

The International Bill of Human Rights

Since its inception, the United Nations has strived to secure the promotion and protection of human rights worldwide. The first, and possibly the singularly most important, step taken by the United Nations in furtherance of the incumbent obligation to promote respect for human rights and fundamental freedoms was the General Assembly's adoption, on 10 December 1948, of the Universal Declaration of Human Rights. Although not technically legally binding, the effect of the Universal Declaration has far surpassed the expectations of the drafters and it is widely accepted as the consensus of global opinion on fundamental rights. The original intention that it would be followed swiftly by a binding enforceable tabulation of rights was not to be realized; it was to be eighteen years before consensus was reached on the text of two International Covenants and a further ten years before those instruments attracted sufficient ratifications to enter into force.

The so-called International Bill of Human Rights consists of the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and its Protocol and the International Covenant on Civil and Political Rights and two Optional Protocols annexed thereto. It has been referred to by the United Nations as 'the ethical and legal basis for all the human rights work of the United Nations . . . the foundation upon which the international system for the protection and promotion of human rights has been developed' (OHCHR, *Fact Sheet No 22*, p 3). This chapter will examine these instruments with reference to the scope and enforceability of each one. Selected rights contained in the instruments are considered in more detail in Chapter 11 onwards.

The International Bill of Human Rights has been described as 'a milestone in the history of human rights, a veritable Magna Carta marking mankind's arrival at a vitally important phase: the conscious acquisition of human dignity and worth' (OHCHR, *The International Bill of Rights Fact Sheet 2, Rev 1*).

In its very first session the General Assembly transmitted a draft Declaration on Fundamental Human Rights and Freedoms to the Economic and Social Council (ECOSOC) for consideration by it and by its new sub-organ, the Commission on Human Rights. Following on from the work of the League of Nations, consideration of minimum standards of rights was on the new organization's agenda. The International Bill of Human Rights was originally to be drafted by three working groups—one on a general declaration of international human rights standards, one on more specific elaboration of the rights (a covenant of rights), and the third on the implementation mechanism. Due to time constraints, only the declaration was redrafted to an appropriate standard in time for the General Assembly's

Paris meeting. A number of areas of contention emerged including the relationship between a State's sovereignty and the idea of universally proclaimed rights. Nevertheless, by Resolution 217A (III) of 10 December 1948, the General Assembly of the United Nations adopted the Universal Declaration of Human Rights. The first bold step towards creating a universal framework, an 'International Bill of Human Rights', had been taken.

4.1 The Universal Declaration of Human Rights

The Declaration only marked a first step since it was not a convention by which States would be bound to carry out and give effect to the fundamental human rights; nor would it provide for enforcement; yet it was a step forward in a great evolutionary process. It was the first occasion on which the organized community of nations had made a declaration of human rights and fundamental freedoms.

HE Herbert Evatt, President of the General Assembly, speaking after
the vote on Resolution 217(III), 10 December 1948

The Universal Declaration was adopted without a dissenting vote, although eight States (Byelorussian SSR, Czechoslovakia, Poland, Saudi Arabia, Ukrainian SSR, USSR, Union of South Africa, and Yugoslavia) abstained. The passage of time, in concert with the increasing reliance on the Universal Declaration by the global community, has largely negated the impact of these abstentions testifying to the veracity of the statement by the then president of the General Assembly that the Universal Declaration was a remarkable achievement, a step forward in the great evolutionary process. It was the first international instrument in which rights to be accorded to all peoples were articulated. Accordingly, its importance cannot be underestimated. In spite of this, debate continues over the enforceability of it and its legal status in contemporary international law.

4.1.1 Is the Universal Declaration binding?

A Declaration of the General Assembly is not, by definition, legally binding, though it has strong moral force. Moreover, it is arguable that many of the rights enunciated in the Charter are now so widely accepted that they form part of the general principles of law, although they may not have crystallized into customary international law. However, see the *dicta* of Judge Ammoun in his separate opinion on the *Namibia* case that the provisions of the Universal Declaration of Human Rights 'can bind States on the basis of custom . . . whether because they constituted a codification of customary law . . . or because they have acquired the force of custom through a general practice accepted as law'. Whichever, undoubtedly no State can avoid the impact of the Universal Declaration. In the last seventy years, it has increasingly lived up to its proclaimed goal as being 'a common standard of achievement for all peoples and all nations'. It is frequently referred to in international, regional, and national human rights instruments and jurisprudence.

