Perhaps the most direct and authoritative statement is by the International Court of Justice in the *Hostages* case, in which it stated:

Wrongfully to deprive human beings of their freedom and to subject them to physical constraint in conditions of hardship is in itself manifestly incompatible with the principles of the Charter of the United Nations, as well as with the fundamental principles enunciated in the Universal Declaration of Human Rights.²³⁷

The prohibition against arbitrary detention is closely linked to provisions relating to the right to a fair trial, found in *articles 10 and 11*. A comprehensive survey of provisions relating to criminal justice recently concluded that "at times there seems to be an uncanny resemblance between the terminology of more recent constitutions and that of the Universal Declaration and the ICCPR [International Covenant on Civil and Political Rights],"²³⁸ and many observers include the right to a fair trial (without more specific examination of the components of the right) among those now

²³⁵ *Id.* at 885.

²³⁶ See generally Lillich, *supra* note 226, at 133-36.

²³⁷ *United States v. Iran*, 1980 I.C.J. at 42.

²³⁸ M. Cherif Bassiouni, *Human Rights in the Context of Criminal Justice: Identifying International Procedural Protections and Equivalent Protections in National Constitutions*, 3 DUKE J. COMP. & INT'L. L. 235, 292 (1993).

guaranteed under customary law.²³⁹

Article 12, which deals, inter alia, with the right to privacy, was cited by the U.S. Government in the *Hostages* case²⁴⁰ as being encompassed in customary law and is included in other major human rights treaties. However, the content of the right would undoubtedly vary considerably among states, and the contours of that realm of personal privacy which is beyond the reach of government is perhaps too vague to be deemed a useful part of customary law at present.

Article 13, which is concerned with freedom of movement and the right to leave and return, also was cited by the United States in the *Hostages* case.²⁴¹ Meron believes that these rights should be added to those considered to be part of customary law,²⁴² but there does not seem to be sufficient consensus on this point at present to draw firm conclusions.²⁴³

Despite widespread acceptance of the 1951 Convention on the Status of Refugees and the 1967 Protocol thereto, the right to seek (not to receive) asylum set forth in *article 14* has not been identified by commentators or states as falling within customary international law. However, returning a person to a country where he would be tortured or persecuted might well violate a developing customary norm against the *refoulement* of refugees.²⁴⁴

²³⁹ See, e.g., *Preliminary Report . . . on . . . Iran*, *supra* note 229; BAYEFESKY, *supra* note 183 (citing U.S. courts with respect to arbitrary detention); Dugard, *supra* note 227 (arbitrary imprisonment); U.S. Memorial, *supra* note 175, at 182 (citing art. 9); MERON, *supra* note 134, at 95-96; Krafft, *supra* note 186.

²⁴⁰ U.S. Memorial, *supra* note 175, at 182 n.36.

²⁴¹ *Id.*

²⁴² MERON, *supra* note 134 (citing *Analysis of the Current Trends and Developments Regarding the Right to Leave any Country, Including One's Own, and to Return to One's Own Country, and some other Rights or Considerations Arising Therefrom*, Commission on Human Rights, Sub-Commission on the Prevention of Discrimination and Protection of Minorities, U.N. ESCOR, 40th Sess., U.N. Doc. E/CN.4/Sub.2/1988/35 (1988) (the Sub-Commission's Special Rapporteur on this subject was C.L.C. Mubanga-Chipoya of Zambia)).

²⁴³ See generally HURST HANNUM, *THE RIGHT TO LEAVE AND RETURN IN INTERNATIONAL LAW AND PRACTICE* (1987) (including the texts of the Uppsala (1972) and Strasbourg (1986) Declarations on the Right to Leave and Return).

²⁴⁴ See, e.g., GUY S. GOODWIN-GILL, *THE REFUGEE IN INTERNATIONAL LAW* 97-100 (1983); Deborah Perluss and Joan F. Hartman, *Temporary Refuge: Emergence of a Customary Norm*, 26 VA. J. INT'L L. 551 (1986); MERON, *supra* note 134; THORNBERRY, *supra* note 150, at 239-40 n.87. Cf. Kay Hailbronner, *Non-Refoulement and "Humanitarian" Refugees: Customary International Law or Wishful Legal Thinking?* 26 VA. J. INT'L L. 857

German courts have recognized that the right to a nationality set forth in *article 15* is “the expression of customary international law in the sense of article 25 of the Basic Law [German Constitution].”²⁴⁵ The Inter-American Court of Human Rights referred to article 15 of the Declaration as supporting its conclusion that “[t]he right of every human being to a nationality has been recognized as such by international law.”²⁴⁶ However, no other source for including this specific right within customary law has been found.

A German court has likewise found that “there is a consensus under international law that freedom of marriage is one of the fundamental human rights,” citing the European Convention of Human Rights and *article 16* of the Universal Declaration.²⁴⁷

The right to property, included in *article 17* of the Universal Declaration, was omitted from both of the two human rights Covenants. However, a U.N. rapporteur on the right to property recently concluded that the Declaration’s standards “became rules of customary international law and which as such were regarded as mandatory in the doctrine and practice of international law.”²⁴⁸ One must assume that the right to property would be included as one of these “mandatory” rules, so long as one excludes from the right broader issues such as the international norm governing expropriation and other controversial topics. The rapporteur did observe that the right to property is not universally recognized,²⁴⁹ however, thus casting some doubt on its status or scope as a customary norm. Nonetheless, it would seem difficult to maintain that a state’s power to expropriate or seize individual property is wholly unlimited.

Article 18 guarantees the right to freedom of thought, conscience, and religion; its provisions were expanded upon in the 1981 Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on

(1986) (querying whether non-refoulement for refugees who do not fit within the definition of the Refugee Convention is a customary law norm).

²⁴⁵ Judgment of Sept. 27, 1988, BVerwG (Highest Admin. Ct.), BVerwG 1 C 20.88, *reprinted in* 3 INFORMATIONSBRIEF FÜR AUSLÄNDERRECHT 91, 95 (1989).

²⁴⁶ Proposed Amendments to the Naturalization Provisions of the Political Constitution of Costa Rica, Inter-Am. Ct. H.R., Advisory Opinion OC-4/84 (1984), at para. 33.

²⁴⁷ Judgment of May 4, 1971, BVerfG (Fed. Const. Ct.), 31 BVerfGE 58, *reprinted in* 72 I.L.R. 295, 298 (Basic Right to Marry Case).

²⁴⁸ *The Right of Everyone to Own Property Alone as well as in Association with Others*, (Luis Valencia Rodriguez, Independent Expert), U.N. Doc. E/CN.4/1993/15, at 37 (1992).

²⁴⁹ *Id.* at 23.

Religion or Belief adopted by the U.N. General Assembly.²⁵⁰ The Declaration's Preamble considers that "religion or belief, for anyone who professes either, is one of the fundamental elements in his conception of life and that freedom of religion or belief should be fully respected and guaranteed." Although the Special Rapporteur on Iran of the U.N. Commission on Human Rights has stated that freedom of thought, conscience, and religion has "the character of *jus cogens*,"²⁵¹ the degree of de facto and de jure suppression of the practice of certain religions makes acceptance of such an assertion problematic. In addition, some Islamic countries have denied that Muslims have a right to change their religion.²⁵²

Similarly, the widespread restrictions on freedom of opinion and expression, set forth in *article 19* of the Declaration, make it difficult to conclude that this provision is now part of customary international law, unless one accepts that the restrictions to freedom of expression which states believe are permissible can be so broad as to swallow the right itself. Similar observations might be made with respect to *article 20's* guarantee of the right of peaceful assembly.

Despite the arguments of some that a "right to democracy" may be emerging as a norm of international customary law,²⁵³ it is apparent that many states have not accepted *article 21's* guarantee of the right to participate in the political life of one's country.

Articles 22 through 27 deal primarily with economic, social, and cultural rights, including social security, the right to work, the right to rest and leisure, the right to an adequate standard of living, the right to education, and the right to participate in cultural life. Despite the fact that the United States, in particular, has often denied the status of "rights" to these norms, they may enjoy wider international support than some of the civil and political rights traditionally emphasized in U.S. jurisprudence. However, they are rarely referred to by either commentators or courts in discussions of

²⁵⁰ G.A. Res. 36/55, U.N. GAOR, 36th Sess., Supp. No. 51, at 171, U.N. Doc. A/36/51 (1981).

²⁵¹ *Preliminary Report . . . on . . . Iran*, *supra* note 229, at 14-15.

²⁵² See Karl Josef Partsch, *Freedom of Conscience and Expression, and Political Freedoms*, in *THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS*, at 211 and notes (Louis Henkin ed., New York: Columbia Univ. Press, 1982).

²⁵³ See, e.g., Thomas M. Franck, *The Emerging Right to Democratic Governance*, 86 AM. J. INT'L L. 46 (1992). Cf. Gregory H. Fox, *The Right to Political Participation in International Law*, 17 YALE J. INT'L L. 539 (1992); Henry J. Steiner, *Political Participation as a Human Right*, 1 HARV. HUM. RTS. J. 77 (1988).

the content of customary international human rights law.

The following rights would seem to enjoy sufficiently widespread support as to be at least potential candidates for rights recognized under customary international law: the right to free choice of employment;²⁵⁴ the right to form and join trade unions;²⁵⁵ and the right to free primary education, subject to a state's available resources.²⁵⁶ Many rights included within these articles are closely related to other rights, such as the right to life and the prohibition against arbitrary discrimination. The Appeals Board of the Council of Europe has found that "[t]he absence of discrimination based on sex, and equal pay for workers of either sex constitute, at the present time, one of the general principles of law."²⁵⁷

Article 28, which calls for "a social and international order" in which the Declaration's rights can be realized is clearly hortatory and not sufficiently precise to constitute an international legal norm.

Although it does not set forth a substantive right, *article 29*²⁵⁸ does declare what might be considered a general principle of international law, if it is interpreted to mean that international human rights may not be restricted arbitrarily, which would be "tantamount to the abolition of liberty."²⁵⁹ On

²⁵⁴ Cf. Convention Concerning Forced or Compulsory Labour (I.L.O. No. 29), adopted June 28, 1930, 39 U.N.T.S. 55 (entered into force May 1, 1932); Convention Concerning the Abolition of Forced Labour (I.L.O. No. 105), adopted June 25, 1957, 320 U.N.T.S. 291 (entered into force Jan. 17, 1959; entered into force for the U.S. Sept. 25, 1992).

²⁵⁵ Cf. Convention Concerning Freedom of Association and Protection of the Right to Organize (I.L.O. No. 87), adopted July 9, 1948, 68 U.N.T.S. 17, (entered into force July 4, 1950); Right to Organize and Collective Bargaining Convention (I.L.O. No. 98), adopted July 1, 1949, 96 U.N.T.S. 257 (entered into force July 11, 1951). Aspects of this right are guaranteed under both the Covenant on Civil and Political Rights and Covenant on Economic, Social and Cultural Rights, *supra* note 221.

²⁵⁶ Although not mentioned by commentators as a fundamental right, the right to at least primary education (and the concomitant obligation on a state to provide such education) seems to be universally accepted in the practice of states. A contrary view, expressed in the context of a challenge to the exclusion of alien children from Texas schools, may be found in *Plyler v. Doe*, 457 U.S. 202 (1982), *affirming* 628 F.2d 448 (5th Cir. 1980), *affirming* 458 F. Supp. 569 (E.D. Tex. 1978).

