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*With the support of the Direction de la coopération au développement et de l'aide humanitaire of the Swiss Ministry of Foreign Affairs, Bern, Switzerland*

**Le droit international des  
droits de l'homme**

Conception - Elaboration - Aboutissement

**International Law  
on Human Rights**

Conception - Elaboration - Outcome

**El derecho internacional  
de los derechos humanos**

Concepción - Elaboración - Resultados

**Isse Omanga BOKATOLA**

Centre international de formation  
a l'enseignement des droits de l'homme et de la paix

**Collection  
Thématique**

**Hors série**

**Introduction aux  
droits de l'homme**

**Introduction to  
human rights**

**Introducción a los  
derechos humanos**

**1997**

**CIFEDHOP**



# Preface

**Yves LADOR**

Human Rights Consultant

“Could you explain to me how a human right is born?” This question could be the opening line of the introduction to human rights written by Professor Isse BOKATOLA. It’s a delicate question because of the challenge it contains. The question of origin, of birth, does not only ask for facts; it also questions the meaning of that knowledge.

The merit of Isse BOKATOLA is to take on this challenge. He reminds us that human rights are proclaimed in numerous texts, which do not all have the same weight. To understand the importance and the practicalities of each right, he proposes that we follow the long path leading to its creation. In doing this, he reminds us of the obvious: human rights are in the legal domain. However, literature regarding human rights education often prefers to use historic or social references in order to avoid judicial descriptions, often considered as stilted.

This distance between pedagogy and the law is created by the difficulty of transmitting a specific use of language, sometimes a bit “scholarly”, which seems to prohibit common understanding of ideas which are nevertheless familiar and basic. It is really necessary to follow the strict path of the law to understand human rights? Perhaps yes, in order to avoid missing the objective desired. Even with the best of intentions, there may be a negative effect in choosing an easier way. At the end of the day, the apprentice will not have received the full range of tools necessary to master and monitor the human rights he has heard about.

If legal texts have a form of their own, it is because the jurists who write them have no other choice.

These texts are instruments which play a standardisation role. Each of their paragraphs, their sentences, their words contribute to defining our rights and the way they will be respected. From their creation to their implementation, they are examined with a magnifying glass, pulled apart and checked, to make them say what we, or our institutions, must or must not do.

Since legal texts are the drivers of our rights, the excluded may be deprived of using them. This means the pedagogue must find the right path leading to their comprehension: the understanding of how fundamental rights are defined, how they are born and how they should be applied.

Addressing these rights from their creation and development allows us to correctly position them. They are the result of numerous discussions and arbitration. They follow a process which validates them and gives them authority. While they may be binding even for those who create them, the various human rights instruments do not all have the same legal value. They are in evolution and their differences must be noted as they cannot all be used in the same manner.

Isse BOKATOLA proposes here a pedagogical tool which fills a gap in human rights education. It is a guide for trainers looking for clear and precise points of reference when presenting human rights. Along the way, he points out the institutions and situations where these universal rights are debated and developed. Isn't knowledge of one's fundamental rights one of the basic requirements for putting them into practice? By opening up this possibility to everyone, Isse BOKATOLA shows that every citizen can also contain the seed of a jurist.

# International Law on Human Rights

Conception - Elaboration - Outcome

**by**

**Isse**

**Omanga BOKATOLA**

Lecturer

Consultant to the UNO  
and International NGOs

## Introduction

On June 26, 1945, the United Nations Organisation (UN) was created primarily as a result of World War II; as of December 31, 1996, it counted 185 Member States. According to the terms of its Charter, the founding fathers created this Organisation to protect future generations from the curse of war and to reiterate their belief in fundamental human rights, in the dignity and value of the human being, and in the equality of rights of men and women.

The Charter of the United Nations thus placed human rights on a new footing, since indeed, the idea of human rights was not created with the UN. According to a number of authors, one can look to Ancient Greece and then Rome to find the roots of human rights, or more precisely, the natural rights of man (those rights taught to all human beings by nature). Nevertheless, it is known that the Greco-Roman world recognised the legitimacy of slavery. This excludes the present basic idea of human

rights, which, according to the United Nations, is the universal equality of all men (all human beings).

However, there is no general legal definition of human rights. The difficulty arises from the uncertainty surrounding the notion of human rights, coming particularly from the diversity of civilisations, regions and ideologies which until now have been connected to these rights. The move towards the universality of human rights is trying to eliminate the diverse trends and schools of thought previously created, as can be seen, for example, by the United Nations Vienna Conference on Human Rights held June 14-25, 1993. In addition, the end of the Cold War and the disappearance of the two blocs (Communist and Western), leads us today, from East to West and from North to South, to a single, global conception of human rights, to a sort of synthesis or coherent and indivisible whole formed by three generations of interdependent rights - first generation: civil and political rights - second generation: economic, social and cultural rights - third generation: "solidarity" rights (the right to development, to protection of the environment, to peace).

The UN has adopted numerous texts protecting human rights. These normative instruments do not all have the same legal weight. Some, particularly well known (Conventions), carry a great importance because States are bound to follow them. Others (Declarations) do not have a binding legal value; however, some of these texts have initiated common standards leading to general bonds.