Arguably, not all rights in the Universal Declaration have crystallized into custom: decisions should be based on an analysis of the status of the right in question. The American case of *Filartiga v Pena-Irala*, is one instance of a major

court—the United States' Circuit Court of Appeals—pronouncing on whether torture was a breach of customary international law. Circuit Judge Kaufman offered the view that the prohibition on torture 'has become part of customary international law, as evidenced and defined by the Universal Declaration of Human Rights'. Slavery has undoubtedly achieved similar status, being denounced as a crime against humanity at various world conferences.

The Universal Declaration is claimed to represent 'the conscience of the world—[to be] a synthesis, a profession of faith, a common philosophy of human rights—and ipso facto a part of general international law' (Haksar, U, p 36). The Universal Declaration enshrines a consensus on the content of internationally recognized rights owed to humankind. The rights articulated therein are sufficiently broad that they can span all cultures and religions with a minimum of difficulty hence the near unanimity of adoption. Some commentators argue that the Universal Declaration is paternalistic in overtones though, unlike the minority clauses concluded by the League, it has weathered the test of time. Both the International Court of Justice and a multitude of national courts have employed the Universal Declaration either as an interpretative tool or as customary law (see eg Hannum, H). It is often used as a point of reference for constitutional questions, especially in newer States. NGOs rely on the Universal Declaration as the standard of human rights; some such as Article 19, the international NGO on freedom of speech, even take their name from the Universal Declaration.

The status of the Universal Declaration is perhaps debatable. It is clear that it can, however, freely be employed as an interpretative aid with respect to the Charter and as a policy guide to accepted international practice not least in the Universal Periodic Review of State performance by the Human Rights Council. The substance of some of the rights enunciated in the Universal Declaration render any kind of enforcement provision ineffective as they are articulated in a vague and non-legalistic style (a deficiency the Covenants were intended to remedy).

4.1.2 The importance of the Universal Declaration

There are still States which have not signed and/or ratified the International Covenants. Consequently, the Universal Declaration may be the only applicable international human rights instrument. The Universal Declaration has been used as the basis for the constitutive documents of many new, emerging, and newly decolonized States. It is widely perceived as, although not originally intended to be, the definitive statement on human rights in contemporary society. Most international human rights instruments subsequently adopted by the United Nations have a basis in the Universal Declaration and give further definition and cognizance to those rights. Indubitably, it provides a valuable framework of human rights which many subsequent documents expand into legally binding texts. As will be seen, the two International Covenants expand the Universal Declaration while other instruments such as the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination Against Women, and the United Nations Convention on the Rights of the Child draw on the scope and content of the Universal Declaration, elaborating rights and freedoms for specific groups in society. The importance of the Declaration may be gauged by the many international, regional, and national

statements which indicate its universal applicability as an international standard: for example, the Helsinki Declaration, adopted as the Final Act by the 1975 Conference on Security and Co-operation in Europe, includes the following statement: 'In the field of human rights and fundamental freedoms, the participating States will act in conformity with the purposes and principles of the Charter of the United Nations and with the Universal Declaration of Human Rights' (1(a), Declaration on Principles Guiding Relations between Participating States). All the basic instruments on human rights adopted by the regional organizations refer to the Universal Declaration in preambular paragraphs. This was echoed by the Vienna Declaration and Programme of Action drawn up by the World Conference on Human Rights in 1993 which states that the Universal Declaration is 'the source of inspiration and has been the basis for the United Nations in making advances in standard setting' (Preamble). The UN Millennium Declaration in 2000 (A/RES/55/2) and the resolution adopting Agenda 2030 and the UN Sustainable Development Goals in 2015 (A/RES/70/1) also make reference to the Universal Declaration.

In light of the foregoing, it is fitting that the United Nations and many Member States, now celebrate the day on which the Universal Declaration was adopted, 10 December, as Human Rights Day. In some States, it is even a public holiday.

4.1.3 The content of the Universal Declaration

The Preamble to the Universal Declaration of Human Rights recognizes the inherent dignity and the equal and inalienable rights of all members of the human family as being the foundation of freedom, justice, and peace in the world. It also reiterates the pledge that Member States of the United Nations take to achieve the promotion of universal respect for, and observance of, human rights and fundamental freedoms. The Declaration was presented in realization of these aims—it seeks to articulate a common understanding of the rights and freedoms involved.