²⁵⁷ *Artzet v. Secretary-General of the Council of Europe* (No. 1), App. Bd. of the Council of Europe, Decision No. 8 (April 10, 1973) (unreported), *reprinted in* 51 I.L.R. 438, 444. In reaching its decision, the Appeals Board relied on article 23 of the Universal Declaration of Human Rights, the U.N. General Assembly's Resolution on the Elimination of Discrimination against Women, and the European Social Charter.

²⁵⁸ For excerpts from the text, see *supra* note 218.

²⁵⁹ DAES, *supra* note 197, at 172.

the other hand, human rights treaties do permit limitations or restrictions on rights to be imposed on grounds other than those specified in article 29,²⁶⁰ which suggests that the literal terms of the article cannot be taken to represent international custom.

Finally, the savings clause in *article 30* is found in essentially all subsequent human rights treaties and may be seen as an admonition that the Declaration's provisions must be implemented in good faith, so as not to undermine its very purpose. This may simply reflect the general principle of international law which does not allow a treaty party to act in a way which would defeat the object and purpose of the treaty while purporting to rely on its provisions.

Firm conclusions as to the status of any of the provisions of the Universal Declaration of Human Rights in customary international law cannot be drawn without a much more thorough and comprehensive survey of state practice than is possible in the present article. However, these cursory observations may suggest the rights with respect to which such a survey might be most productive.

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 participating in the Conference on Security and Cooperation in Europe (CSCE), 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 CSCE 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,"²⁶¹ 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 non-intervention.²⁶² The commitment to conform to the Universal Declaration has been regularly

²⁶⁰ See, e.g., Covenant on Civil and Political Rights, *supra* note 220, art. 12; European Convention of Human Rights, Nov. 4, 1950, 213 U.N.T.S 221, art. 10; American Convention on Human Rights, *supra* note 213, art. 21; African Charter on Human and Peoples' Rights, *supra* note 212, art. 10.

²⁶¹ Final Act of the Conference on Security and Cooperation in Europe, Principle VII, adopted Aug. 1, 1975, reprinted in 14 I.L.M. 1292 (1975).

²⁶² See *Military and Paramilitary Activities*, 1986 I.C.J. at 100.

reiterated in subsequent CSCE documents.

Similarly, the work of U.N. 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 1503²⁶³ are organized according to articles of the Declaration.²⁶⁴

C. The Universal Declaration of Human Rights as Reflecting General Principles of International Law

The present author would agree with Meron that:

it is surprising that 'the general principles of law recognized by civilized nations' mentioned in Article 38(1)(c) [of the Statute of the International Court of Justice] have not received greater attention as a method for obtaining greater legal recognition for the principles of the Universal Declaration and other human rights instruments. As human rights norms stated in international instruments come to be reflected in national laws, . . . Article 38(1)(c) will [or might] increasingly become one of the principal methods for the maturation of such standards into the mainstream of international law.²⁶⁵

The Italian Court of Cassation has held that the Universal Declaration reflects "general principles of international law," which are a part of Italian law pursuant to article 10 of the Constitution,²⁶⁶ although the reference cannot necessarily be taken as equivalent to the "general principles" in article 38(1)(c). One of the only scholarly attempts to date to analyze the content of general international law has been in the field of criminal procedure,

²⁶³ U.N. ESCOR, 48th Sess., Supp. (No. 1A) 8, U.N. Doc. E/4832/Add.1 (1970) (adopted May 27, 1970).

²⁶⁴ See Nigel S. Rodley, *United Nations Non-Treaty Procedures for Dealing with Human Rights Violations*, in *GUIDE TO INTERNATIONAL HUMAN RIGHTS PRACTICE*, *supra* note 121, at 60, 68.

²⁶⁵ MERON, *supra* note 134, at 88.

²⁶⁶ See, e.g., Judgment of July 27, 1959 (Fallimento Ditta Maggi v. Ministry of Fin.), Trib. [Ct of First Instance], Foro It. LXXXV (1960), I, col. 505, *reprinted in* 28 I.L.R. 607.

where there is a wealth of state practice available.²⁶⁷

The reporters of the *Restatement (Third) of the Foreign Relations Law of the United States* observe that "there is a willingness to conclude that prohibitions [against human rights violations] common to the constitutions or laws of many states are general principles that have been absorbed into international law."²⁶⁸ In any event, neither national courts nor lawyers always distinguish clearly between custom and general principles, and the cases cited above often survey both national laws and state "practice" with respect to international law in order to determine the existence of a norm of "customary" international law.

IV. CONCLUSION

There are today thousands of ratifications to the major human rights treaties by well over one hundred states. 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 U.N. Charter, under which all U.N. 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.²⁶⁹ Legally and politically, it is the Universal Declaration of

²⁶⁷ Bassiouni, *supra* note 238. Of course, many country-specific works are available which compare domestic law with international human rights norms, although none focuses primarily on the Declaration. *See, e.g.*, UNITED STATES RATIFICATION OF THE INTERNATIONAL COVENANTS ON HUMAN RIGHTS (Hurst Hannum and Dana D. Fischer eds., Irvington-on-Hudson, NY: Transnational Publishers, 1993); SCHEININ, *supra* note 21. Another source of such comparative material is the periodic reports of states to the committees which oversee implementation of the two Covenants and other human rights treaties.

²⁶⁸ RESTATEMENT, *supra* note 67, § 701, n.1, at 154.

²⁶⁹ *See* U.N. CHARTER, arts. 55 & 56.

Human Rights which defines the Charter's human rights provisions. As the primary source of the global consensus on human rights—which was reaffirmed in the 1993 World Conference on Human Rights in Vienna—the Declaration represents the only common ground when many states discuss human rights.

This common ground is reflected in the customary international law of human rights, to which the Declaration has greatly contributed. Although the impact of customary law in national legal systems varies, on the international plane it is by definition binding on all states. 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.

As noted in the "Bangalore Principles" adopted at a judicial colloquium in 1988, "It is essential to redress a situation where, by reason of traditional legal training which has tended to ignore the international dimension, judges and practising lawyers are often unaware of the remarkable and comprehensive developments of statements of international human rights norms."²⁷⁰ Obviously, one of the most comprehensive statements of these norms is the Universal Declaration.

It may, of course, be true that "[n]ational judges will take international law seriously only when they are convinced that theirs is not the last word on the subject That is why it is so important to promote the ratification of international human rights instruments that provide for judicial and quasi-judicial review by international tribunals."²⁷¹ Pending universal ratification of the Covenants and other treaties, however, it is to the Universal Declara-

²⁷⁰ DEVELOPING HUMAN RIGHTS JURISPRUDENCE, *supra* note 158. Although they were not specifically limited to discussion of the Universal Declaration of Human Rights, note should be taken of four other judicial colloquia on the domestic application of international human rights norms, which were organized by the Commonwealth Secretariat in Harare in 1989, *see* 2 DEVELOPING HUMAN RIGHTS JURISPRUDENCE, A SECOND JUDICIAL COLLOQUIUM ON THE DOMESTIC APPLICATION OF INTERNATIONAL HUMAN RIGHTS NORMS, (London: Commonwealth Secretariat, 1989); Banjul in 1989, *see* 5 INTERRIGHTS BULL. No. 3, at 39 (1990); Abuja in 1990, *see* COMMONWEALTH L. BULL. at 298 (Jan. 1992); and Oxford in 1992. *See also* Kirby, *supra* note 43; *cf.*, Michael D. Kirby, *The Role of the Judge in Advancing Human Rights—Knight Errant or Slot Machine Automaton?* 1 NORDIC J. INT'L L. 29; P. Nnaemeka Agu, *The Role of Lawyers in the Protection and Advancement of Human Rights*, 2 J. HUM. RTS. L. & PRAC. 1 (1992) (Nigeria).

²⁷¹ Thomas Buergethal, *Commentary, in Conference on International Courts and the Protection of Human Rights*, 2 CONN. J. INT'L L. 261, 389 (1987).

tion 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 nearly a half-century ago.

ANNEX 1
CONSTITUTIONAL PROVISIONS REFERRING TO THE STATUS
OF INTERNATIONAL LAW, INCLUDING REFERENCES
TO THE UNIVERSAL DECLARATION OF HUMAN RIGHTS²⁷²

Afghanistan (1990)

Art. 134: "Afghanistan respects and observes the U.N. Charter and Universal Declaration of Human Rights and other accepted principles of international law."

Angola (1975 as revised and altered by the MPLA on July 11, 1980)

Art. 14: "The People's Republic of Angola shall respect and apply the principles of the Charter of the United Nations and of the Charter of the Organization of African Unity."

Argentina (1853)

Art. 31: "The Constitution, the laws of the Nation enacted by the Congress in pursuance thereof, and treaties with foreign powers are the supreme law of the Nation; and the authorities in every Province are bound thereby, notwithstanding any provision to the contrary which the provincial laws or constitutions may contain, excepting, for the Province of Buenos Aires, the treaties ratified following the Pact of November 11, 1859."

Art. 100: "The Supreme Court of Justice and the lower courts of the Nation have jurisdiction over and decide all cases dealing with matters governed . . . by treaties with foreign nations."

Australia (1900, as amended in 1986)

Art. 75: "In all matters arising under any treaty, the High Court shall have original jurisdiction."

Austria (1974)

Art. 9: "The generally recognized rules of International Law are valid parts of Federal law."

Art. 44(1): "Constitutional laws or constitutional provisions contained in simple laws can be passed by the National Council only in the presence of at least one-half of the members and with a majority of two-thirds of the votes cast; they are to be expressly designated as such."

²⁷² All translations are unofficial.

Art. 50(1): "Political State Treaties, others only insofar as their contents modify or complement laws, may be concluded only with the approval of the National Council."

Art. 50(3): "The provisions of Article 42, paragraphs 1 to 4, and, if constitutional law is modified or supplemented by the State treaty, the provisions of Article 44, paragraph 1 are to be meaningfully (sinngemäss) applied to the resolutions of the National Council according to paragraphs 1 and 2 [since deleted] of this Article. In a resolution of approval in accordance with paragraph 1 of this Article, such State treaties or such provisions contained in State treaties are to be expressly designated as "amending the constitution" (verfassungsändernd).

Bahrain (1973)

Art. 37: "A treaty shall have the force of a law after it has been signed, ratified and published in the Official Gazette."

Bangladesh (1991)

Art. 25: "The State shall base its international relations on . . . respect for international law and the principles enunciated in the U.N. Charter . . ."

Belarus

Art. 8: "The Republic of Belarus shall acknowledge the priority of generally-recognized principles of international law and shall prepare to have its legislation conform to [the] same.

"The signing of international treaties in violation of the Constitution shall be prohibited."

Art. 128: "Enforceable acts, international treaties, and other obligations found to be unconstitutional by the Constitutional Court on grounds of violating human rights and liberties shall be deemed invalid, totally or in part, from the time the respective act is adopted."

Benin (1990)

Preamble: "[We] reaffirm our attachment to the principles of Democracy and Human Rights as they were defined by the United Nations Charter of 1945 and the Universal Declaration of Human Rights of 1948, [and] to the African Charter on Human and Peoples' Rights adopted in 1981, by the Organization of African Unity, ratified by Benin on 29 January 1986 and the provisions of which constitute an integral part of the present Constitution and Benin law and have a value superior to domestic law."

Brazil (1988)

Art. 4: "The Federative Republic of Brazil is governed in its international relations by the following principles: . . . the preeminence of human rights"

Art. 109: Federal judges have authority to . . . adjudicate the following: . . . (III) Causes based on a treaty or contract between the Union and a foreign state or international body."

Bulgaria (1991)

Art. 5(4): "International treaties, ratified constitutionally, promulgated, and made effective by the Republic of Bulgaria, are part of the country's internal laws. They take precedence over conflicting domestic legislation."