It is interesting to note here that amongst the sources of international public law, which includes international human rights law, one can distinguish the formal sources - that is to say, the methods used to create international regulations, and the material sources - that is the political, social, economic or other causes which form the basis for creation of international regulations. The formal

sources are enumerated in Article 38 of the Statutes of the International Court of Justice, Statutes attached to the Charter of the United Nations (all UN States Members are automatically party to the Court's Statutes). These sources are international Conventions, international custom, general principles of law, and subsidiary means for the determination of rules of law which constitute jurisprudence and doctrine. In this paper, we are interested in the main formal sources which are Conventions or international treaties and international custom.

Whatever their legal value, the Conventions and Declarations concerning human rights which are adopted by the United Nations Assembly General are always preceded by projects carried out by sub-groups within the Organisation. In general, the Commission on Human Rights adopts a proposed text which it then transmits by means of the Economic and Social Council to the Assembly General. It, in turn, adopts a recommendation - sometimes called a 'Declaration' - before finally adopting a Convention on the subject. There are three types of norms within the United Nations regarding human rights; in other words, three phases in the development of the legal value or binding character of UN human rights texts.

These three phases can be illustrated by using the example of fruit. All fruit passes through three stages:

- first, the seed, where the seed has the potential to create unripe fruit:
- secondly, the unripe or green fruit, which usually cannot be eaten;
- and finally, the ripe fruit, which everyone can eat.

Applied to the subject of human rights, this gives the following three stages in the United Nations process for elaboration of texts relating to human rights:

### **First stage: "seed law"**

which is a draft text or project, at the level of the Commission on Human Rights or the Economic and Social Council; it's a grain for a law, like the "mustard seed" in the Bible which may or may not produce "unripe fruit" (a Declaration), followed by "ripe fruit" (a Convention) depending on where the seed falls, in other words, depending on the situation;

### **Second stage: "unripe law"**

which is a law considered to not yet be "edible" by individuals, in other words, a Declaration or a recommendation by the United Nations which needs to further "ripen" to become binding for States and usable by individuals;

### **Third stage: "ripe law"**

which is a law "edible" by individuals, i.e., a United Nations Convention, binding for States which undertake to adhere to it and ensure its full application for individuals.

The following pages are not intended as an exhaustive inventory of United Nations standardisation efforts in the field of human rights. Their purpose is to give a brief view of the differences in legal weight and binding character between the various texts. As previously mentioned, we will concentrate on international Conventions and Declarations.

## “Seed Law” relating to human rights

### **The preparation of international text drafts**

Within the United Nations, there is no specific, unique procedure for the creation of international texts relating to human rights. In Resolution 41/120 of December 4, 1986, entitled “Establishing International Standards in the field of Human Rights”, the General Assembly asked Member States and United Nations Organisations to keep in mind the following guidelines when creating these texts:

- they must be in accordance with existing international law concerning human rights;
- they must be written to convey the dignity and inherent value of the human being;
- they must be sufficiently precise so that the laws and obligations which come from them can be clearly defined and put into practice;
- as appropriate, they must be accompanied by a means of implementation which is both realistic and efficient, including reporting techniques;
- they must elicit wide international support.

The General Assembly has always confirmed the important role of the Commission on Human Rights in the elaboration of human rights texts. Actually, it is generally the Commission on Human Rights which prepares a draft text on request of the General Assembly, via the Economic and Social Council or following an inquiry of the Sub-Commission on Prevention of

Discrimination and Protection of Minorities. When the text is not initiated by the Sub-Commission, the Commission on Human Rights can ask for its advice. This is usually handled by one of its members preparing an analysis of the issue.

After receiving the pertinent documents from the Sub-Commission, the Commission on Human Rights normally creates an informal working group with non-restrictive membership, i.e., open to anyone from the Commission, to examine the issues linked to the preparation of such a text and to prepare the draft. The working group meets once per year for a week prior to the annual session of the Commission.

During the evaluation of the draft, the Commission usually circulates it for information, comments and suggestions to all United Nations Member States, organisations specialised in the subject, regional intergovernmental organisations, and interested non-governmental organisations. The replies received are analysed for their applicability and utility and a recapitulative working document is prepared by the UN Secretariat, in this case the United Nations Centre for Human Rights. Almost always, before the adoption of a draft, a linguistic committee ensures that the different language versions agree (drafts are prepared in the official languages of the Organisation: English, Arabic, Chinese, French, Russian, Spanish). The Commission on Human Rights can then approve the draft, which it transmits to the Economic and Social Council, which in turn sends it to the General Assembly.

### **The draft for the United Nations Declaration on the Rights of Indigenous Peoples: An Example**

The elaboration of the draft for the United Nations Declaration on the Rights of Indigenous Peoples perfectly

illustrates the process described above concerning the preparation of international human rights texts.

Indigenous peoples or aborigines are known as such because they lived on their land before anyone came from distant lands to colonise it or to dominate them. The existence of these peoples is put in danger each time newcomers, from different cultures and ethnic origins, come into the region and take over the land through war, occupation, colonisation or other means. Indigenous peoples have always searched for ways to keep their identity and their own cultural heritage by fighting the assimilation and integration policies used by dominating factions.