Although the General Assembly proclaimed the Universal Declaration to be 'a common standard of achievement for all peoples and all nations', the standard enshrined in the Universal Declaration is one to be achieved progressively, a goal to be aimed at, indeed a mountain to climb for some States. This explains why some of the rights are inalienable, their realization instantaneous, while other rights are in a comparatively weaker position, more aspirational.

The Universal Declaration is unequivocal in the guarantee of equality to all peoples:

Article 1. All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 2. Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

Equality and the prohibition on discrimination on any ground is at the foundation of the human rights policy of the United Nations. The principle of

non-discrimination is expanded upon in Chapter 11. Several articles of the Universal Declaration reiterate and, in some instances, reinforce this prohibition on discrimination, extending the ambit of the Declaration to the promotion of understanding, tolerance, and friendship among all nations and all racial or religious groups, thereby furthering those activities of the United Nations which seek to secure the maintenance of international peace and security. (The maintenance of international peace and security is, of course, the overriding purpose of the organization itself (Art 1(1) Charter).) The approach of the new world order to human rights has been without doubt characterized by constant reiteration and reinforcement of the premise that all people are created equal. This remains the case in twenty-first century discourses on the future of rights and indeed that post world war world order.

The Declaration commences with the notion that all peoples are born free and equal in dignity and rights (Art 1) and thus should be entitled to enjoyment of the rights enshrined in the Convention without distinction or discrimination (Art 2). Article 3 then encapsulates the most fundamental of all rights—'Everyone has the right to life, liberty and security of person.' The right to liberty is further clarified and expanded in succeeding Articles of the Universal Declaration with slavery and the slave trade prohibited and all persons entitled to freedom from torture and similar treatment (Arts 4–5). All people are entitled to freedom of movement and residence throughout their State, the right to a nationality, and the right to seek asylum from persecution (Arts 13–15). Many rights in the Universal Declaration govern the rights of persons in detention and rights to a fair trial (Arts 7–11). The family is entitled to respect and protection as the natural and fundamental group unit of society—States are obliged not to interfere arbitrarily with the individual's privacy, home, correspondence, family, and reputation, and men and women are entitled to marry and found a family (Arts 12 and 16). Freedom of thought, conscience, and religion, opinion and expression are protected, as is freedom of assembly and association (Arts 18–20). In an attempt to secure democracy, the right to participate in government and public service is included in Art 21. To make certain that individuals are ensured an adequate standard of living, health, and well-being, the right to work, social security, rest and leisure periods, education, and cultural life are prescribed (Arts 22–7). The universality and indivisibility of rights is emphasized by the breadth and scope of the rights in the Universal Declaration.

However, the Universal Declaration is not merely a statement of rights. There is an element of reciprocity: Art 29 provides that 'Everyone has duties to the community in which alone the free and full development of his personality is possible.' The African Charter on Human and Peoples' Rights, and to a lesser extent the American Convention on Human Rights, go much further, articulating a number of duties the individual owes the community and State.

4.1.4 Minority protection and the Universal Declaration

The Universal Declaration creates a new species of rights—universal human rights which are the inalienable birthright of each and every person—though throughout the deliberations on the Universal Declaration, the inclusion of an Article dealing with minorities was favoured. The new underlying premise of universal human

rights should have rendered specific minority protection superfluous. Everyone was accorded the basic human rights (freedom of religion and freedom from discrimination) which previously had been the prerogative of minorities. The incompatibility of a term protecting minority groups in the same document as a profession of the equality of all overrode the concerns that national minorities were the victims of some of the worst crimes against humanity perpetrated during the Second World War. In the end, political considerations outweighed pure humanitarian idealism and the proposed minority clause was excluded from the final document. However, the third part of the resolution of the General Assembly through which the Universal Declaration was adopted was entitled 'Fate of Minorities' and refers the question of minority protection to the Commission on Human Rights and the Sub-Commission. The result of these discussions, contemporary minority protection, is addressed in more detail in Chapter 19.