Burkina Faso (1991)

Preamble: "We, the Sovereign People of Burkina Faso . . . subscribing to the Universal Declaration of the Rights of Man of 1948 and to the international instruments concerning economic, political, social and cultural problems. . . ."

Art. 151: "Treaties or agreements regularly ratified or approved shall be, from their publication, an authority superior to those of the laws, with reserve, for each agreement or treaty, of its application for the other party."

Burundi (1992)

Preamble: "We, the Burundian People . . . Proclaiming our commitment to the respect of fundamental human rights in accordance with the Universal Declaration of Human Rights of December 10, 1948, the International Human Rights Covenants of December 16, 1966, the African Charter on Human and Peoples' Rights of June 18, 1981, and the Charter of National Unity. . . ."

Art. 10: "The rights and duties proclaimed and guaranteed by the Universal Declaration of Human Rights, the International Covenants relative to Human Rights, the African Charter on Human and Peoples' Rights and the Charter of National Unity shall be an integral part of this Constitution."

Art. 171: "Peace treaties and commercial treaties, treaties relative to international organization, treaties that engage the finances of the State, those that modify legislative dispositions as well as those that are relative to the status of persons may be ratified only by virtue of a law."

Art. 176: "When the Constitutional Court, upon request by the President of the Republic, the Prime Minister, the President of the National Assembly or a quarter of the representatives, declares that an international obligation

contravenes the Constitution, such accord may only be ratified after amendment of the Constitution.”

Cambodia (1993)

Art. 31: “The Kingdom of Cambodia shall recognize and respect human rights as stipulated in the United Nations Charter, the Universal Declaration of Human Rights, the covenants and conventions related to human rights, women’s and children’s rights.”

Chad (Transitional Charter, 1993)

Preamble: “Reaffirms the attachment of the Chadian people to the principles of pluralist democracy, the 1789 [Declaration] of the Rights of Man and Citizens, the 1948 Universal Declaration of Human Rights, and the 1981 African Charter on Human and Peoples’ Rights.”

Chile (1980)

Art. 32(17): The President has the power to sign and ratify treaties, but they “must be submitted to the approval of Congress as prescribed for in Article 50, No 1.”

Art. 50(1): “In the same agreement, whereby a treaty is approved, the Congress may authorize the President of the Republic to decree, while such treaty is in force, the provisions with force of law which he may deem necessary for the complete enforcement thereof, and . . . provisions prescribed for in the second and following paragraphs of Art. 61 shall apply. . . .”

Art. 61: “This authorization may not be extended to nationality, citizenship, elections or plebescite, nor to matters covered by the constitutional guarantees or which must be a matter of the constitutional organic laws or laws passed by a qualified quorum.

“The authorization may not include powers that affect the organization, powers and the legal system of the officers of the Judiciary, the National Congress, the Constitutional Court or the office of the Comptroller General of the Republic.”

Colombia (1991)

Art. 5: “The state recognizes . . . the primacy of the inalienable rights of the individual. . . .”

Art. 9: “The external relations of the State are based on national sovereignty, on respect for the self-determination of peoples, and on the

recognition of the principles of international law approved by Colombia.”

Comoros (1992)

Preamble: “Inspired by the Universal Declaration of Human Rights of the United Nations, . . . [the Comorian people] proclaim and guarantee in particular [a list of nineteen specific rights follows]. . . .

“This preamble is an integral part of the constitution.”

Art. 17: “Peace treaties, commercial treaties, [and] treaties or agreements concerning international organizations can only be ratified or approved by virtue of a law.

“Treaties or agreements properly ratified or approved have, from their entry into force, an authority superior to that of laws, on the condition that each agreement or treaty is applied by the other party.

“If the Constitutional Council, on being seized by the President of the Republic, the President of the Federal Assembly, or the executive or legislative authority of an Island has determined that an international engagement includes a clause contrary to the constitution, authorization to ratify or approve it can only occur after revision of the constitution.”

Congo-Brazzaville (1979)

Art. 39: “The People’s Republic of the Congo subscribes to the fundamental principles and objectives contained in the Charters of the United Nations and of the Organizations of African Unity (OAU).”

Art. 89: “Treaties and laws, before their ratification or adoption by the People’s National Assembly, may be submitted for opinion by the government to the Constitutional Council which rules on their conformity with the Constitution.”

Art. 95: “A provision declared unconstitutional may be neither promulgated nor applied.”

Art. 118: “Treaties of peace, commercial treaties, treaties relating to international organizations, treaties involving State finances, those modifying provisions of a legislative nature relating to the status of persons or entailing cession, exchange or addition of territory, can be ratified only by virtue of a law.”

Art. 119: “If the Constitutional Council . . . has declared that a treaty commitment carries a clause violating a constitutional norm, it issues an opinion of non-ratification or, if it is already in force, asserts in unconstitutionality.”

Art. 121: "Duly ratified treaties have the force of law on condition, for each treaty, of its being applied by the other party."

Costa Rica (1948, as amended through 1977)

Art. 7: "Public treaties, international agreements and concordats duly approved by the Legislative Assembly shall have a higher authority than the laws from their promulgation or from the day they designate."

Côte d'Ivoire (1960)

Preamble: "The people of the Ivory Coast declare their adherence to the principles of Democracy and the Rights of Man, as they have been defined by the Declaration of the Rights of Man and the Citizen of 1789, by the Universal Declaration of 1948, and as they have been guaranteed by this Constitution."

Art. 54: "Peace treaties, and treaties and amendments regarding international organization, and those that modify internal laws of the State, may be ratified only after passage of a law."

Art. 55: "If the Supreme Court, acting at the request of the President of the Republic or the President of the National Assembly, declares that an international obligation includes a clause contrary to the Constitution, authorization to ratify it can take place only after revision of the Constitution."

Art. 56: "Treaties or agreements regularly ratified shall, upon their publication, prevail over laws, provided, for each agreement or treaty, that it is applied by the other party."

Czech Republic (Constitutional Law No. 1/1993 [1993])

Art. 10: "Ratified and promulgated international accords on human rights and fundamental freedoms, to which the Czech Republic has committed itself, are immediately binding and are superior to law."

Art. 87(1)(b): "The Constitutional Court resolves the nullification of other legal regulations or their individual provisions if they are in contradiction with a constitutional law, legislation or international agreement under Art. 10."

Djibouti (1992)

Art. 37: "Treaties or agreements duly ratified shall, upon their publication, have an authority superior to that of laws subject, for each agreement or treaty, to its application by the other party and to its conformity with the

relevant provisions of the law of treaties.

"Without prejudice to the previous paragraph, the ratification or approval of an international commitment containing a clause contrary to the relevant provisions of the Constitution may take place only after the amendment of the Constitution."

Art. 63: "Peace treaties, commercial treaties, treaties or agreements relative to international organizations, treaties which imply a commitment for the finances of the State, those relative to the status of persons, and those that call for the cession, exchange or acquisition of territory may be ratified or approved only by virtue of a law."

Dominican Republic (1966)

Art. 3: "The Dominican Republic recognizes and applies the rules of general and American international law to the extent that its public powers have adopted them . . ."

Ecuador (1979, amended 1983)

Art. 137: "The Constitution is the supreme law of the land. . . . Laws, decrees, ordinances, provincial and international treaties or agreements that oppose the Constitution or modify its precepts in any way shall be void."

Egypt (1980)

Art. 2: "Islamic jurisprudence is the principal source of legislation."

Art. 151: "[Treaties] shall have the force of law after their conclusion, ratification and publication according to the established procedure."

El Salvador (1983)

Art. 144: "The international treaties formalized by the Republic of El Salvador with other states or international organizations, once in effect, in conformity with the provisions of the same treaty and of this constitution, constitute the laws of this republic.

"The law may not modify or repeal that agreed in a treaty in effect for the Republic of El Salvador. In case of conflict between the treaty and the law, the first shall prevail."

Art. 145: "Treaties in which constitutional provisions are in any manner restricted or affected may not be ratified, unless the ratification is done with the corresponding reservations (exceptions), in which case the provisions of the treaty about which the exceptions are made, are not a law of the republic."

Equatorial Guinea (1991)

Preamble: "Relying on principles of social justice and the solemn reaffirmation of the rights and liberties of mankind defined and consecrated by the Universal Declaration of Human Rights in 1948. . . ."

Art. 8: "The Equatoguinean State respects the principles of International Law and reaffirms its adherence to the rights and obligations proceeding from the charters of the international organizations and agencies to which it belongs."

Estonia (1993)

Art. 3: "State power shall be exercised solely on the basis of this Constitution and such laws which are in accordance with the Constitution. Universally recognized principles and norms of international law shall be an inseparable part of the Estonian legal system."

Art. 123: "The Republic of Estonia shall not conclude foreign treaties which contradict the Constitution."

"If Estonian laws or other acts contradict foreign treaties ratified by the *Riigikogu* [legislature], the provisions of the foreign treaty shall be applied."

Ethiopia (Transitional Period Charter No. 1, as published in *Negarit Gazeta* No. 1, 22 July 1991)

Art. 1: "Based on the Universal Declaration of Human Rights of the United Nations, adopted and proclaimed by the General Assembly by resolution 217 A (III) of 10 Dec. 1948, individual human rights shall be respected fully, and without any limitation whatsoever."

France (1958)

Preamble: "The French people hereby solemnly proclaims its attachment to the Rights of Man and the principles of national sovereignty . . ."

Art. 53: "Peace treaties, commercial treaties, treaties or agreements relative to international organization, those that imply a commitment for the finances of the State, those that modify provisions of a legislative nature, those relative to the status of persons, those that call for the cession, exchange or addition of territory may be ratified or approved only by a law."

Art. 54: "If the Constitutional Council, the matter having been referred to it by the President of the Republic, by the Premier, or by the President of one or the other assembly, shall declare that an international commitment contains a clause contrary to the Constitution, the authorization to ratify or approve this commitment may be given only after amendment of the

Constitution.”

Art. 55: “Treaties or agreements duly ratified or approved shall, upon their publication, have an authority superior to that of laws, subject, for each agreement or treaty, to its application by the other party.”

Gabon (1991)

Preamble: “The Gabonese people . . . [s]olemnly affirms its adherence to Human Rights and the fundamental liberties such as they result from the Declaration of the Rights of Man and the Citizen of 1789, consecrated by the Universal Declaration of Human Rights of 1948, by the African Charter on Human and Peoples’ Rights of 1981, and by the National Charter of Liberties of 1990.”

Art. 87: “International engagements . . . hereafter shall be deferred, before their ratification, to the Constitutional Court. . . . The Constitutional Court shall verify, within a period of one month, if its provisions contain a clause contrary to the Constitution. . . . In the affirmative, these provisions shall not be ratified.”

Art. 114: “Peace treaties, commercial treaties, treaties relative to international organization, treaties which engage the finances of the State, those which are relative to the state of persons shall only be approved and ratified by virtue of a law.”

“. . . Treaties do not take effect until after having been duly ratified and published.”

Germany (1948)

Art. 25: “The general rules of international law shall be an integral part of federal law. They shall take precedence over the laws and shall directly create rights and duties for the inhabitants of the federal territory.”

Art. 59(2): “Treaties which regulate the political relations of the Federation or relate to matters of federal legislation shall require the consent or participation, in the form of federal law, of the bodies competent in any specific case for such federal legislation. As regards administrative agreements, the provisions concerning the federal administration shall apply *mutatis mutandis*.”