## **Birth of the draft Declaration**

During the first twenty or so years following the creation of the UN, representatives of indigenous peoples periodically requested help from the Organisation, but without success. 1970 was a turning point when the Sub-Commission on Prevention of Discrimination and Protection of Minorities recommended and got the authorisation of the Economic and Social Council, via the Commission on Human Rights, to carry out a detailed study on the problem of discrimination against indigenous populations. In 1971, the Sub-Commission designated one of its members, Mr. José R. Martínez Cobo, as Special Rapporteur assigned to carry out this study. The objective was to propose national and international measures which could be adopted to eliminate discrimination against indigenous populations. Mr. Martínez Cobo's final report was presented to the Sub-Commission in 1984.

Before the Special Rapporteur completed his study, the Sub-Commission, as authorised by the Social and Economic Council in 1982, set up a working group which met annually starting in August of that year. This Working Group on Indigenous Populations is

responsible, on one hand, for reviewing new initiatives for the promotion and protection of the fundamental human rights and freedoms of indigenous populations, and on the other hand, for paying particular attention to the evolution of standards concerning the rights of these populations. As a subsidiary body of the Sub-Commission, the Working Group is made up of five independent experts who are members of the Sub-Commission. They meet for the week prior to the annual session of the Sub-Commission, and their meeting is open to all interested parties - governments, specialised institutions or other bodies of the UN, international and regional intergovernmental organisations, non-governmental organisations, and indigenous populations themselves.

## **Preparation of the draft Declaration**

The Sub-Commission Working Group gives particular emphasis to the second part of its mandate: the evolution of international norms regarding the rights of indigenous populations. This is why, in 1985, it decided to give priority to drafting an international Declaration on the Rights of Indigenous Populations (in 1988, the Sub-Commission replaced the term "indigenous populations" by "indigenous peoples"), which the United Nations General Assembly would be asked to examine with a view to its adoption and proclamation. With the support of a great number of organisations, a draft was made which served as the basis for the elaboration of the Declaration's text. Numerous rights and freedoms of indigenous peoples are covered in the draft Declaration, which also foresees procedures for the resolution of conflicts or differences between States and indigenous peoples. The Sub-Commission Working Group took into account comments made during its sessions as well as those submitted in writing.

A number of years (1985-1993) and a lot of work was necessary to arrive at agreement on the varied and difficult points raised by the text. The General Assembly in December 1992, the Commission on Human Rights in March 1993, and the "Vienna Declaration and Programme of Action" of the World Conference on Human Rights of June 1993, asked the Sub-Commission Working Group to do its utmost to complete the draft Declaration in 1993. Heeding these recommendations, in July 1993, the Sub-Commission Working Group finished its preparatory work and adopted the draft for the Declaration on the Rights of Indigenous Peoples.

### **Follow-up to the draft**

In August 1993, the Sub-Commission asked the UN Secretary General to submit the draft Declaration as soon as possible to the appropriate service of the Centre for Human Rights for technical review. This technical review is done in line with the guidelines mentioned above which are contained in the General Assembly's Resolution 41/120 of December 4, 1986. The review also takes into account the Secretariat's own experience on the subject.

Thus, for the technical review of the draft Declaration on the Rights of Indigenous Peoples which it carried out in 1994, the Secretariat looked particularly for coherent and precise wording, notably with neutral gender and ensuring harmonisation between the different UN official language versions, as well as agreement between the preamble and the provisions of the text. It should also be noted that the Secretariat examined the draft's articles in light of international instruments currently in force, i.e. those international instruments appearing in the latest version of the United Nations document "Human Rights: A Compilation of International Instruments" (1994), the African Charter on Human and Peoples' Rights, Convention No. 169 of the International Labour Office

regarding Indigenous and Tribal Peoples and the Convention on Biological Diversity. It must also be underlined that the review requested by the Sub-Commission was a technical one and its purpose was to help indigenous peoples and governments to understand certain points of the draft Declaration. No modifications were made to the proposal which was adopted in July 1993 by the Sub-Commission's Working Group on Indigenous Populations.

In August 1994, the Sub-Commission adopted the technically-revised draft of the United Nations Declaration on the Rights of Indigenous Peoples. It also decided to submit it to the 1995 session of the Commission on Human Rights, asking it to review the draft as quickly as possible.

In March 1995, the Commission on Human Rights followed up on the request made by the General Assembly in December 1994, which asked it to examine the draft Declaration adopted by the Sub-Commission. The Commission gave high priority to the creation of a working group which was to meet between sessions and with a membership not limited to the Commission on Human Rights. Based on the draft adopted by the Sub-Commission in August 1994, the working group's sole objective was to draw up a draft Declaration on the Rights of Indigenous Peoples to be reviewed and adopted by the General Assembly during the International Decade of Indigenous Peoples (December 10, 1994 - December 10, 2004). This decision was approved by the Economic and Social Council in July 1995 and the Working Group of the Commission on Human Rights held its first session from November 20 to December 1, 1995.

The Commission's Working Group took a first look at the draft Declaration adopted by the Sub-Commission in August 1994, and agreed that, overall, it represented a good basis for discussion. However, no one can tell how

long these discussions might take, since the proposal must follow the same path in the Commission's Working Group that it followed in the Sub-Commission's Working Group - and there it took eight years before it was adopted. Nevertheless, everyone agrees on the necessity of a Working Group of the Commission on Human Rights, and that the Commission itself must adopt a draft Declaration as quickly as possible, which can then be sent to the Economic and Social Council. In turn, the latter will submit it to the General Assembly, with the hopes of having it adopted during the International Decade of Indigenous Peoples.

