A "NUTSHELL" APPROACH TO THE U.N. HUMAN RIGHTS LAW PROTECTING MINORITIES

FRANK C. NEWMAN

The United Nations Charter prescribes the supreme law of the world,[1] and the U.N. human rights Covenants which contain the prescriptive clauses of the International Bill of Rights[2] certainly merit comparable respect. This article will focus exclusively on U.N. Human Rights law, but it should be noted that European and Inter-American regional legal arrangements have also been quite effective in developing minorities law. In Article 27 of the Covenant on Civil and Political Rights, the following few words exemplify the kind of U.N. law that has been designed specifically to help minorities throughout the world:

> In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.[3]

To be protected, an individual must be a member of a group that does not constitute a "majority"; and the group must also be an "ethnic, religious or linguistic" entity. All members are protected regarding the enjoyment of their own culture, the practice of their own religion, and the use of their own

1. Article 103 reads: "In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail."
2. The International Bill of Rights includes the Universal Declaration of Human Rights (adopted by General Assembly resolution 217 A of 10 December 1948); the Covenant on Economic, Social and Cultural Rights (adopted and opened for signature, ratification and accession by General Assembly resolution 2200 A (XXI) of 16 December 1966, entry into force on 3 January 1976); and the Covenant on Civil and Political Rights and its First Optional Protocol (adopted and opened for signature, ratification and accession by General Assembly resolution 2200 A (XXI) of 16 December 1966; entry into force on 23 March 1976).
3. Pursuant to the Covenant's Article 48(2), the United States has been a party since 8 September 1992.

Frank C. Newman is a California Supreme Court Justice (retired), and Ralston Professor of International Law, University of California at Berkeley (emeritus). He is also a founder of Human Rights Advocates.

language. It is to be noted, too, that the rights accrue to the individual and not to the group as a unit.

In addition, each government that is a party to the Civil and Political Covenant has agreed "to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized . . . *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*" (italics added).[4] These italicized words can be called "The Civil and Political Covenant's Basic Non-Discrimination List."

The protections afforded by Article 27 of the Covenant sometimes can be diminished by Article 4(1). It permits derogatory measures, strictly required by the exigencies of the situation, "[i]n time of public emergency which threatens the life of the nation." It also stipulates that, even under such circumstances, the emergency measures must not "involve discrimination solely on the ground of race, colour, sex, language, religion or social origin." Note first, that this list is shorter than the Covenant's Basic Non-Discrimination List; and second, that the phrase "or other status" is not included.

Other U.N. Treaties That Help Minorities

I. The following treaties focus on discrimination and proscribe discrimination against members of minority as well as majority groups:

1. International Convention on the Elimination of All Forms of Racial Discrimination, adopted and opened for signature and ratification by General Assembly resolution 2106 A (XX) of 21 December 1965; entry into force on 4 January 1969.
2. Convention on the Elimination of All Forms of Discrimination Against Women, adopted and opened for signature, ratification and accession by General Assembly resolution 34/180 of 18 December 1979; entry into force on 3 September 1981.
3. Employment and Occupation Convention (No. 111 Concerning Discrimination in Respect of Employment and Occupation), adopted on 25 June 1958 by the General Conference of the International Labor Organization; entry into force on 15 June 1960.
4. Convention Against Discrimination in Education, adopted on 14 December 1960 by the General Conference of the United Nations Educational, Scientific and Cultural Organization; entry into force on 22 May 1962.

II. Many other U.N. treaties not only proscribe discrimination, but also contain other language that aids members of minority as well as majority groups:[5]

4. See Article 2(1) of the Civil and Political Covenant.
5. Sometimes pertinent too, of course, are treaties of the International Committee of the Red Cross and of regional bodies such as the Council of Europe, the OAS and the OAU.