Ghana (1992)

Art. 40: “In its dealings with other nations, the Government shall . . . promote respect for international law, treaty obligations and the settlement of international disputes by peaceful means; adhere to the principles

enshrined in or as the case may be, the aims and ideals of - (i) the Charter of the U.N.; (ii) the Charter of the O.A.U.; (iii) the Commonwealth; (iv) the Treaty of the Economic Community of West African States; and (v) any other international organisation of which Ghana is a member.”

Greece (1975)

Art. 28: “The generally acknowledged rules of international law, as well as international conventions as of the time they are sanctioned by law and become operative according to the conditions therein shall be an integral part of domestic Greek law and shall prevail over any contrary provision of the law.”

Guatemala (1986)

Art. 46: “The general principle that in the field of human rights treaties and agreements approved and ratified by Guatemala have precedence over municipal law is established.”

Guinea (1990)

Preamble: “The People of Guinea, Proclaim: . . . Its adherence to the ideals and principles, rights and duties established in the United Nations Charter, the Universal Declaration of the Rights of Man, the Charter of the Organization for African Unity, and the African Charter on Human and Peoples’ Rights.”

Art. 77: “Peace treaties, commercial treaties, treaties or accords relative to international organization, those which engage the finances of the State, those which modify provisions of a legislative nature, those which are relative to the state of persons, those which encompass cession, exchange or adjunction of territory, shall only by ratified or approved by a law.”

Art. 78: “If the Supreme Court, convened by the President of the Republic or a Deputy has declared that an international engagement contains a law contrary to the Fundamental Law, authorization to ratify or approve it shall not intervene until after the revision of the Fundamental Law.

“A law authorizing the ratification or approval of an international engagement shall not become effective when it has been declared non-conforming to the Fundamental Law.”

Art. 79: “Treaties or accords regularly approved or ratified shall have from their date of publication a superior authority to that of laws under the reservation of reciprocity.”

Haiti (1987)

Preamble: "The Haitian people proclaim this constitution in order to:—Ensure their inalienable and imprescriptible rights to life, liberty and the pursuit of happiness; in conformity with the Act of Independence of 1884 and the Universal Declaration of Human Rights of 1948."

Art. 19: "The State has the absolute obligation to guarantee the right to life, health, and respect of the human person for all citizens without distinction, in conformity with the Universal Declaration of Human Rights."

Honduras (1982)

Art. 15: "Honduras supports the principles and practices of international law, that promote the solidarity and self-determination of peoples, nonintervention and the strengthening of universal peace and democracy."

Art. 16: "International treaties entered into by Honduras with other states form part of the domestic law as soon as they enter into force."

Art. 17: "When an international treaty affects a constitutional provision, it must be approved through the same procedure that governs constitutional reform before being ratified by the Executive Power."

Art. 18: "In case of conflict between the treaty or convention, and the law, the former shall prevail."

Hungary (1989)

Art. 7(1): "The Legal system of the Republic of Hungary accepts the generally recognized rules of international law, and furthermore, it shall ensure the agreement between the accepted international legal obligations and domestic statutes."

Ireland (1937)

Art. 29(3): "Ireland accepts the generally recognized principles of international law as its rule of conduct in its relations with other states."

Art. 29(6): "No international agreement shall be part of the domestic law of the state save as may be determined by the Oireachtas."

Israel

Art. 108: "A treaty shall have validity under the domestic law—

(1) by virtue of Law;

(2) by virtue of a Knesset resolution to ratify the treaty . . . provided the resolution shall not contradict any provision of Law."

Italy (1947)

Art. 10: "Italy's legal system conforms with the generally recognized principles of international law."

Art. 80: "The Chambers authorize, by law, ratification of international treaties of a political nature, or which provide for arbitration or judicial regulation, or imply modifications to the nation's territory or financial burdens, or to laws."

Japan (1947)

Art. 98: "The treaties concluded by Japan and established laws of nations shall be faithfully observed."

Jordan (1952)

Art. 33(ii): "Treaties and agreements which involve financial commitments to the treasury or affect the general or personal rights of Jordanians shall not be enforceable unless they are sanctioned by the National Assembly."

Kazakhstan (1993)

Preamble: "The constitution shall possess supreme legal force, and its norms shall be directly applied. Laws and other acts which contradict the provisions of the Constitution shall not have legal force."

Art. 3: "International legal acts concerning rights and freedoms of men and citizens recognized by the Republic of Kazakhstan shall have priority before [domestic] laws in the territory of the Republic."

Kyrgyzstan (1993)

Art. 12(1): "The Constitution shall have supreme legal force and direct effect in the Kyrgyz Republic."

Art. 12(3): "International treaties and other norms of international law which have been ratified by the Kyrgyz Republic shall be a component and directly applicable part of legislation of the Kyrgyz Republic."

Art. 16(1): "In the Kyrgyz Republic basic human rights and freedoms shall be recognized and guaranteed in accordance with universally accepted norms and principles of international law, international treaties and agreements on the issues of human rights which have been ratified by the Kyrgyz Republic."

Art. 16(2): "Every person in the Kyrgyz Republic shall enjoy the right . . . [there follows a list of fifteen specific rights]."

“The enumeration of rights and freedoms in the Constitution shall not be interpreted as negating or infringing upon other universally recognized human rights and freedoms.”

Kuwait (1962)

Art. 70: “The Amir shall conclude treaties by decree and shall transmit them immediately to the National Assembly with the appropriate statement. A treaty shall have the force of law after it is signed, ratified and published in the Official Gazette.

”However, treaties of peace and alliance; treaties concerning the territories of the State, its natural resources or sovereign rights, or public or private rights of citizens; treaties of commerce, navigation and residence; and treaties which entail additional expenditure not provided for in the budget, or which involve amendment of the laws of Kuwait; shall come into force only when made by a law.”

Lithuania (1992)

Art. 105: “The Constitutional Court shall present conclusions concerning . . . the conformity of international agreements of the Republic of Lithuania with the Constitution. . . .”

Art. 135: “In conducting foreign policy, the Republic of Lithuania shall pursue the universally recognized principles and norms of international law, shall strive to safeguard national security and independence as well as the basic rights, freedoms and welfare of its citizens, and shall take part in the creation of sound international order based on law and justice.”

Art. 138: “International agreements which are ratified by the Seimas [legislature] of the Republic of Lithuania shall be [a] constituent part of the legal system of the Republic of Lithuania.”

Luxembourg (1868)

Art. 37: “Treaties shall not come into effect until they have been sanctioned by law and published. . . .”

Macedonia (1991)

Art. 8: “The fundamental values of the constitutional order of the Republic of Macedonia are:

- the basic freedoms and rights of the individual and citizen, recognized in international law and set down in the Constitution. . . .
- respect for the generally accepted norms of international law.”

Art. 98: "Courts are autonomous and independent. Courts judge on the basis of the Constitution and laws and international agreements ratified in accordance with the Constitution."

Malawi (1994)

Art. 11(2): "In interpreting the provisions of this Constitution a court of law shall . . . where applicable, have regard to current forms of public international law and comparable foreign case law."

Mali (1992)

Preamble: "The sovereign people of Mali, . . . subscribe to the Universal Declaration of Human Rights of December 10, 1948 and to the African Charter on Human and Peoples' Rights of June 27, 1981."

Art. 116: "Treaties or agreements regularly approved or ratified shall have, from their publication, an authority superior to that of laws, under the reservation for each treaty or agreement of application by the other party."

Moldova (1994)

Art. 4(1): "Constitutional provisions for human rights and freedoms shall be understood and implemented in accordance with the Universal Declaration of Human Rights, and with other conventions and treaties endorsed by the Republic of Moldova.

Art. 4(2): "Wherever disagreements appear between conventions and treaties signed by the Republic of Moldova and her own national laws, priority shall be given to international regulations."

Art. 7: "The Constitution of the Republic of Moldova is the supreme law of the country. No laws or other legal acts and regulations in contradictions with the provisions of the Constitution may have any legal power."

Art. 8(1): "The Republic of Moldova pledges to respect the Charter of the United Nations and the treaties to which she is a party, to observe in her relations with other states the unanimously recognized principles and norms of international law.

Art. 8(2): "The coming into force of an international treaty containing provisions contrary to the Constitution shall be preceded by a revision of the latter."

Mongolia (1992)

Art. 10(1): "Mongolia shall adhere to the universally recognized norms and principles of international law and pursue a peaceful foreign policy.

Art. 10(2): "Mongolia shall fulfill in good faith its obligations under international treaties to which it is a Party.

Art. 10(3): "The international treaties to which Mongolia is a Party, shall become effective as domestic legislation upon the entry into force of the laws on their ratification or accession.

Art. 10(4): "Mongolia shall not abide by any international treaty or other instruments incompatible with its Constitution."

Morocco (1972, as amended 1992)

Preamble: "Aware of the necessity of setting its action within the context of the international organizations of which it is an active and energetic member, the Kingdom of Morocco subscribes to the principles, rights and obligations resulting from the charters of the aforesaid organizations and reaffirms its attachment to the Human Rights as they are universally recognized."

Netherlands (1983, amended in 1987)

Art. 90: "The Government shall promote the development of the international rule of law."

Art. 91(3): "Any provisions of a treaty that conflict with the Constitution or which lead to conflicts with it may be approved by the Chambers of the States General only if at least two-thirds of the votes cast are in favor."

Art. 93: "Provisions of treaties and of resolutions of international institutions, which may be binding upon all persons by virtue of their contents shall become binding after they have been published."

Art. 94: "Statutory regulations in force within the Kingdom shall not be applicable if such application is in conflict with provisions of treaties that are binding on all persons or of resolutions by international institutions."

Nicaragua (1987)

Art. 46: "All persons in the national territory shall enjoy protection and recognition by the state of the rights inherent to human beings, as well as unrestricted respect, promotion and protection of human rights, and the full exercise of the rights set forth in the Universal Declaration of Human Rights; the American Declaration of the Rights of Man; the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights of the United Nations; and the American Convention of Human Rights of the Organization of American States."

Art. 182: "The Political Constitution is the fundamental charter of the Republic; all other laws are subordinate to it. Any laws, treaties, decrees, rules, orders or provisions that oppose it or alter its dispositions shall have no value."

Niger (1989)

Preamble: "The people of Niger declare their attachment to the principles of democracy and human rights as defined by the Declaration of the Rights of Man and the Citizen of 1789, the Universal Declaration of Human Rights of 1948, [and] the Charter on Human and Peoples' Rights of 1981, as guaranteed by the present Constitution."

Art. 101: "The peace treaties, treaties or agreements relating to international organizations, the ones which modify the State's internal laws and the ones dealing with the State's financial involvement can only be ratified through a law."

Art. 102: "In the event that the Supreme Court, seized by the President of the Republic or by the President of the National Assembly has declared that an international agreement comprises a clause adverse to the Constitution, it can be ratified only after the revision of the Constitution."

Art. 103: "The treaties and agreements ratified regularly have from the day of their publication, an authority superior to the one of the laws, on the condition for each agreement or treaty, of their application by the other party."

Peru (1993)

Art. 3: "The enumeration of the rights provided in this chapter does not exclude others guaranteed by the Constitution or still others of similar nature or those premised on the dignity of man, on the principles of popular sovereignty or of the democratic State [based on Law and of the Republican form of Government]."

Art. 55: "Treaties signed by the State and in force are part of national law."

Art. 56: "Treaties must be approved by the Congress before their ratification by the President of the Republic if they involve the following matters: (1) Human rights. (2) Sovereignty, dominion, or integrity of the State. (3) National defense. (4) Financial obligations of the State. . . ."