4.1.5 The relevance of the Universal Declaration

The Universal Declaration attracts and deserves accolades of superlatives. Without doubt, it was an unprecedented step for the world and its peoples—State acknowledgement that individuals were no longer solely subject to the whims of the State. Rather, individuals were entitled, as a birthright, to equality and to specific fundamental rights. These rights were specified by international law but had origins predating the Universal Declaration. As the embodiment of a set of accepted universal human rights, the Universal Declaration is unparalleled. It is the first example of such a universal document transcending culture and traditions to prescribe a global standard. As has been noted, the principal failing of the Universal Declaration is perhaps its legal status or lack thereof. It is legally unenforceable, except insofar as it is accepted as enshrining 'general principles of law' or aspects of custom but is invoked by the Human Rights Council. The General Assembly agreed that Member States, in conformity with their obligations under Arts 55–6 of the United Nations Charter, should 'solemnly publicise the text of the Declaration and . . . cause it to be disseminated, displayed, read and expounded principally in schools and other educational institutions, without distinction based on the political status of countries or territories' (UN GA Resolution 217). The Secretary-General is given the responsibility of publishing and disseminating the text in as many languages as possible. Nine States abstained from approving this part of the Resolution 217, none objected. Human rights education is considered along with the right to education in Chapter 21.

The advent of computerization and the internet has furthered these objectives. The Universal Declaration is now available online through the website of the UN High Commissioner for Human Rights in over three hundred language versions including Akuapem Twi, Asante, Catalan, Corsican, Kurdish, Nepali, Quechua, Samoan, Scots Gaelic, Tongan, and Zulu as well as Latin and Esperanto. Indeed, the Universal Declaration holds the world record as the most widely translated document—in that respect, it is truly universal. In many countries, events such as independence from colonial powers or anniversaries of the Universal Declaration itself were celebrated with constitutions, even monuments, incorporating the Universal Declaration. Observation of Human Rights Day on the anniversary of its adoption further promote awareness and dissemination of the Universal Declaration.

1968 was designated the International Year of Human Rights and culminated in a World Conference on Human Rights, held in Tehran, Iran. The conference adopted a Proclamation reviewing the progress made in the twenty years since the Universal Declaration was adopted. The Conference proclaimed that illiteracy was a barrier to the promotion of education (Proclamation 14) and it was imperative that all States fulfil their solemn obligations to promote and encourage respect for human rights and fundamental freedoms for all (Proclamation 1) before affirming its faith in the principles of the Universal Declaration of Human Rights and urging all peoples and governments to dedicate themselves to the principles enshrined therein, redoubling their efforts to 'provide for all human beings a life consonant with freedom and dignity and conducive to physical, mental, social and spiritual welfare' (Decision 1). The World Conference on Human Rights held in Vienna in 1993 further affirmed the views of the international community (a community which had more than trebled in membership): 'All human rights are universal, indivisible and interdependent and interrelated' (Declaration 5). The basic tenet of equality which underpinned the Universal Declaration was thus endorsed and the new global community expressed its recognition of the equal importance of all the rights enshrined in the Universal Declaration.

Marking the millennium, the United Nations General Assembly articulated the resolve of the Member States to 'respect fully and uphold the Universal Declaration of Human Rights' (UN Doc A155/L.2, para 25).

4.2 The United Nations International Covenants of 1966

It was the hope of the drafters that the Universal Declaration would be swiftly followed by a more detailed tabulation of rights and freedoms in a legal format (Part E, GA Resolution 217(III), 1948). The original idea, as proposed by the Commission on Human Rights at its second sitting, was for an International Bill of Rights comprising a Declaration, a Covenant, and Measures of Implementation. After protracted discussion, the General Assembly agreed to the drafting of two distinct instruments rather than a single legally binding covenant expanding upon the whole litany of rights enshrined in the Universal Declaration. The two Covenants were requested to be presented to the General Assembly at the same time in an attempt to highlight the 'unity of the aim' (GA Resolution 543(VI), 1952). The series of negotiations and consultations, which shaped the drafting of the two Covenants, was lengthy and comprehensive involving State, specialized agency, and NGO participation.

The intended alacrity of the drafting proved unattainable in reality. It was not until 16 December 1966 that the Economic and Social Council succeeded in presenting satisfactory draft proposals to the General Assembly for approval and adoption as annexes to resolutions of that day. The International Covenants were intended to supersede the Universal Declaration insofar as they would be legally binding on those States choosing to accept them. However, although they have relatively high numbers of Contracting Parties, their acceptance is by no means universal. Consequently, the continuing value of the Universal Declaration cannot be underestimated.