## Conclusion

All this signifies that the draft Declaration of the United Nations on the Rights of Indigenous Peoples remains, like all international draft texts, an idea for a law or a "seed law" which may or may not produce a "ripe law", that is to say, a Declaration.

Some United Nations human rights texts have stayed as "seed law"; they have not passed beyond the first phase of the UN process for the creation of human rights instruments through the Commission on Human Rights and the Social and Economic Council. As of the end of 1996, these texts include the following:

- ❑ Standard Minimum Rules for the Treatment of Prisoners, adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its Resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977;
- ❑ Safeguards guaranteeing protection of the rights of those facing the death penalty, approved by Economic and Social Council Resolution 1984/50 of 25 May 1984;
- ❑ Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, recommended by the Economic and Social Council in its Resolution 1989/65 of 24 May 1989.

Finally, in addition to the draft UN Declaration on the Rights of Indigenous Peoples, other drafts are presently in the “seed law” state within the Commission on Human Rights:

- ❑ the draft Declaration on the Rights and Responsibilities of Individuals, Groups and Bodies within Society to Promote and Protect Human Rights and Universally-recognised Fundamental Freedoms;
- ❑ the draft of Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, for a system of regular, preventive visits to detention sites;
- ❑ the draft of Optional Protocol to the Convention on the Rights of the Child concerning the sale of children, child prostitution, and pornography using children;
- ❑ the draft of Optional protocol to the Convention on the Rights of the Child concerning the participation of children in armed conflicts.

“Unripe law” relating  
to human rights

## **General remarks**

The Charter of the United Nations gave the General Assembly and the Economic and Social Council their responsibilities concerning human rights. One of the main tasks of the Economic and Social Council is to prepare, on subjects within its domain, draft Conventions for submission to the General Assembly. These drafts are prepared by the Council’s technical commissions, notably the Commission on Human Rights. The Commission is, therefore, a subsidiary body of the Council, which in turn is answerable to the General Assembly to which it makes a report each year.

Generally, when it receives proposed texts from the Commission on Human Rights, the Economic and Social Council adopts them and recommends that the General Assembly does likewise.

## **Significance of Declarations**

In the second phase of the United Nations process for elaboration of texts concerning human rights subjects, the General Assembly adopts by resolution a recommendation, sometimes called a Declaration, which has a broad, if not universal, field of application.

In UN language, the terms Declaration and recommendation have very specific meanings. According to UN practice, a Declaration is a formal, solemn instrument, which is used on exceptional occasions when, for example, the Organisation wants to affirm principles of great importance and lasting value. It expects Member States to respect these principles to a maximum, as in the case of the Universal Declaration of Human Rights. On the other hand, a recommendation is less formal. Apart from this, there is no difference between a Declaration and a recommendation. Hence, a Declaration or a recommendation, which is universally applicable, in most cases sets out general principles or general standards concerning human rights.

## **The reason for Declarations**

In United Nations practice, the adoption of Declarations or recommendations (second step) always precedes that of Conventions (third step). There are important reasons for this.

In effect, experience shows that if numerous States are ready to approve a proclamation of principles, they are far less eager when it is a matter of linking themselves to an international Convention. Therefore, in

a specific field, when it is seen that deep divergence stops States from ratifying a universal Convention, it is best to get at least their recognition of a certain number of common principles. In view of the difficulties encountered in preparing international Conventions, it seems wise to foresee another process in the form of a Declaration of principles.

There is also another reason for the adoption of Declarations before that of Conventions. In the case where the United Nations has prepared a Convention which is not ratified, or ratified by only a limited number of States, the principles contained in the Convention will have no significance. On the other hand, if there is a solemn Declaration by the General Assembly, this will remain the fundamental reference text on the subject for international organisations and States. In a way, this is an attempt to create international law by saturation or brainwashing. When the Declaration has been adopted by a large majority and has the consensus of a large part of the international community, it can become a means of pressure by one group of States on other and create international custom on the condition that it is widely applied without ambiguity.

## The lifecycle of Declarations

### Preparation of Declarations

It is most often at its Third Commission, which handles social, humanitarian and cultural issues, that the General Assembly deals with the majority of problems concerning human rights, including the draft texts

submitted to it by the Economic and Social Council. It is useful to indicate that in most cases, the Sixth Commission of the General Assembly, the Judicial Commission, is associated on the study of draft texts.

However, it does happen for diverse reasons that the General Assembly looks directly at some proposals without prior examination by a large commission (the General Assembly has seven). In these cases, the General Assembly may decide to create a working group of unlimited membership, open to all Member States, to carry out the elaboration of the draft. It could also decide to create a Special Committee for the study of the proposal, which would be made up of Member States chosen for equal geographic representation, and representing the principal judicial systems in the world. In all cases, the General Assembly usually invites interested Member States, intergovernmental organisations and non-governmental organisations to participate in the preparation of the text.