Art. 57: "The President of the Republic may accept or ratify treaties without need for the prior approval of the Congress in matters not covered in the previous article. In all these cases, he must render an accounting to

the Congress.

“When the treaty affects constitutional provisions, it must be approved by the same procedure that applies to amending the Constitution before being ratified by the President of the Republic.”

Portugal (1989)

Art. 8(1): “The rules and principles of general or ordinary international law shall be an integral part of Portuguese law.

Art. 8(2): “Rules provided for in international conventions duly ratified or approved shall, following their official publication, apply in municipal law as long as they remain internationally binding with respect to the Portuguese State.

Art. 8(3): “Rules laid down by the competent organs of international organisations to which Portugal belongs, apply directly in municipal law insofar as the constitutive treaties as applicable provide to that effect.”

Art. 16(2): “The provisions of the Constitution and laws relating to fundamental rights shall be read and interpreted in harmony with the Universal Declaration of Human Rights.”

Republic of Korea (1987)

Art. 6(1): “Treaties duly concluded and promulgated in accordance with the Constitution and the generally recognized rules of international law shall have the same effect as the domestic laws of the Republic of Korea.”

Romania (1991)

Art. 11(1): “The Romanian state pledges to fulfill, to the letter and in good faith, its commitments under the treaties to which it is a party.”

Art. 11(2): “The treaties ratified by Parliament, according to the law, are part of domestic law.”

Art. 20(1): “Constitutional provisions concerning the rights and liberties of citizens shall be interpreted and applied in conformity with the Universal Declaration of Human Rights and with other treaties and covenants to which Romania is a party.”

Art. 20(2): “Where any inconsistencies exist between the covenants and treaties on fundamental human rights to which Romania is a party, and domestic laws, the international regulations shall take precedence.”

Russian Federation (1993)

Art. 15(4): “The generally recognized principles and norms of internation-

al law and international treaties of the Russian Federation are a constituent part of its legal system. If an international treaty of the Russian Federation establishes rules other than those specified by a law, the rules of the international treaty shall apply.”

Art. 17(1): “Human and civil rights and liberties in accordance with the generally recognized principles and rules of international law are recognized and guaranteed in the Russian Federation and under this Constitution.”

Art. 125(6): “[I]nternational agreements of the Russian Federation may not be enforced and applied if they violate the Constitution of the Russian Federation.”

Rwanda (1991)

Preamble: “Faithful to democratic principles and concerned about ensuring the protection of human rights and promoting respect for fundamental freedoms, in accordance with the ‘Universal Declaration of Human Rights’ and the ‘African Charter of Human and Peoples’ Rights’”

Art. 44(6): “[P]eace treaties, alliance treaties, treaties that may bring modifications to the national territorial borders or affect sovereignty rights, treaties concerning the Republic’s relations with one or several other States, as well as treaties, conventions and agreements involving financial implications not anticipated in the budget, shall be enforceable only following approval by law.”

Sao Tomé & Príncipe (1990)

Art. 17(2): “The precepts relative to fundamental rights are interpreted and integrated in harmony with the Universal Declaration of Human Rights.”

Senegal (1963)

Preamble: “The people of Senegal solemnly proclaim their independence and their attachment to fundamental rights as they are defined in the Declaration of the Rights of Man and the Citizen of 1789 and in the Universal Declaration of 10 December 1948.”

Art. 77: “Peace treaties, commercial treaties, treaties or agreements relating to international organizations, those which obligate state finances, those which modify provisions of a legislative nature, those which concern the status of persons, and those which entail a cession, exchange or acquisition of territory shall be ratified or approved only by virtue of a law.”

Art. 78: “If the Supreme Court declares that an international commitment contains a clause contrary to the Constitution, the authorization to ratify or

approve it may be made only after an amendment of the Constitution.”

Art. 79: “Treaties or agreements duly ratified shall, upon their publication, have an authority superior to that of the laws subject, for each treaty and agreement, to its application by the other party.”

Seychelles (1993)

Art. 48: “This Chapter shall be interpreted in such a way so as not to be inconsistent with any international obligations of Seychelles relating to human rights and freedoms. . . .”

Slovakia (1992)

Art. 11: “The international agreements on human rights and basic freedoms which were ratified by the Slovak Republic and which have been declared legal, take precedence over its laws whenever they guarantee a wider scope of constitutional rights and freedoms.”

Art. 132: “If the Constitutional Court decides that [domestic laws] . . . are incompatible with the Constitution or other laws, the regulations or the articles concerned shall cease to have effect. The bodies which have issued these regulations are obliged to bring them into accord with the Constitution, constitutional laws and other laws in the case of [federal government decrees] . . . and with international treaties, government decrees and generally binding legal regulations issued by ministries and other central bodies of the state administration in the case of [regional decrees] . . . within six months from the declaration of the decision of the Constitutional Court.”

Slovenia (1991)

Art. 8: “Laws and other regulations must be in accordance with generally valid principles of international law and with international agreements to which Slovenia is bound. Ratified and published international agreements are used directly.”

Somalia (1979)

Art. 19: “The Somali Democratic Republic shall recognize the Universal Declaration of Human Rights and generally accepted rules of international law.”

South Africa (1993)

Sec. 35(1): “In interpreting . . . [fundamental rights] a court of law shall, where applicable, have regard to public international law applicable to the

protection of the rights entrenched . . . , and may have regard to comparable foreign case law.”

Sec. 231(4): “The rules of customary international law binding on the Republic shall, unless inconsistent with this Constitution or an Act of Parliament, form part of the law of the Republic.”

Spain (1978)

Art. 10(2): “The standards relative to the fundamental rights and liberties recognized by the Constitution shall be interpreted in conformity with the Universal Declaration of Human Rights and the international treaties and agreements thereon ratified by Spain.”

Switzerland (1874)

Art. 113(1): “The Federal Court shall further adjudicate complaints concerning the violation of the constitutional rights of citizens as well as individual complaints concerning violation of concordats and international treaties.”

Art. 113(3): “In all aforementioned instances, the Federal Court shall apply the laws and generally binding decrees adopted by the Federal Assembly, as well as the international treaties approved by this Assembly.”

Tanzania (1984)

Art. 9(1): “[T]he Authority of the State and all its instruments must direct all their activities and policies towards the task of ensuring . . . (f) that human dignity is preserved and maintained in accordance with the International [sic] Declaration on Human Rights.”

Togo (1979)

Preamble: “[Togo] shall adhere to the Charters of the United Nations, the Organization for African Unity, CEDEAO, and the Universal Declaration of Human Rights of December 10, 1948.”

Art. 43: “Treaties or agreements which are properly ratified shall take precedence, as soon as they are published, over laws, with the requirement, for each agreement or treaty, that it be applied by the other party.”

Tonga (1988)

Art. 39: “It shall be lawful for the King to make treaties with Foreign States provided that such treaties shall be in accordance with the laws of the Kingdom.”

Tunisia (1959)

Art. 32: "Treaties only have the force of law after their ratification. Treaties duly ratified have an authority superior to that of laws."

Art. 33: "Treaties are ratified by law."

Turkmenistan (1992)

Art. 5: "The Constitution of Turkmenistan shall be the supreme Law of the State; its rules and provisions shall be applied directly. Laws and other legal acts which contradict the Constitution shall have no legal force."

Art. 6: "Turkmenistan shall acknowledge the priority of generally recognized norms of international law. Turkmenistan shall be an authorized member of the world community, observing in its foreign policy the principles of peaceful co-existence, non-use of force, and non-interference in the internal affairs of other states."

United States (1787)

Art. 3(2): "The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority."

Art. 6: "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

Uzbekistan (1992)

Preamble: "The people of Uzbekistan, solemnly declaring their adherence to human rights and principles of state sovereignty, . . . recognizing priority of the generally accepted norms of the international law, . . ."

Art. 13: "Democracy in the Republic of Uzbekistan shall rest on the principles common to all mankind, according to which the ultimate value is the human being, his life, freedom, honour, dignity and other inalienable rights."

Art. 15: "The constitution and the laws of the Republic of Uzbekistan shall have absolute supremacy in the Republic of Uzbekistan."

Venezuela (1961)

Art. 128: "International treaties or conventions conducted by the National Executive must be approved by a special law in order to be valid, unless

they concern the execution or completion of pre-existing obligations of the Republic, the application of principles expressly recognized by it, the execution of ordinary acts in international relations, or the exercise of powers which the law expressly bestows on the National Executive.”

Yugoslavia (1992)

Art. 10: “The Federal Republic of Yugoslavia shall recognize and guarantee the rights and freedoms of man and citizen recognized under international law.”

Art. 124: “The Federal Constitutional Court Shall rule on . . . conformity of statutes, other laws and general enactments with the Constitution . . . and with ratified and promulgated international treaties.”

ANNEX 2
NATIONAL CASES
CITING THE UNIVERSAL DECLARATION OF HUMAN RIGHTS²⁷³

Antigua: Judgment of May 19, 1975, Attorney-General v. Antigua Times, Ltd., Jud. Comm. P.C., *reprinted in* 60 I.L.R. 135.

Argentina: Arena v. Autoridades administrativas del Servicio Penitenciario Federal, CFed. [Fed. Ct. App.], S.C.A. 531, L.XXII (1989).

Argentina: Claramonte v. Mayo, S.C.C. 759, L.XXII (1989).

Argentina: Juarez v. Ministerio de Trabajo, CSJN [Sup Ct.], S.C.J. 63, L. XXII (1989).

Argentina: Molteni v. Estado Nacional, M.282.XXII (1989).

Argentina: Fernandez v. Sanatoria Güemes S.A., F.249 XXI (1988).

Australia: J. v. Lieschke, 162 C.L.R. 447 (Austl. 1987).

Australia: Koowarta v. Bjelke-Petersen, 153 C.L.R. 168 (Austl. 1983-1984).

Australia: Austl. v. Tasmania, 158 C.L.R. 1 (Austl. 1983) (the Tasmanian Dam Case).

Australia: Dugan v. Mirror Newspapers Ltd., 22 A.L.R. 439 (Austl. 1979).

Australia: Dowal v. Murray, 143 C.L.R. 410 (Austl. 1978).

Austria: VfGH (sole ct. for const. matters), 1950 VfSlg 2030, *reprinted in* 1950 Y.B. HUM. RTS. 28.

²⁷³ There are many other cases which invoke international treaties and other human rights norms, but this list is limited to those cases (including separate and dissenting opinions) which specifically refer to the Universal Declaration of Human Rights. Of course, mere reference to the Declaration does not necessarily imply that a court found its provisions persuasive or even relevant to the issue at hand.

Belgium: *M. v. United Nations and Belgium*, Ct. App. of Brussels, Pasicrisie belge, 1972, I, p. 971, *reprinted in* 69 I.L.R. 139.

Belgium: *De Meyer v. Etat Belge, Ministre de la Famille, Council of State*, Pasicrisie belge, 1966, IV, p. 97, *reprinted in* 47 I.L.R. 196.

Belgium: *Auditeur Militaire v. Krumkamp*, Mil. Ct. of Brahant, Pasicrisie belge, 1950, III, *reprinted in* 17 I.L.R. 388.

Botswana: *Attorney-General v. Unity Dow*, Ct. App. No. 4/91, slip op. (1991).

Botswana: *State v. Petrus*, [1985] LRC (Const.) 699 (1983), (Aguda, J.A., separate opinion).

Brazil: No. 87.565, Fed. Sup. Ct., published April 8, 1980.

Brazil: No. 22.722, Fed. Ct. App., published June 18, 1963.