That the Economic and Social Council finally settled upon a dual approach to human rights protection may only partly be attributable to the difficulties encountered in expanding the entire Universal Declaration in one text. The provisions of the Universal Declaration became two international instruments: the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). The former essentially concerns those rights and freedoms detailed in Arts 3–21 of the Universal Declaration while the latter codifies the provisions of Arts 22–7. In the resolution of the General Assembly which adopted the two Covenants, the hope was expressed that ‘the Covenants and the Optional Protocol [to the ICCPR] will be signed and ratified or acceded to without delay and come into force at an early date’ (GA Resolution 2200A, 1966). Once more, the General Assembly was attempting to unite the two Covenants. To an extent, it was a successful ploy. History attests that the numbers of ratifications and accessions to each is comparable (ratification of the Optional Protocols is a different issue). Many States thus view the two Covenants as a unit although obviously there are political and diplomatic considerations with States wishing to be seen on the international stage to profess adherence to the International Bill of Human Rights.

The Covenants were hailed as the International Bill of Human Rights and introduced amid a wave of international and popular support. However, this was, perhaps, an idealistic aspiration and it was not to be. It took almost ten years for the Covenants to enter into force: the Economic, Social and Cultural Covenant on 3 January 1976 and that of Civil and Political Rights on 23 March 1976.



Discussion topic

Twin Covenants borne of one Universal Declaration

Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.

Art 2(1) International Covenant on Economic, Social and Cultural Rights

Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

Art 2(2) International Covenant on Civil and Political Rights

For many observers, this is the key difference between the two Covenants. With reference to the rights and freedoms enshrined therein, evaluate the necessity for this distinction.

The emphasis in each of the Covenants varies to reflect the perceived nature of the rights addressed therein. It was deemed politically unacceptable and impractical to replicate the Universal Declaration with all the now expanded rights in one document. With the adoption of two distinct covenants, the difference has

perpetuated a belief that human rights exist in a hierarchy of different 'generations' of rights. It was many years before the indivisibility of rights was once again emphasized in single instruments, including the Convention on the Rights of the Child of the United Nations, the African Charter on Human and Peoples' Rights, and the EU Charter on Fundamental Rights. Today the comparable implementation and monitoring of both the covenants emphasizes the indivisibility and inter-relatedness of all the core rights and freedom in the Universal Declaration. Both Covenants are subject to monitoring mechanisms by treaty bodies, and both are growing their jurisprudence through individual communications. Consequently there is a clearer understanding as to the obligations incumbent on States and the resource implications for States in protecting, promoting, and respecting human rights in fulfilment of their treaty obligations.

4.2.1 A family of universal rights?

The key to the understanding the academic debate on the different generations of rights (where it remains—many commentators no longer use the distinction) lies in the recognition that human rights are indivisible. In essence, the International Covenant on Civil and Political Rights details what some commentators regard as first-generation human rights. That is to say, the fundamental basic human rights required to be exercisable by everyone in any fair democratic society. These rights are essentially those which evolved in the eighteenth century with the French and American Declarations. Such rights are reasonably universally recognized and accepted. In terms of the treaties, they should be realized immediately in all Member States of the United Nations. These rights include the right to life, the right to liberty, and the right to a fair trial before an independent and impartial tribunal or court as well as fundamental freedoms such as those of expression and of conscience.

The International Covenant on Economic, Social and Cultural Rights, on the other hand, is concerned with so-called second-generation human rights. These rights evolved in the latter stages of the nineteenth century with social reform in Europe. Some of these rights may be less readily realizable, especially by developing States. The right to education, the right to adequate housing, the right to social security, the right to a safe and healthy working environment, and the right to leisure and rest time are examples. Despite the designation as second generation, some commentators maintain these rights in fact have the earliest origin. Certainly they include the basics of existence—food, health, work, and an adequate standard of living.