## **Adoption of Declarations**

After the draft has been looked at by its large Commissions, by a working group or by a special committee (sometimes by an international conference or congress called by the UN as well), the General Assembly, by a resolution, formally adopts the Declaration. In the same resolution, the General Assembly normally invites everyone as individuals, as well as governments, the bodies of the United Nations, specialised institutions, intergovernmental organisations and non-governmental organisations to recognise the rights mentioned in the Declaration and to ensure their respect through legislative or other means. It also asks these groups to give the text widest possible publicity through all means of information dissemination at their

disposal, and asks the UN General Secretary to do the same.

## **Legal value of Declarations**

As with all United Nations recommendations, the Declarations concerning human rights have no obligatory judicial weight -- the people for whom they are intended are not bound by them nor do they commit any offence by not respecting them. The simple act of calling a text a "Declaration" rather than a "recommendation" does not make it obligatory for anyone. In this way, from a strictly legal point of view, Declarations and recommendations well merit the name of "unripe law" is because they need to "ripen" to become binding for States and able to be solicited by individuals.

Nevertheless, given the solemnity and broad significance of "Declarations", it can be said that when the United Nations adopts a Declaration it manifests its fervent hope that the international community will respect the principles it proclaims. In consequence, although "unripe law" is not binding from a judicial standpoint, Declarations and recommendations may be very constraining morally and politically - they are undeniably means of moral and political pressure. Thus, the hostility of a State to a Declaration or recommendation which has received the support of more or less the majority of States, obliges it to take a defensive position.

These moral and political considerations are even more pressing when one understands the means of psychological pressure with which Declarations are invested - the solemnity of the proclamation, formulated in the same manner as Conventions, etc. All this can be even more reinforced when the Declarations and recommendations contain control mechanisms to measure progress in applying the proclaimed principles

or to signal oversights or weaknesses in their implementation. These types of control mechanisms sometimes exist in human rights Declarations, as for example in the case of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief.

Finally, the absence of binding judicial power does not mean that Declarations and recommendations have no significance. They are part of the creation of new international common law; as long as they represent the desire of States to be legally linked and that they are widely practised in a clear and consistent manner. This is the situation, for example, with the Universal Declaration of Human Rights.

In reality, by defining "a common ideal to be met by all peoples and by all nations", the Universal Declaration of Human Rights does not have, in itself, a binding legal value. At the same time, some States, by the action of incorporating it into their constitutions, have accepted to respect it. In this sense, the binding character of the Universal Declaration comes less from the text itself than from the unilateral agreement of the State to accept it. On the other hand, the Universal Declaration has been cited by other resolutions and international instruments, and since its adoption, has had wide-ranging moral and political repercussions. Over the years, it has become a reference document, even a source of international law. The Universal Declaration influences UN politics and, along with it, that of all States; it is one of the instruments whose provisions have most eminently contributed to the creation of common law. And we know that, along with Conventions or international treaties, international custom forms the principal formal source of international public law, law which also includes international law on human rights.

## “Ripe law” relating to human rights

### **Overview**

We know that in the field of human rights, the General Assembly has often adopted both a recommendation, sometimes called a “Declaration”, and a Convention, sometimes called a “covenant”, on the same subject. According to UN practice, adoption of Conventions or treaties (the third step) always takes place after that of Declarations or recommendations (the second step).

For the United Nations, a treaty is an official agreement between two or more States, an international agreement which, in the field of human rights, contains provisions for the promotion or protection of one or more human rights. A treaty usually carries the name of “Convention”. To underline their large and wide-ranging importance, some Conventions have been called “covenants”. A text to modify or add to the clauses of a Convention is normally called a Protocol. A Convention is based on the general principles and standards contained in the Declaration on the same subject which preceded it. This third phase in the development of United Nations texts sets out precise rights, fixes limitations or restrictions on exercising these rights and explains the obligations to be taken on by States.

### **Procedures to complete a Convention**

As we have seen, Declarations and recommendations have no obligatory value in the eyes of the law and are only adopted and proclaimed by the General Assembly of the UN. This is in contrast to Conventions which are

texts meant to have a binding legal value for the States for which they are intended. This is why Conventions and covenants are adopted in a General Assembly resolution and, contrary to Declarations and recommendations, require signature by States either at the time of their ratification or at a later date when a State is ready to give its support. A number of phases are involved to reach the point where States give their consent - negotiation, signature, approval and ratification, to which we must add adherence, all leading to the Convention coming into effect.

## Negotiation

The negotiation of Conventions is carried out in exactly the same way as for Declarations, since the drawing up of Declarations has been "Conventionalised".

The negotiation starts with discussions between groups within the Third and the Sixth Commissions of the General Assembly, with the Working Group or Special Committee, and sometimes also in a Special World Conference or Congress called by the General Assembly. It then continues in a plenary session of the General Assembly, the Special Conference or World Congress. These days, texts are increasingly disputed and voted on article by article, and many States either individually or collectively explain their votes, giving further precision to their position concerning the article under examination. As long as the text has not been fixed, that is, up to the adoption of the Convention, all of its provisions can be re-examined. This "package deal" technique means that the agreement of a State on a given point is subordinate to its agreement of all the others.