Chile: Judgment of July 21, 1988, *Skrabs v. Kriegler*, Sup. Ct. (unpublished), *reprinted in* 89 I.L.R. 59.

Chile: Judgment of July 19, 1988, *Szurgelies and Szurgelies v. Spohn*, Sup. Ct., 256 Fallos del Mes 390, *reprinted in* 89 I.L.R. 44.

Finland: Päättös case, Ct. App. of Vaasa, No. R 92/1295, May 26, 1993.

France: Judgment of May 17, 1993, (Batouche), Conseil d'Etat (Highest Admin. Ct.).

France: Judgment of May 5, 1993, (Association scouts de France), Cass. civ. 2e.

France: Judgment of Jan. 29, 1993, (Association pour l'objection de conscience à toute participation à l'avortement), Conseil d'Etat (Highest Admin. Ct.).

France: Judgment of Dec. 17, 1992, (Herrou), Cass. soc.

France: Judgment of Oct. 16, 1992, (Battesti), Conseil d'Etat (Highest Admin. Ct.).

France: Judgment of Jan. 10, 1992, (Union syndicale des professions de santé respectant la vie humaine), Conseil d'Etat (Highest Admin. Ct.).

France: Judgment of May 28, 1991, (Huston), Cass. civ. 1e.

France: Judgment of Dec. 21, 1990, (Confédération nationale des associations familiales catholiques), Conseil d'Etat (Highest Admin. Ct.).

France: Judgment of Oct. 10, 1990, (Garde des Sceaux v. Hyver), Conseil d'Etat (Highest Admin. Ct.).

France: Judgment of Apr. 30, 1990, (Benlenguer), Conseil d'Etat (Highest Admin. Ct.).

France: Judgment of Nov. 6, 1987, (Casanovas), Conseil d'Etat (Highest Admin. Ct.).

France: Judgment of Mar. 28, 1985, Cass. soc.

France: Judgment of Mar. 11, 1985, (Retailleau), Conseil d'Etat (Highest Admin. Ct.).

France: Judgment of Dec. 6, 1984, (Bellion), Cass. soc.

France: Judgment of Nov. 23, 1984, (Roujansky), Conseil d'Etat (Highest Admin. Ct.).

France: Judgment of Dec. 7, 1983, (Luneau), Conseil d'Etat (Highest Admin. Ct.).

France: Judgment of June 3, 1981, (Kerrou), Conseil d'Etat (Highest Admin. Ct.).

France: Judgment of Mar. 19, 1975, (Paisnel), Conseil d'Etat (Highest Admin. Ct.).

France: Judgment of July 18, 1973, (Monus), Conseil d'Etat (Highest Admin. Ct.).

France: Judgment of May 11, 1960, (Car), Conseil d'Etat (Highest Admin. Ct.).

France: Judgment of Apr. 18, 1951, (Elections de Nolay), Conseil D'Etat (Highest Admin. Ct.).

France: Judgment of June 3, 1950, (*In re Hauck*), Cass. crim., *excerpted in* 22 I.L.R. 388.

France: Judgments of Apr. 22, 1992, Feb. 4, 1992, Jan. 30, 1992, Oct. 15, 1991, Sept. 25, 1991, Nov. 15, 1989, May 29, 1989, Mar. 29, 1989, Feb. 20, 1989, Aug. 18, 1988, Mar. 22, 1988, Oct. 22, 1987, May 7, 1987, Apr. 28, 1987, Jan. 13, 1987, Nov. 27, 1985, Feb. 18, 1985, Jan. 23, 1985, May 3, 1984, Cass. crim.

Germany, Federal Republic of: Judgment of Sept. 27, 1988, BVerwG (Highest Admin. Ct.), BVerwGE 1 C 20.88, *reprinted in* 3 INFORMATIONSBRIEF FUR AUSLANDERRECHT 91 (1989).

Germany, Federal Republic of: 52 BVerwGE 313 (1977).

Germany, Federal Republic of: Judgment of May 4, 1971, BVerfG (Fed. Const. Ct.), 31 BVerfGE 58, *reprinted in* 72 I.L.R. 295 (Basic Right to Marry Case).

Germany, Federal Republic of: Judgment of Apr. 22, 1968, (Admin. Ct., Frankfurt), 1968 DVBl 472, *reprinted in* 60 I.L.R. 207 (Iranian Naturalization Case).

Germany, Federal Republic of: Judgment of June, 29, 1957, BVerwG (Highest Admin. Ct.), 5 BVerwGE 153.

Germany, Federal Republic of: 3 BVerwGE 171 (1956).

Germany, Federal Republic of: Judgment of July 12, 1955, BGH (Fed. Sup. Ct.), 8 NJW 1365, *reprinted in* 22 I.L.R. 524 (Extradition of Greek National Case).

Hong Kong: *In re Wong and Ng*, Dec. 16, 1983, and Jan. 13, 1984, [1984] HKLR 71 (High Ct. 1983-1984).

India: *Kishore Chand v. State of Himachal Pradesh*, [1991] 1 S.C.C. 286.

India: *Mullin v. Administrator, Union Territory of Delhi and Others*, (Sup. Ct.), [1981] 1 S.C.C. 608.

India: *Jolly George Vargheese v. Bank of Cochin*, 1980 A.I.R. (S.C.) 470.

India: *Maneka Gandhi v. Union of India*, 1978 A.I.R. (S.C.) 597.

India: *Kesavananda Bharati v. State of Kerala*, 1973 A.I.R. (S.C.) 1461.

India: *Biswambhar Singh v. State of Orissa*, 1957 A.I.R. (Orissa) 247, *reprinted in* 24 I.L.R. 425.

India: *Bombay Educ. Soc'y v. State of Bombay*, 1954 Bom. 1333.

Ireland: *Eastern Health Bd. and TM and AM v. An Bord Uchtala*, 1992 No. 101 (Ir. S.C., Mar. 8, 1993) (O'Flaherty J., conc.).

Ireland: *In re R. Ltd.*, [1989] I.L.R.M. 757 (Ir. S.C.).

Ireland: *In re R. Ltd.*, [1989] I.R. 126 (Ir. S.C.) (Walsh J., conc., joined by Griffin and Hederman, JJ.).

Ireland: *State v. Cooney* [1982] I.R. 337 (Ir. H. Ct., Feb. 16, 1982).

Ireland: *In re Woods*, [1970] I.R. 154 (Ir. S.C., Dec. 19, 1967), *excerpted in* 53 I.L.R. 552.

Ireland: *In re O Laighléis*, [1960] I.R. 93 (Ir. S.C.).

Ireland: *State v. Tapley*, [1952] I.R. 62 (Ir. S.C. 1950).

Israel: *Military Prosecutor v. Halil Muhamad Mahmoud Halil Bakhis*, June 10, 1968, 1 Selected Judgments of the Mil. Cts. in the Administered Territories 371 (Mil Ct. 1971), *reprinted in* 47 I.L.R. 484.

Israel: *American European Beth-El Mission v. Minister of Social Welfare*, 21 (2) Piskei-Din 325 (Sup. Ct. 1967) (Cohn, J., separate opinion), *reprinted in* 47 I.L.R. 205.

Israel: *Kurtz and Latushinsky v. Kirschen*, 21 (2) Piskei-Din 20 (Sup. Ct. 1967) (Cohn, J., separate opinion), *reprinted in* 47 I.L.R. 212.

Italy: Judgment of Feb. 1, 1962 (Ministry of Home Affairs v. Kemali), Cass. [Ct. of Last App.], Foro It. LXXXVII (1962), Part I, at 190, *reprinted in* 40 I.L.R. 191.

Italy: Judgment of July 27, 1959 (Fallimento Ditta Maggi v. Ministry of Fin.), Trib. [Ct. of First Instance], Foro It. LXXXV (1960), I, col. 505, *reprinted in* 28 I.L.R. 607.

Mauritius: *Union of Campement Sites Owners and Lessees v. Gov't of Mauritius*, [1984] The Mauritius Reports 100 (Ct. of Civ. App.), *reprinted in* 91 I.L.R. 317.

Mauritius: *Police v. Labat*, [1970] The Mauritius Reports 214 (Sup. Ct.), *reprinted in* 70 I.L.R. 191.

Mauritius: *Roussety v. Attorney General*, [1967] The Mauritius Reports 45 (High Ct.), *reprinted in* 44 I.L.R. 108.

Mauritius: *Director of Pub. Prosecutions v. Labavarde*, [1965] The Mauritius Reports 72 (High Ct.), *reprinted in* 44 I.L.R. 104, 106.

Namibia: *Ex parte Attorney General: In re Corporal Punishment by Organs of the State*, 1991 (3) SA 76 (Sup. Ct. 1991).

Namibia: *Minister of Defence v. Mwandighi* 1992 (2) SA 355 (Sup. Ct. 1991), *reprinted in* 91 I.L.R. 341.

Netherlands: Judgment of Feb. 13, 1991, Rb. (Amsterdam) [Dist. Ct.], [1991] NJ 488.

Netherlands: Judgment of Nov. 7, 1984 (*X v. Inspector of Direct Taxes*), HR [High Ct.], [1985] NJ No. 247, [1985] BNB No. 43.

Netherlands: Judgment of Aug. 16, 1984, Rb. (Amsterdam) [Dist. Ct.], [1985] NJCM Bull. 648.

Netherlands: Judgment of Mar. 16, 1978 (*A. Koning v. State Secretary of Transp. and Water Management, Afd. Rechtspr.* [Admin. Ct. of First Instance], [1979] AB No. 198.

Netherlands: Judgment of Nov. 23, 1977, HMG [Mil. Ct. App.], [1978] NYIL 315.

Netherlands: Judgment of Dec. 27, 1967 (*Stichjting Communicatie Belangen Nederland v. State-Secretary for Transp. and Water Management*), Royal Decree, No. 18.

Netherlands: *In re Beck*, [1949] NJ No. 437 (Spec. Ct. Cass.), *reprinted in* 16 I.L.R. 279.

Netherlands: *In re Flesche*, [1949] NJ No. 548 (Spec. Ct. Cass.), *reprinted in* 16 I.L.R. 266.

Netherlands: *In re Rauter*, [1949] NJ No. 87 (Spec. Ct. Cass.), *reprinted in* 16 I.L.R. 526.

New Zealand: *Ministry of Transp. v. Noort Police v. Curran*, [1992] 3 N.Z.L.R. 260 (April 30, 1992) (Ct. App., Wellington).

New Zealand: *Noort v. Ministry of Transp.*, [1992] 1 N.Z.L.R. 743 (Sept. 3, 1991) (High Ct.).

New Zealand: *Huakina Dev. Trust v. Waikato Valley Auth.*, [1988] 2 N.Z.L.R. 188 (June 2, 1987) (High Ct., Admin. Div.).

New Zealand: *Van Gorkom v. Attorney-General*, [1977] 1 N.Z.L.R. 535 (Feb. 10, 1977) (Sup. Ct.).

Nigeria: *Nolokwu v. Comm'r of Police*, [High Court], *reported in LAW OF HABEAS CORPUS* 96 (Chief Gani Fawehinmi ed., 1986).

South Africa: *Ex parte Attorney General: In re Corporal Punishment by Organs of the State*, 1991 (3) SA 76, (Sup. Ct. 1991).

Spain: STS (Sentencia del Tribunal Supremo) of July 3, 1979, *in Aranzadi* 3.182.

Sri Lanka: *W.M.K. Silva v. Piyasena Senaratne*, S.C. App. No. 7 of 1988.

Sri Lanka: *Perera v. Attorney-General*, S.C. Nos. 107-109/86, slip op. (1986) (unreported).