So-called third-generation rights are arguably a newer phenomenon, hence their designation. They are, effectively, group rights: rights which may be exercised collectively. Rights of peoples or solidarity rights as they are sometimes known are gaining increasing prominence—for example, the right to self-determination or the right to an environment conducive to development. In 1986, the General Assembly of the United Nations adopted the Declaration on the Right to Development. Including the right to development as a human right aims at the creation of the conditions necessary for the full realization of all other human rights of both first and second generations. It stresses the interdependence, indivisibility, and universality of the two Covenants (see Chapter 24). The Declaration constitutes a significant step by the United Nations in the direction of conceptualizing third-generation human rights. Neither Covenant encapsulates this section of human

rights although both instruments include identical provisions on the right to self-determination. Arguably, States viewed the inclusion of self-determination as a reflection on the decolonization process rather than a foray into collective rights (see Chapter 18).

Although these claimed generational differences may reflect the chronological development of the rights, it must be remembered that the genus is the family of rights. Like any family, the different generations may be viewed as combined into a single solitary unit, in this case, the universal rights of all human beings.

4.2.2 The International Covenant on Economic, Social and Cultural Rights

4.2.2.1 Overview

The International Covenant on Economic, Social and Cultural Rights (ICESCR) charges Contracting Parties to:

take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognised in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.

Art 2

An evolving programme of realization, depending on the goodwill and resources of States, is clearly envisaged. Given the nature of some of the rights, such an approach is essential. A variety of technical cooperation and a range of specialized agencies can provide further backup for States in this process: needs are often identified through the reports system and met through the processes which are discussed in the following chapters.

The Covenant itself is divided into five parts and runs to thirty-one Articles. As of October 2021, 171 States have ratified the Covenant.

4.2.2.2 The rights

The ICESCR is the first international instrument to deal extensively with economic, social, and cultural rights. (For accuracy, it should be noted that the European Social Charter of 1961 (Council of Europe) predates the ICESCR with various economic and social rights. Naturally its jurisdiction is, however, limited to Europe.) The right to self-determination is provided in Art 1 and is the sum total of Part 1 of the Covenant. It is identical to that of the International Covenant on Civil and Political Rights though some commentators have suggested that it may be construed differently, 'giving recognition to a right to economic, rather than political, self-determination' (Craven, M, p 25). The remaining rights are found in Part 3 of the Covenant.

According to the Covenant, everyone is entitled to a right to work and earn a living (Art 6). The realization of this right is dependent on the establishment of appropriate training and vocational programmes. Provision of work is not the sole requirement. The working conditions must be fair. Here, some reference can be made to the provisions of the International Labour Organization (ILO) which began the process of delineating the minimum standards of work which every individual is entitled to. The ILO is focused on vulnerable groups whereas the ICESCR applies to everyone although nursing mothers and children are singled out in Art 10. Trade Union membership and activities are also covered.

Other rights in the ICESCR include an adequate standard of living, food, physical and mental health, education, and a rich cultural life including the protection of the moral and material interests of an author of any scientific, literary, or artistic work.

4.2.2.3 Implementation

Implementation of the ICESCR is by reports. States are required to send periodic reports to the Committee on Economic, Social and Cultural Rights of the Economic and Social Council. No supervisory body was established by the Covenant, thus the periodic reports were originally transmitted to the Secretary-General of the Economic and Social Council (Art 16). These reports detail the advances made by the State in the realization of the goals set for them in furtherance of the progressive achievement of the rights and freedoms embodied in the Charter for their entire population. However, in 1986, the Committee on Economic, Social and Cultural Rights was set up to consider the compliance of States Parties with that Covenant. The Committee on Economic, Social and Cultural Rights may transmit the report, or part thereof, to the Human Rights Council for study and general recommendations (Art 19). The Economic and Social Council may then bring to the attention of other organizations and subsidiary, specialized agencies of the United Nations any matters arising out of the reports with which they may be able to assist, for example, by providing technical assistance. Assistance and cooperation are the key words with respect to this Covenant—the fostering of international cooperation as a by-product contributing to the maintenance of friendly relations among States. From mid-2013, a protocol permits individuals to complain to the Committee should rights be infringed by a State which so accepts the competence of the Committee.

4.2.2.4 Concluding observations

The rights enshrined in the Covenant have in many respects been slow to achieve international prominence, partly due to their misconception as lesser or secondary rights. The African Charter, in its Preamble, reverses this view, stating that economic and social conditions are necessary for the realization of civil and political rights. The recent return to emphasizing the universality and indivisibility of rights should bolster the Covenant as will the development of the work of the Committee particularly with the advent of individual communications.