The fixed text of the Convention is always composed of a preamble and the terms of enactment. The preamble

enumerates the States which are party to the Convention and states its objectives and goals. The enacting terms include first: the articles, second: the final clauses, i.e., procedures for amendment, revision, methods of operation and expansion, duration of the Convention, etc. and finally: any annexes, which are usually technical or complementary provisions regarding either specific articles or the Convention as a whole.

## Signature

The end of negotiations is broken into two parts: first the vote or adoption of the Convention by consensus of the plenary of the General Assembly, Special Conference or World Congress, followed by signature by States representatives. The purpose of the signature is to confirm that the final text is what was intended by the States. In principle, a validated text is not open to modification.

Signing marks the end of the negotiations, but it does not mean that the Convention has become binding for the States which signed it. Generally, the binding legal character of a Convention comes from the statement of consent to be bound by it and not from the signature. However, in certain cases, the signature in itself can constitute the statement of consent of a State to be bound by a Convention which then becomes binding based on the signature alone. This is the simplified procedure for finalising a Convention wherein the signature fulfils the double function of validation of the text and expression of desire to be bound by it. In all other cases, that is where there is a formal finalisation (or classic, ordinary, or long), the signature shows a State's willingness to continue the procedure through to the final statement of its consent to be bound by the Convention.

## Approval

The approval is the first expression of a State to be bound by the Convention. It allows authorities of the State, such as parliaments for States with representative governments, to verify that their representatives have stayed within the boundaries of the instructions they received.

In general, this verification does not re-open questioning of any promises already made, as the Convention is not yet binding for the State; it is only a further examination of the text prior to any legal engagement by a State. Nevertheless, it is not a pure formality, since the parliament may decide not to approve the Convention. The right to refuse to ratify a Convention is inherent in the notion of the formal, classic, ordinary or long Convention finalisation procedure.

Parliamentary approval usually comes during the interval between the signature and the ratification of the Convention. It is not actually the ratification, since in representative governments, the parliament authorises ratification and the head of state formally carries it out. After approval, parliament can no longer question either ratification or adhesion to the Convention.

## Ratification

Ratification is the second action by which States indicate their consent to be bound by the Convention. It is the act by which the highest State representative with the authority to conclude Conventions (the head of state in representative governments) confirms the Convention drawn up by his representatives during the negotiations, agrees that it is finalised and binding, and formally commits in the name of the State to carry it out. With the

ratification of the Convention, the State concludes the classic or ordinary finalisation procedure.

It is important to note that there is no presumption or obligation for a State to ratify a Convention which it has signed and which has been approved by its parliament. The competence to ratify belongs to the head of state, that is, the executive branch, which could very well not follow-up on the parliamentary authorisation and abstain from the ratification for political reasons or he could take a very long time to do it. Whatever the reasons, the State which does not give its definite consent to be bound by the Convention is not obliged to respect it nor can they take advantage of its provisions. It is only upon submission of the ratification instruments that the State is legally bound.

## **Adherence**

Adherence is the act by which the State which has not participated in the negotiation and has not signed the text, shows it consents to be legally bound by the Convention. Adherence has the same value as signature and ratification.

## **Entry into Force**

In order to begin applying a Convention, the conditions for its entry into force must be completed. For Conventions concluded under the auspices of the UN, it is traditional that their final clauses treat the entry into operation not as the time of unanimous ratification, but rather when a specific number is achieved. Today, this number is usually thirty-five, but it can be revised downward to facilitate the effective date, or increased if a larger participation is necessary for reasons of efficacy. We can here mention the case of the International

Convention on the Protection of the Rights of All Migrant Workers and the Members of Their Families, adopted and opened for signature, ratification and adherence by the General Assembly on 18 December 1990, which has not yet come into force. At the end of 1996, it had not yet reached the required twenty instruments of ratification or adherence (as of 31 December 1996, the UN numbered 185 States Members).

The specification of a limited number of ratifications necessary for the entry into force is certainly an evolution in the Convention finalisation procedure, because it facilitates and accelerates the implementation of the Convention. However, at the same time, Conventions are being weakened by the increasing number of reservations put on provisions by the States which ratify them. In effect, while it is true that using reservations may lead to the universality of Conventions by providing an escape hatch for States which otherwise might not adhere to them, the price to pay is the distortion of Conventions which always lose their integrity.

## **Implementation of Conventions**

It is the responsibility of party States to apply the international human rights Conventions. Amongst other measures, some Conventions foresee the creation of specialised bodies specifically to monitor the implementation of these Conventions by the States which have ratified or adhered to them. In addition, the General Assembly, the Economic and Social Council and its subsidiary bodies, in particular the Commission on Human Rights and the Sub-Commission on Prevention of Discrimination and Protection of Minorities, places great emphasis on monitoring the implementation of human rights code, particularly as written in international Conventions.

## **Supervisory bodies for the implementation of Conventions**

In particular, they are:

- the Committee on the Elimination of Racial Discrimination (eighteen members), which monitors the implementation of the International Convention on the Elimination of All Forms of Racial Discrimination;
- the Human Rights Committee (eighteen members), which monitors the implementation of the International Covenant on Civil and Political Rights and the Optional Protocol thereto;
- the Committee on Economic, Social and Cultural Rights (eighteen members), which monitors the implementation of the International Covenant on Economic, Social and Cultural Rights;
- the Committee on the Elimination of Discrimination against Women (twenty-three members, all women), which monitors the implementation of the Convention on the Elimination of All Forms of Discrimination against Women;
- the Committee against Torture (ten members), which monitors the implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
- the Committee on the Rights of the Child (ten members), which monitors the implementation of the Convention on the Rights of the Child.