Sri Lanka: *Chelliah v. Paranage*, 2 Sri Lanka Law Reports 132 (1982).

Sri Lanka: *Thadchanamoorthi v. Attorney-General*, F.R.D. (1) 129.

Sri Lanka: *Visvalingan v. Liyange*, (1982) F.R.D. (2) 529.

Sri Lanka: *Velmurugu v. Attorney-General*, 1 Sri Lanka Law Reports 406 (1981).

Sri Lanka: *Mahenthiran v. Attorney-General*, Supreme Court, [1980] Sri Lanka Law Reports (1980).

Switzerland: Admin. Trib., *Argovie*, [1983] AGVE, No. 13, at 321.

Switzerland: Federal Tribunal, ATF 104 Ia 92.

Switzerland: Federal Tribunal, ATF 108 Ia 277.

Tanzania: *Ephrahim v. Pastory & Kaizilege*, *reprinted in* 87 I.L.R. 106 (High Ct. 1990).

Tanzania: D.P.P. v. Haji Ahmed, Crim. App. Nos. 44 and 45 of 1985 (Ct. App.).

United Kingdom: Alexander v. Wallington Gen. Comm'rs, 1993 S.T.C. 588 (C.A. 1993).

United Kingdom: Republic of Somalia v. Woodhouse Drake & Carey (Suisse) SA, [1992] 3 W.L.R. 7844 (Q.B. 1992).

United Kingdom: R v. Immigration Appeal Tribunal *ex parte* Minta, 1990 Q.B. 1248 (1991).

United Kingdom: R v. London Borough of Barnet *ex parte* Islam and Quraishi, 1989 Q.B. 2181 (1991).

United Kingdom: R v. Secretary of State for the Home Dept. *ex parte* Yassine, [1990] Imm. A.R. 354 (Q.B. 1990).

United Kingdom: R v. Secretary of State for the Home Dept. *ex parte* Ruddock, [1987] All E.R. 518 (Q.B. 1986).

United Kingdom: Wheeler v. Leicester City Council, [1985] 1 App. Cas. 1054 (C.A. 1985).

United Kingdom: Minister of Home Affairs v. Fisher, [1980] App. Cas. 319 (P.C. 1979).

United Kingdom: Secretary of State for the Home Dept. v. Two Citizens of Chile, [1977] Imm. A.R. 36 (1975).

United Kingdom: Waddington v. Miah alias Ullah, Court of Appeal, [1974] 1 W.L.R. 683 (HL) (C.A. 1974).

United Kingdom: R v. Miah, [1974] 1 All E.R. 1110 (C.A. 1973).

United States: Aguinda v. Texaco, 93 Civ. 7527 (VLB), 1994 U.S. Dist. LEXIS 18364 (S.D.N.Y. 1994).

United States: Heldman v. Sobol, 846 F. Supp. 285 (S.D.N.Y. 1994).

United States: *Clever v. Cherry Hill Bd. of Educ.*, 838 F. Supp. 929 (D.N.J. 1993).

United States: *Demjanjuk v. Petrovsky*, 10 F.3d 338 (6th Cir. 1993).

United States: *Ortiz-Moreno v. INS*, 7 F.3d 234 (6th Cir. 1993) (citation in table format).

United States: *Phaidin v. United States*, 28 Cl. Ct. 231 (1993).

United States: *Rodgers v. Ohio Dept. of Rehabilitation and Correction*, 632 N.E.2d 1355 (Ohio Ct. App. 1993).

United States: *United States v. Copeland*, 830 F. Supp. 216 (S.D.N.Y. 1993).

United States: *United States v. Schiffer*, 836 F. Supp. 1164 (E.D. Pa. 1993).

United States: *Weinstein v. Lasover*, No. 93-1552, 1993 U.S. Dist. LEXIS 16417 (E.D. Pa. 1993).

United States: *Wong v. Ilchert*, 998 F.2d 661 (9th Cir. 1993).

United States: *Denegri v. Chile*, 1992 U.S. Dist. LEXIS 4233 (D.D.C. 1992).

United States: *Levy v. Weksel*, 143 F.R.D. 54 (S.D.N.Y. 1992).

United States: *In re Estate of Marcos Human Rights Litig.*, 978 F.2d 493 (9th Cir. 1992).

United States: *Siderman de Blake v. Republic of Arg.*, 965 F.2d 699 (9th Cir. 1992).

United States: *Singh v. Ilchert*, 801 F. Supp. 313 (N.D. Cal. 1992).

United States: *Fulop Family v. United States*, 919 F.2d 738 (6th Cir. 1990) (unpublished).

- United States: *Simanonok v. Simanonok*, 918 F.2d 947 (Fed. Cir. 1990).
- United States: *DKT Memorial Fund v. Agency for Int'l Dev.*, 887 F.2d 275 (D.C. Cir. 1989).
- United States: *Lipscomb v. Simmons*, 884 F.2d 1242 (9th Cir. 1989).
- United States: *United States v. Clotida*, 892 F.2d 1098 (1st Cir. 1989).
- United States: *West v. Bowen*, 879 F.2d 1122 (3d Cir. 1989).
- United States: *Carmichael v. United Technologies Corp.*, 835 F.2d 109 (5th Cir. 1988).
- United States: *M.A. A26851062 v. INS*, 858 F.2d 210 (4th Cir. 1988).
- United States: *Mugmuk v. Beyer*, 1988 U.S. Dist. LEXIS 7992 (D.N.J. 1988).
- United States: *United States v. Terrazas-Carrasco*, 861 F.2d 93 (5th Cir. 1988).
- United States: *Cerrillo-Perez v. INS*, 809 F.2d 1419 (9th Cir. 1987).
- United States: *Forti v. Suarez-Mason*, 672 F. Supp. 1531 (N.D. Cal. 1987).
- United States: *Haitian Refugee Cent. v. Gracey*, 809 F.2d 794 (D.C. Cir. 1987).
- United States: *People v. Ghent*, 739 P.2d 1250 (Cal. 1987).
- United States: *Boehm v. Superior Court*, 223 Cal. Rptr. 716 (Cal. Ct. App. 1986).
- United States: *Lopez-Pacheco v. United States*, 627 F. Supp. 1224 (D.P.R. 1986).
- United States: *Sheridan Rd. Baptist Church v. Michigan Dept. of Educ.*, 396 N.W.2d 373 (Mich. 1986).

United States: *United States v. Ringrose*, 788 F.2d 638 (9th Cir. 1986).

United States: *Fernandez-Roque v. Smith*, 622 F. Supp. 887 (N.D. Ga. 1985).

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United States: *Jean v. Nelson*, 727 F.2d 957 (11th Cir. 1984), *aff'd*, 472 U.S. 846 (1985).

United States: *Siderman de Blake v. Republic of Arg.*, No. CV 82-1772-RMT(MCx), slip op. (C.D. Cal. 1985).

United States: *Tel-Oren v. Libyan Arab Republic*, 517 F. Supp. 542 (D.D.C. 1981), *aff'd per curiam*, 726 F.2d 774 (D.C. Cir. 1984), *cert. denied*, 470 U.S. 1003 (1985).

United States: *Von Dardel v. U.S.S.R.*, 623 F. Supp. 246 (D.D.C. 1985).

United States: *Wong v. Tenneco, Inc.*, 702 P.2d 570 (Cal. 1985).

United States: *Dickens v. Lewis*, 750 F.2d 1251 (5th Cir. 1984).

United States: *Laker Airways, Ltd. v. Pan American World Airways, Inc.*, 604 F. Supp. 280 (D.D.C. 1984).

United States: *Tel-Oren v. Libyan Arab Republic*, 726 F.2d 774 (D.C. Cir. 1984).

United States: *Crow v. Gullet*, 706 F.2d 856 (8th Cir. 1983).

United States: *Fernandez-Roque v. Smith*, 567 F. Supp. 1115 (N.D. Ga. 1983).

United States: *Hinkie v. United States*, 715 F.2d 96 (3d Cir. 1983).

United States: *Ishtyaq v. Nelson*, 627 F. Supp. 13 (E.D.N.Y. 1983).

United States: *Sanchez-Espinoza v. Reagan*, 568 F. Supp. 596 (D.D.C. 1983).

United States: *American Nat'l Ins. Co. v. Fair Employment and Housing Comm'n*, 651 P.2d 1151 (Cal. 1982).

United States: *Centre for the Independence of Judges and Lawyers of the United States, Inc. v. Mabey*, 19 Bankr. 635 (D. Utah 1982).

United States: *Crow v. Gullet*, 541 F. Supp. 785 (D.S.D. 1982).

United States: *In re Alien Children Educ. Litig.*, 501 F. Supp. 544 (S.D. Tex. 1980), *aff'd* 5th Cir. 1981 (unreported mem.), *aff'd on other grounds sub nom. Plyler v. Doe*, 457 U.S. 202 (1982).

United States: *Fernandez v. Wilkinson*, 505 F.Supp. 787 (D. Kan. 1980), *aff'd on other grounds sub nom. Rodriguez-Fernandez v. Wilkinson*, 654 F.2d 1382 (10th Cir. 1981).

United States: *Founding Church of Scientology v. Regan*, 670 F.2d 1158 (D.C. Cir. 1981).

United States: *Jaffee v. United States*, 663 F.2d 1226 (3d Cir. 1981).

United States: *Soroa-Gonzales v. Civiletti*, 515 F. Supp. 1049 (N.D. Ga. 1981).

United States: *Sterling v. Cupp*, 625 P.2d 123 (Or. 1981).

United States: *City of Santa Barbara v. Adamson*, 610 P.2d 436 (Cal. 1980).

United States: *Filartiga v. Peña-Irala*, 630 F. 2d 876 (2d Cir. 1980).

United States: *Lareau v. Manson*, 507 F. Supp. 1177 (D. Conn. 1980).

United States: *Tayyari v. New Mexico State Univ.*, 495 F. Supp. 1365 (D.N.M. 1980).

United States: *Bhargava v. Commissioner*, 37 T.C.M. 848 (1978), *aff'd* 603 F.2d 211 (2d Cir. 1979) (affirming without opinion).

United States: *Commonwealth v. Sadler*, 3 Phila. 316, 1979 Phila. Cty. Rptr. LEXIS 92 (Common Pleas Ct. 1979).

United States: *Cramer v. Tyars*, 588 P.2d 793 (Cal. 1979).

United States: *Davis v. Dist. Director*, 481 F. Supp. 1178 (D.D.C. 1979).

United States: *In re Alien Children Educ. Litig.*, 482 F. Supp. 326 (Jud. Panel on Multidist. Litig. 1979).

United States: *In re Vilensky's Estate*, 424 N.Y.S.2d 821 (Sur. Ct. 1979).

United States: *In re White*, 158 Cal. Rptr. 562 (Cal. Ct. App. 1979).

United States: *Pauley v. Kelly*, 255 S.E.2d 859 (W. Va. 1979).

United States: *Sami v. United States*, 617 F.2d 755 (D.C. Cir. 1979).

United States: *People v. Levins*, 586 P.2d 939 (Cal. 1978).

United States: *Huynh Thi Anh v. Levi*, 427 F. Supp. 1281 (E.D. Mich. 1977).

United States: *Nguyen Da Yen v. Kissinger*, 528 F. 2d 1194 (9th Cir. 1975).

United States: *United States v. Vargas*, 370 F. Supp. 908 (D.P.R. 1974).

United States: *Eggert v. City of Seattle*, 505 P.2d 801 (Wash. 1973).

United States: *Bixby v. Pierno*, 481 P.2d 242 (Cal. 1971).