4.2.3 The International Covenant on Civil and Political Rights

4.2.3.1 Overview

The International Covenant on Civil and Political Rights, on the other hand, is unequivocal on the obligations incumbent on Contracting Parties: Art 2 provides:

1. Each party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognised in the present Covenant . . .
2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such legislative or other measures as may be necessary to give effect to the rights recognised in the present Covenant . . .

This Covenant becomes effective following ratification by a State. Realization of the rights and freedoms enshrined in the Covenant is immediate. To some, this suggests that more importance should be attached to this Covenant. However, the discrepancy is not attributable to the importance of the rights and freedoms concerned, rather it is the perceived ease with which the rights can be enforced and given true effect within a State. Rights pertaining to civil and political freedoms were deemed easier to legislate for, whereas those on social, economic, and cultural rights require, in general, a long-term approach and the injection of financial and technical aid to the economy of the State concerned. By its very nature, the Economic, Social and Cultural Covenant is restricted by the resources available in a State. However, it is submitted that many civil and political rights also require considerable financial resources on the part of States. Thus, this distinction is arguably artificial.

4.2.3.2 The rights

Essentially, the International Covenant on Civil and Political Rights expands those rights enshrined in Arts 1–21 of the Universal Declaration on Human Rights. The right to life is stated, with the Second Protocol to the Covenant seeking the abolition of the death penalty, reinforcing the sanctity of life. The prohibition on slavery and torture is detailed (Arts 7–8). Deprivation of liberty through detention and the rights of an accused to a fair trial are tabulated in considerably more detail than they are in the Universal Declaration. The status of the alien should be determined in accordance with the law and all residents of a State have the right to move freely throughout the territory (Arts 12–13). Naturally, the freedom of thought, conscience, and religion is secured as is the freedom of expression and holding opinions, with particular reference made to the prohibition of propaganda of war and advocacy of racial hatred in Art 20. This clearly reflects on the events of the Second World War and other conflicts since. Assembly and association are prescribed with restriction only possible in accordance with the law and where necessary in a democratic society (Arts 21–2). Children are to be protected as befits their minor status (Art 24)—this Article is itself expanded on considerably by the United Nations Convention on the Rights of the Child 1989. Democratic rights of participation in government are also included. Finally, Art 27 provides for the right of ethnic, religious, or linguistic minorities to enjoy their culture, profess and practise their religion, and use their own language in a partial return to the concept of minority rights as advocated by the League of Nations.

4.2.3.3 Implementation

Implementation of the Civil and Political Covenant is, as with its twin, a matter primarily of reports. However, unlike the Economic Social and Cultural Covenant, a Human Rights Committee was established by the Covenant (in terms of Art 28). State parties submit reports to the Committee on the measures they have adopted which give effect to the rights recognized in the Covenant and on the progress made in the enjoyment of those rights within their jurisdiction (Art 40). However, Art 41 of the Covenant enables States to declare, at any time, their recognition of the competence of the Committee to receive and consider any communications to the effect that the State concerned is not fulfilling its obligations under the Covenant. This system of inter-State complaints operates on the basis of reciprocity

as do the regional systems. More controversial is the First Optional Protocol to the Covenant which, in Art 1, provides for individual petition to the Committee. The Protocol has not proven as popular as was intended (116 ratifications as of May 2021). Indeed, many of the larger developed States have not acceded to it—the United Kingdom and the United States of America, for example. The Human Rights Committee is also empowered with making recommendations and issuing comments on any matter within its competence.

The Human Rights Committee is based in Geneva. Concluding observations adopted following consideration of State reports and its views adopted pursuant to individual communications are final but not binding. However, its independent reports on alleged violations of the Covenant are annexed to its annual report to the General Assembly. Consequently, they have strong moral force and, to date, with a few notable exceptions, States have acted in accordance with the reasoned opinion of the Committee.

4.2.3.4 Concluding observations

Despite the significant number of signatory parties, 173 as of October 2021, the civil and political rights included in the Covenant are still regularly violated worldwide. A perusal of the concluding observations of the Human Rights Committee adopted pursuant to State periodic reports reveals many gaps between the written constitutional guarantees of many States and the reality of human rights abuses. The annual and State-specific reports of Non-Governmental Organizations (NGOs) are particularly instructive in this respect.