Overall, the mandate of these Committees can be summed up as:

– to examine periodic reports presented by party States on the measures they have taken to put into effect the rights recognised in the Conventions. If necessary, the reports must state the reasons keeping the State from fully carrying out its obligations as stated in the Conventions;

– to make suggestions and recommendations to party States based on the information they receive.

The Committee on the Elimination of Racial Discrimination is also authorised to examine communications received from individuals after their having exhausted all available domestic remedies and/or disputes between States regarding their responsibilities

as stated in the Convention. In the latter case, it holds the role of mediator between the party States.

The Human Rights Committee may also play the role of mediator in the case where one party State accuses another party State of not fulfilling its obligations under the Covenant. In addition, the Optional Protocol authorises it to examine communications, after exhaustion of all available domestic remedies, from individuals claiming to be victims of the violation of one of their rights as stated in the Covenant, and to announce its findings to both the individual and the party State concerned.

The Committee against Torture may also, in certain circumstances after exhaustion of all domestic remedies, examine the communications of individuals. If necessary, it may conduct a confidential inquiry including a visit to the party State, with its agreement and co-operation, when credible sources of information indicate the systematic use of torture in the party State's territory. The findings of the inquiry may be sent to the party State in question, along with appropriate comments and suggestions.

The members of the various committees are normally elected for four years by the party States. They sit on the committees as individuals and are chosen to assure an equitable geographic balance and to represent the principal judicial systems of the world.

The committees generally submit an annual report of their activities to the General Assembly. In these reports they often deplore the delays by party States in submitting their respective periodic reports. This highlights the limitation of this means of measuring the implementation of Conventions, as we know that it is not a means to force States to end violations of rights recognised within the Conventions.

## **Other procedures for examining human rights communications**

Because of their particular importance, this paper is limited to those procedures which allow the Commission on Human Rights and the Sub-Commission on Discrimination and Protection of Minorities to examine information concerning flagrant violations of those human rights contained in communications or complaints pertaining to human rights.

In its Resolution 1235 (XLII) of 6 June 1967, the Economic and Social Council authorised the Commission and the Sub-Commission, on their request, to examine information regarding flagrant violations of human rights and fundamental freedoms in all countries. By means of this resolution, the Commission and the Sub-Commission can take measures in certain cases regarding human rights complaints. Amongst other measures, after having attentively examined the information received, the Commission can undertake an in-depth study of situations showing constant and systematic human rights violations and then present a report and its recommendations to the Council.

Based on Resolution 1235 (XLII), the Sub-Commission prepared a draft resolution which the Commission presented to the Council. The principal provisions of the draft resolution were adopted by the Council in its Resolution 1503 (XLVIII) of 27 May 1970, entitled "Procedure for dealing with communications relating to violations of human rights and fundamental freedoms". In this way, UN procedures on the subject were established in the Economic and Social Council's Resolution 1235 (XLII) of 6 June 1967 and 1503 (XLVIII) of 27 May 1970, as well as in the rules of admissibility of these communications adopted by the Sub-Commission in its Resolution of 13 August 1971.

According to these texts, the Sub-Commission is allowed to create a working group with five of its members, the Communications Working Group, which meets once per year during the two weeks immediately preceding the Sub-Commission's meeting. Its objective is to draw the attention of the Sub-Commission to information and related governmental response, which seem to reveal through credible proof, the existence of flagrant and systematic violations of human rights and fundamental freedoms.

The Sub-Commission's role is to examine, in closed or confidential meetings, the information brought to it by majority decision of the Communications Working Group, and to choose those particular situations which it will submit to the Commission on Human Rights as having credible proof of the existence of flagrant and systematic violations of human rights and fundamental freedoms. When making its choice, the Sub-Commission takes into account not only the information received and governmental responses, but also "all other pertinent information".

Also in closed session, the Commission on Human Rights undertakes an in-depth examination of the situation. Aided by its own working group, it has two possibilities available: firstly, it can decide to carry out a detailed study itself and present a confidential report with recommendations to the Economic and Social Council. Such a study does not imply agreement of either the government concerned nor of any body superior to the Commission. Secondly, it may decide that a specific situation be examined by a Special Committee. This type of study requires the specific consent of the State concerned and is carried out in collaboration with it. The Commission refers to this confidential report to present its recommendations to the Economic and Social Council, which may in turn present them to specific States.