United States: *Dandridge v. Williams*, 397 U.S. 471 (1970).

United States: *In re Weitzman*, 426 F.2d 439 (8th Cir. 1970)

United States: *Beck v. Manufacturers Hanover Trust Co.*, 481 N.Y.S.2d 211 (N.Y. Sup. Ct. 1966).

United States: *Jamur Prods. Corp. v. Quill*, 273 N.Y.S.2d 348 (N.Y. Sup. Ct. 1966).

United States: *Zemel v. Rusk*, 381 U.S. 1 (1965).

United States: *Copeland v. Secretary of State*, 226 F. Supp. 20 (S.D.N.Y. 1964).

United States: *Kennedy v. Mendoza-Martinez*, 372 U.S. 144 (1963).

United States: *Schneider v. Rusk*, 218 F. Supp. 302 (D.D.C. 1963).

United States: *Int'l Ass'n. of Machinists v. Street*, 367 U.S. 740 (1961).

United States: *Wilson v. Hacker*, 101 N.Y.S.2d 461 (N.Y. Sup. Ct. 1950).

United States: *AFL v. American Sash & Door Co.*, 335 U.S. 538 (1949).

ANNEX 3

INTERNATIONAL INSTRUMENTS REFERRING TO THE
UNIVERSAL DECLARATION OF HUMAN RIGHTS

European Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, 213 U.N.T.S. 221, 222, pmbl. (entered into force Sept. 3, 1953).

Convention Relating to the Status of Refugees, July 28, 1951, 189 U.N.T.S. 137, 150, pmbl. (entered into force Apr. 22, 1954).

Convention on the Political Rights of Women, Mar. 31, 1953, 193 U.N.T.S. 135, 136, pmbl. (entered into force July 7, 1954).

Convention Relating to the Status of Stateless Persons, Sept. 28, 1954, 360 U.N.T.S. 130, pmbl. (entered into force June 6, 1960).

Convention on the Nationality of Married Women, Feb. 20, 1957, 309 U.N.T.S. 65, pmbl. (entered into force Aug. 11, 1958).

Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, Sept. 7, 1956, 266 U.N.T.S. 3, 40 (entered into force Apr. 30, 1957).

Convention Concerning the Abolition of Forced Labour (I.L.O. No. 105), June 25, 1957, 320 U.N.T.S. 291, 292, pmbl. (entered into force Jan. 17, 1959).

Convention Concerning Discrimination in Respect of Employment and Occupation (I.L.O. No. 111), June 25, 1958, 362 U.N.T.S. 31, 32, pmbl. (entered into force June 15, 1960).

Declaration on the Rights of the Child, G.A. Res. 1386, U.N. GAOR, 14th Sess., Supp. No. 16, at 19, pmbl., U.N. Doc. A/4354 (1959).

Declaration on the Granting of Independence to Colonial Countries and Peoples, G.A. Res. 1514, U.N. GAOR, 15th Sess., Supp. No. 16, at 66, 67, para. 7, U.N. Doc. A/4684 (1960).

UNESCO Convention against Discrimination in Education, Dec. 14, 1960, 429 U.N.T.S. 93, pmb. (entered into force May 22, 1962).

Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, Dec. 10, 1962, 521 U.N.T.S. 231, 232, pmb. (entered into force Dec. 9, 1964).

Declaration on the Elimination of All Forms of Racial Discrimination, G.A. Res. 1904, U.N. GAOR, 18th Sess., Supp. No. 15, at 35, 36, pmb., arts. 1, 8, 11, U.N. Doc. A/5515 (1963).

Convention Concerning Employment Policy (I.L.O. No. 122), July 9, 1964, 569 U.N.T.S. 65, 68, pmb. (entered into force July 15, 1966).

Recommendation on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, G.A. Res. 2018, U.N. GAOR, 20th Sess., Supp. No. 14, at 36, pmb., U.N. Doc. A/6014 (1965).

Declaration on the Promotion among Youth of the Ideals of Peace, Mutual Respect and Understanding between Peoples, G.A. Res. 2037, U.N. GAOR, 20th Sess., Supp. No. 14, at 40, pmb., U.N. Doc. A/6014 (1965).

International Convention on the Elimination of All Forms of Racial Discrimination, Dec. 21, 1965, 660 U.N.T.S. 195, 212, pmb., arts. 4, 7 (entered into force Jan. 4, 1969).

UNESCO Declaration of the Principles of International Cultural Cooperation, Nov. 4, 1966, pmb., art. 4, *reprinted in UNESCO'S STANDARD-SETTING INSTRUMENTS at IV.C.1.Intro, 3, 5 (1981).*

International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, 999 U.N.T.S. 3 (1966), pmb. (entered into force Jan. 3, 1976).

International Covenant on Civil and Political Rights, Dec. 19, 1966, 999 U.N.T.S. 171, 173 (1966), pmb. (entered into force Mar. 23, 1976).

Declaration on the Elimination of Discrimination against Women, G.A. Res. 2263, U.N. GAOR, 22d Sess., Supp. No. 16, at 35, pmb., U.N. Doc. A/6716 (1967).

Declaration on Territorial Asylum, G.A. Res. 2312, U.N. GAOR, 22d Sess., Supp. No. 16, at 81, pmbl., art. 1, U.N. Doc. A/6716 (1967).

Proclamation of Tehran, proclaimed by the International Conference on Human Rights, May 13, 1968, U.N. GAOR, 23d Sess., pmbl., arts. 2, 4, 8, 14, 15, oper. paras. 1, 2, U.N. Doc A/CONF.32/41 (1968).

American Convention on Human Rights, Nov. 22, 1969, O.A.S.T.S. No. 36, p. 1, O.A.S. Off. Rec. OEA/Ser.L/V/II.23, doc. 21, rev. 6, pmbl. (entered into force July 18, 1978).

Declaration on Social Progress and Development, G.A. Res. 2542, U.N. GAOR, 24th Sess., Supp. No. 30, at 49, 50, pmbl., art. 5, U.N. Doc. A/7630 (1969).

Declaration on the Rights of Mentally Retarded Persons, G.A. Res. 2856, U.N. GAOR, 26th Sess., Supp. No. 29, at 93, pmbl., U.N. Doc. A/8429 (1971).

International Convention on the Suppression and Punishment of the Crime of Apartheid, G.A. Res. 3068, U.N. GAOR, 28th Sess., Supp. No. 30, at 166, pmbl. (1974) (entered into force July 18, 1976).

Universal Declaration on the Eradication of Hunger and Malnutrition, Nov. 16, 1974, *endorsed in* G.A. Res. 3348, U.N. GAOR, 29th Sess., Supp. No. 31, at 75, pmbl., U.N. Doc. A/9631 (1974) (adopted by the World Food Conference).

Declaration on the Protection of Women and Children in Emergency and Armed Conflict, G.A. Res. 3318, U.N. GAOR, 29th Sess., Supp. No. 31, at 146, art. 6, U.N. Doc. A/9631 (1974).

Declaration on the Use of Scientific and Technological Progress in the Interests of Peace and for the Benefit of Mankind, G.A. Res. 3384, U.N. GAOR, 30th Sess., Supp. No. 34, at 86, pmbl., art. 2, U.N. Doc. A/10034 (1975).

Declaration on the Rights of Disabled Persons, G.A. Res. 3447, U.N. GAOR, 30th Sess., Supp. No. 34, at 88, pmbl., U.N. Doc. A/10034 (1975).

Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res. 3452, U.N. GAOR, 30th Sess., Supp. No. 34, at 91, pmbl., art.2, U.N. Doc. A/10034 (1976) (adopted Dec. 9, 1975).

UNESCO Declaration on Race and Racial Prejudice, Nov. 27, 1978, pmbl., arts. 5, 6, *reprinted in UNESCO'S STANDARD-SETTING INSTRUMENTS at III.C.1.Intro, 4, 7, 8 (1981).*

UNESCO Declaration on Fundamental Principles Concerning the Contribution of the Mass Media to Strengthening Peace and International Understanding, to the Promotion of Human Rights and to Countering Racism, Apartheid and Incitement to War, Nov. 28, 1978, pmbl., art. 11, *reprinted in UNESCO'S STANDARD-SETTING INSTRUMENTS at IV.C.3.Intro, 3, 8-9 (1981).*

Code of Conduct for Law Enforcement Officials, G.A. Res. 34/169, U.N. GAOR, 34th Sess., Supp. No. 46, at 185, pmbl., art. 2, U.N. Doc. A/34/46 (1979) (commentary).

Convention on the Elimination of All Forms of Discrimination Against Women, G.A. Res. 34/180, 34 U.N. GAOR, 34th Sess., Supp. No. 46, at 193, 194, pmbl., U.N. Doc. A/34/46 (1979) (adopted Dec. 18, 1979) (entered into force Sept. 3, 1981).

African Charter on Human and Peoples' Rights, June 27, 1981, O.A.U. Doc. CAB/LEG/67/3 Rev. 5, pmbl., art. 60 (entered into force Oct. 21, 1986).

Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, G.A. Res. 36/55, U.N. GAOR, 36th Sess., Supp. No. 51, at 171, 172, pmbl., arts. 3, 8, U.N. Doc. A/36/51 (1981).

Principles of Medical Ethics Relevant to the Role of Health Personnel, Particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res. 37/194, U.N. GAOR, 37th Sess., Supp. No. 51, at 210, 211, pmbl., Principle 4 n.155, U.N. Doc. A/37/51 (1982).

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res. 39/46, U.N. GAOR, 39th Sess., Supp. No. 51, at 197, pmb., U.N. Doc. A/39/51 (1984) (entered into force June 28, 1987).

United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), G.A. Res. 40/33, U.N. GAOR, 40th Sess., Supp. No. 53, at 206, 208, Rules 7, 9, U.N. Doc. A/40/53 (1985) (commentary).

International Convention Against Apartheid in Sports, G.A. Res. 40/64, U.N. GAOR, 40th Sess., Supp. No. 53, at 37, 38, pmb., U.N. Doc. A/40/53 (1985).

Basic Principles on the Independence of the Judiciary, *adopted by Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders*, U.S. Doc. A/CONF.121/22/Rev.1 (1985), *endorsed by* G.A. Res. 40/32, U.N. GAOR, 40th Sess., Supp. No. 53, at 204, U.N. Doc. A/40/53 (1985).

Declaration on the Human Rights of Individuals Who Are not Nationals of the Country in Which They Live, G.A. Res. 40/144, U.N. GAOR, 40th Sess., Supp. No. 53, at 252, pmb., U.N. Doc. A/40/53 (1985).

Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally, G.A. Res. 41/85, U.N. GAOR, 41st Sess., Supp. No. 53, at 265, pmb., U.N. Doc. A/41/53 (1986).

Declaration on the Right to Development, G.A. Res. 41/128, U.N. GAOR, 41st Sess., Supp. No. 53, at 186, 187, pmb., art. 9, U.N. Doc. A/41/53 (1986).

Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities, G.A. Res. 47/135, U.N. GAOR, 47th Sess., Supp. No. 49, at 210, 211, pmb., U.N. Doc. A/47/49 (1992).

Vienna Declaration and Programme of Action, pmb., paras. 3, 8, U.N. Doc. A/CONF.157/23, (1993) (adopted by the World Conference on Human Rights), reprinted in 32 I.L.M. 1661 (1993).

**High Commissioner for the Promotion and Protection of All Human Rights,
G.A. Res. 48/141, U.N. GAOR, 48th Sess., Supp. No. 49, at 261, 262, pmb1.,
para. 3(a), U.N. Doc. A/48/49 (1993).**