4.3 Building on the Bill of Rights—extending international human rights law

By the time the United Nations agreed the text of the twin covenants, another treaty, the International Convention on the Elimination of All Forms of Racial Discrimination 1965, had been agreed. It currently (October 2021) has 182 States Parties. This instrument is considered in more depth in Chapter 11 on Equality and Non-Discrimination. It was prompted in part by the civil rights movement, decolonization, and the apartheid movement in South Africa. This treaty focused on a particular sector of population—persons of different racial origin. That sectoral approach has been followed with a further instrument on discrimination, this time focused on sex—the Convention on the Elimination of All Forms of Discrimination Against Women 1979 (see also Chapters 11 and 21) which has 189 States Parties to it.

Other groups have more positively framed approaches, seeking to build on enhancing the respect, promotion, and protection of rights for specific groups of the world. The Convention on the Rights of the Child 1989 with a record breaking 196 States Parties (including all UN Member States bar the United States of America) is a good example. This instrument focuses on the positive independent rights of children. Its success in attracting ratifications has been emulated by the Convention on the Rights of All Persons with Disabilities 2006 which has attracted 182 States

Parties and embodies a human rights-based approach to persons with disabilities. Interest has been less forthcoming for the International Convention on the Protection of All Migrant Workers and Members of their Families 1990 which has secured the support of fifty-six States.

Two further treaties address specific problems. The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984, which is accepted by 111 States, is considered in more detail in Chapter 17. The International Convention for the Protection of All Persons from Enforced Disappearances 2006 is considered in part in Chapter 14. It has secured sixty-three States Parties and is more popular in Central and South America, Northwestern Africa, and Europe than elsewhere.

These are the other designated core human rights treaties under the auspices of the United Nations.

4.4 Conclusions on the Bill of Human Rights

Does the Bill of Human Rights live up to the expectations of the original proponents? Undoubtedly, the length of time it took to complete the Bill is a negative factor. Similarly, the length of time it has taken to secure ratifications for the two International Covenants is derisory. On the other hand, the fact that so many States have signed up to the Bill and, on paper at least, are attempting to conform with its standards is commendable. However, as is the case with other aspects of public international law, States will always try and justify their actions in terms of the salient standards. Hence, there are many reservations and declarations in respect of the Covenants. Note, though, that the 1993 World Conference on Human Rights, held in Vienna, declared that States should not resort to reservations, a wholesale embrace of the Articles being preferred. In general, those States reluctant to be held publicly accountable do not ratify the Optional Protocol to the ICCPR and barely comply with the requirements to submit periodic reports.

The Covenants permit States to declare themselves legally as well as morally bound by the terms of the Universal Declaration. Principles contained in the International Bill of Human Rights have occasionally been invoked before the International Court of Justice. Throughout the world, national judges apply the rights articulated in, or the principles underlining, the Universal Declaration and Covenants either directly or by applying national law which is modelled on components of the International Bill of Human Rights.

Many would argue that the implementation branch of the International Bill of Human Rights is a greenstick: it is pliable and though there may be fractures in a State's performance, the breaks are rarely absolute. State reports are the primary means of implementing the human rights contained in the International Bill of Human Rights. As is discussed in Chapter 9, a self-reporting system is often considered to 'lack teeth'. The Optional Protocols to the International Covenants enables the treaty bodies to receive individual complaints alleging violations of human rights against those States who have recognized the competency of the Committee for this.

All principal regional human rights instruments acknowledge the Universal Declaration in preambles. Nothing in any regional instrument is ever to be taken

as compromising the Universal Declaration on Human Rights and international law. The instruments themselves testify to the interdependence and indivisibility of all rights: respect for civil and political rights inevitably involves elements of economic, cultural, and social rights whilst full and active enjoyment of economic, social, and cultural rights requires the enjoyment of civil and political freedoms.

Together, the United Nations Declaration and the two International Covenants form the foundation of international human rights protection, as advocated by the United Nations. That is only part of the complex web of human rights instruments. Chapters 5–8 now turn to the regional organizations and their progress in articulating and embedding human rights standards.

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Find these cases online at www.oup.com/he/smith-hr10e/

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