In the implementation of these procedures, the Commission on Human Rights has developed other means of working which allows it to establish a dialogue with interested governments, notably due to direct contacts taken between its sessions by the UN General Secretary or by special representatives or independent experts (Special Rapporteurs) designated by it to make a report at the following session. During the 52nd session which was held in Geneva, 18 March to 26 April, 1996, the Commission on Human Rights thus looked at information, based on the confidential report submitted by the Sub-Commission in August 1995, concerning human rights violations in the following countries:

□ in public session, with the participation of observers from Member and non-Member States of the UN, representatives of intergovernmental and non-governmental organisations, and Special Representatives and Special Rapporteurs:

Afghanistan, Burundi, China, Cyprus, Colombia, Cuba, East Timor, Guinea, Haiti, Iran, Iraq, Lebanon (South Lebanon and West Bekaa), Myanmar, Papua New Guinea (Bougainvillaea Island), Russian Federation (Chechenia), Rwanda, Sudan, ex-Yugoslavia (Bosnia-Herzegovina, Croatia, Kosovo, Federal Republic of Yugoslavia - Serbia and Montenegro), United States of America, Zaire;

□ in closed or private session:

Azderbaidjan, Albania, Armenia, Chad, Latvia, Peoples Democratic Republic of Laos, Republic of Moldavia, Rwanda, Saudi Arabia, Slovenia, Thailand, Uganda.

Over the years, some governments have become increasingly co-operative, whilst others have opposed these procedures. This once again shows the reticence of States regarding control mechanisms for the implementation of Conventions: control mechanisms have only a relative value, much rests on the good will of States and the outside pressures which can be exerted on them.

## Final remarks

Those who know the international human rights texts, know the human rights. Those who know the human rights, know their rights. This simple formula is fundamental because he who is aware of his rights has the best chance of getting them respected. However, for each person who knows his rights, there are thousands of others who have no notion of them. Therefore, a widely-spread knowledge of human rights is the best and safest protection against the risk of violations.

Human rights education and information can make each person more conscious of his own rights and better equipped to defend them. Those who are better informed, at all levels including international, individual, groups or non-governmental organisations, can provide information, for example, to the UN on potential flagrant and systematic human rights violations, and thus take part in the networks of all types of pressures which can be exerted on States for them to respect the Conventions which they have ratified or adhered to.

Even more, the role of individuals, alone or collectively, must not and cannot be limited solely to participation in controlling the implementation of texts. That is to say, the first recipient of human rights is public opinion, (i.e., individuals), which must continue to play its growing role as a powerful stimulant for States during the creation of texts. It must also continue its contribution to the promotion of human rights, notably through its activities concerning education of human rights. Finally, the individual himself is the purpose or objective of human rights. In this quality, he must participate actively in their elaboration, application and promotion. His life simply depends on it. ■

## Declarations adopted by the UN

At the end of 1996, the United Nations General Assembly had adopted the following human rights Declarations and recommendations:

- Universal Declaration of Human Rights, 1948
- Declaration of the Rights of the Child, 1959
- Declaration on the Granting of Independence to Colonial Countries and Peoples, 1960
- Declaration on the Permanent Sovereignty over Natural Resources, 1962
- United Nations Declaration on the Elimination of All Forms of Racial Discrimination, 1963
- Recommendation on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, 1965
- Declaration on the Promotion among Youth of the Ideals of Peace, Mutual Respect and Understanding between Peoples, 1965
- Declaration on the Elimination of Discrimination against Women, 1967
- Declaration on Territorial Asylum, 1967
- Proclamation of Teheran, 1968
- Declaration on Social Progress and Development, 1969
- Universal Declaration on the Eradication of Hunger and Malnutrition, 1974
- Declaration on the Protection of Women and Children in Emergency and Armed Conflict, 1974
- Declaration on the Use of Scientific and Technological Progress in the Interests of Peace and for the Benefit of Mankind, 1975
- Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1975
- Declaration on the Rights of Disabled Persons, 1975
- International Declaration against Apartheid in Sports, 1977
- Declaration on Preparing Groups to Live in Peace, 1978
- Declaration on South Africa, 1979
- Code of Conduct for Law Enforcement Officials, 1979
- Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, 1981
- Declaration on the Participation of Women in the Promotion of Peace and in International Co-operation, 1982

- Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985
- Declaration on the Human Rights of Individuals Who are not Nationals of the Country in which They Live, 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, 1986
- Declaration on the Right to Development, 1986
- Declaration on the Protection of All Persons from Enforced Disappearance, 1992
- Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, 1992
- Vienna Declaration and Programme of Action, 1993.

## UN Conventions in force as of 1996

At the end of 1996, the following United Nations Conventions relating to human rights were in force

- Convention on the Prevention and Punishment of the Crime of Genocide, 1948
- Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, 1949
- Convention relating to the Status of Refugees, 1951
- Convention on the International Right of Correction, 1952
- Convention on the Political Rights of Women, 1952
- Protocol amending the Slavery Convention signed at Geneva on 25 September 1926, 1953
- Convention relating to the Status of Stateless Persons, 1954
- Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, 1956
- Convention on the Nationality of Married Women, 1957
- Convention on the Reduction of Statelessness, 1961
- Convention on Consent to Marriage, Minimum Age for Marriage and Registration for Marriages, 1962
- International Convention on the Elimination of All Forms of Racial Discrimination, 1965
- International Covenant on Economic, Social and Cultural Rights, 1966
- International Covenant on Civil and Political Rights, 1966

- Optional Protocol to the International Covenant on Civil and Political Rights, 1966
- Protocol relating to the Status of Refugees, 1966
- Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity, 1968
- International Convention on the Suppression and Punishment of the Crime of Apartheid, 1973
- Convention on the Elimination of All Forms of Discrimination against Women, 1979
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984
- International Convention against Apartheid in Sports, 1985
- Convention on the Rights of the Child, 1989
- Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, 1989.

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