1. International Covenant on Economic, Social and Cultural Rights, adopted and opened for signature, ratification and accession by General Assembly resolution 2200 A (XXI) of 16 December 1966; entry into force on 3 January 1976.
2. International Covenant on Civil and Political Rights, adopted and opened for signature, ratification and accession by General Assembly resolution 2200 A (XXI) of 16 December 1966; entry into force on 23 March 1976.[6]
3. Convention on the Rights of the Child, adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989; entry into force on 2 September 1990.
4. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted and opened for signature, ratification and accession by General Assembly resolution 39/46 of 10 December 1984; entry into force on 26 June 1987.
5. International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, adopted by General Assembly resolution 45/158 of 18 December 1990 (*not in force*).
6. Convention Relating to the Status of Refugees, adopted on 28 July 1951 by the U.N. Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, convened under General Assembly resolution 429 (V) of 14 December 1950; entry into force on 22 April 1954.
7. Protocol Relating to the Status of Refugees, taken note of by the General Assembly in resolution 2198 (XXI) of 16 December 1966; entry into force on 4 October 1967.
8. Convention on the Prevention and Punishment of the Crime of Genocide, approved and proposed for signature and ratification or accession by General Assembly resolution 260 A (III) of 9 December 1948; entry into force on 12 January 1951.

The preceding paragraphs illustrate the need for (1) reading all human rights instruments carefully, and (2) recognizing that minority group members are often protected by legal phrases designed to help majority as well as minority groups, especially in non-discrimination matters. For instance, discrimination based on race, language, religion or poverty can often hurt people even when they are in the majority. That is why the U.N. Sub-Commission on the Prevention of Discrimination and the Protection of Minorities, when it was established at the first session of the Commission on Human Rights nearly a half-century ago, was instructed "to make recommendations . . . concerning [not only] the

6. The Basic Non-Discrimination Lists in Article 2(1) of the Civil and Political Covenant (No. 2 on this list) and Article 2(2) of the Economic, Social and Cultural Covenant (No. 1 on this list) are not identical, and it is uncertain whether the differences are significant. Note, though, that Article 4 of the Civil and Political Covenant is radically different from Article 4 of the Economic, Social and Cultural Covenant.

prevention of discrimination of any kind relating to human rights [but also] the protection of racial, religious and linguistic minorities."[7]

The U.N. Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities

The "Minorities Declaration" was adopted by General Assembly resolution 47/135 on 18 December 1992. It recognizes "the need to ensure even more effective implementation of international human rights instruments with regard to the rights of persons belonging to national or ethnic, religious and linguistic minorities," but it is not a treaty. It therefore neither binds governments nor defines legal obligations.

A related document, issued eighteen months after the Declaration was adopted, comments: "Now both Governments and individual citizens face the challenge of implementing those standards. Sadly, the reality of life for many minorities bears no resemblance to the minimum human rights standards set forth."[8]

Interested jurists might contend that advocates who represent minority groups should concentrate their efforts not on declarations and other "soft law," but rather on treaty rights and on the need to help ensure juridical respect for those rights. We must keep in mind, though, that during the U.N.'s first half-century its single most influential human rights instrument may well have been the Universal Declaration of Human Rights, which of course is not a treaty. The following considerations should also be kept in mind:

1. Government officials, U.N. officials, and innumerable others can be and often have been persuaded to recognize more rights than pertinent treaties identify.
2. Constant use, particularly of the Universal Declaration of Human Rights ("a common standard of achievement for all peoples and all nations"),[9] has confirmed that non-treaty U.N. standards can be very influential.
3. As recently noted in Paragraph 14 of the U.N.'s Introduction to the [New] Standard Rules on Equalization of Opportunities for Persons with Disabilities, non-treaty "rules . . . can become *international customary rules* when they are applied by a great number of states with the intention of respecting a rule in international law" (italics added).[10]

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7. Frank Newman and David Weissbrodt, *International Human Rights: Law, Policy and Process* (Cincinnati, OH: Anderson Publishing Co., 1990), 7.
8. See paragraph 2 of U.N. Doc. E/CN.4/Sub.2/1994/NGO/1 (26 July 1994).
9. See the preambular paragraph immediately preceding Article 1 of the Declaration.
10. U.N. Doc. DPI/1454/April 1994. It is my belief that customary international law is normally created when rules become "general principles of law recognized by civilized nations." See Article 38(1)(c) of the Statute of the International Court of Justice, which is an integral part of the U.N. Charter.

4. U.N. practice shows that human rights declarations quite often precede treaties.[11] Experience in monitoring the U.N.'s 1992 Minorities Declaration may lead to a consensus that additional treaty law is needed.

In August 1994, the U.N. Sub-Commission, noting the "Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, and convinced that its implementation, in conjunction with the International Convention on the Elimination of All Forms of Racial Discrimination and all other relevant international instruments, provides the best guidance for such endeavors," decided *inter alia* that "its agenda will include annually an item concerning a comprehensive examination of thematic issues relating to racism, xenophobia, minorities and migrant workers."[12]

Choosing the Best Instrument

We have noted that treaties are generally more useful than non-treaties, but this is rarely the case when the involved government has not ratified the treaty in question. The United States, for instance, has to date ratified neither the Covenant on Economic, Social and Cultural Rights, nor the U.N. Conventions on Women's Rights and the Rights of the Child. And by no means do most government lawyers accept the contention that pertinent but unratified treaty clauses generally become customary international law.

Most treaties discussed here have, in fact, been ratified by most governments. What lawyers and other advocates then must decide is: Exactly which treaty clauses will be of most help? To illustrate: If a child is suffering from inhuman or degrading treatment not only because she is in a minority group but also because of gender, race, religion or age, when should advocates utilize clauses in the Children's, Women's, Racial, and/or Torture treaties as well as the two Covenants? Inhuman or degrading treatment is proscribed in each of those treaties, as are unjustifiable discriminations based on gender, race, religion or age. Even within a single treaty more than one clause sometimes may be applicable. The Civil and Political Covenant, for instance, proscribes discrimination in Articles 2(1), 4(1), 24(1), 25, and 26.

Respectfully, I propose a simple rule for all advocates: Be sure to stress the words in the applicable instrument or instruments that seem to assure the most protection. Moreover, the basic overall rule for all human rights activists should be that each individual is entitled to benefit from (1) all applicable treaties, and (2) the protections embodied in whatever clauses are likely to help her or him most.

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11. See, e.g., preambular paragraphs in the two Covenants and also in the U.N.'s Racial-, Women-, Children- and Torture-specific treaties.
12. E/CN.4/Sub.2/1994/L.11/Add.1; see preambular paragraph 8 and operative paragraph 5.

Are the Treaties Enforced?

International laws, like national laws, are enforced often but not always; and recent developments have shown that the channels now employed by human rights activists for enforcing U.N. mandates really do parallel channels employed nationally by civil liberties and civil rights activists. The crucial word is "remedy"; and, illustratively, the Civil and Political Covenant proclaims in Article 2(3)(a) that everyone whose rights therein recognized are violated "shall have an effective remedy." In addition, Article 2(3)(b) mandates national enforcement by requiring that "any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative, or legislative authorities, or by any other competent authority provided for by the legal system of the State."

Enforcement by U.N. and other international authorities involves varied institutions and procedures, and the U.N. "treaty bodies" already are exerting powerful pressures. Within states, by no means do all officials honor the International Bill of Human Rights or the other U.N. documents faithfully. Thoughtful analyses, however, suggest that progress has been persistent and that the pace of the gains made globally is quite similar to the pace made over the decades nationally.

Is it not indisputable that, during recent years in many countries (including those not governed by the regional human rights treaties), gains made by and on behalf of the world's minorities have been truly remarkable? As activists and advocates increasingly turn to the U.N. instruments identified here, the pace of extending gains already made surely could be accelerated. Indeed, might not the well-being of perhaps millions of world-citizens thus gradually be enhanced?