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International Human Rights Law in the Twenty-First Century: Effective Municipal Implementation or Paean to Platitudes

Neil H. Afran*

*Touro College Jacob D. Fuchsberg Law Center

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INTERNATIONAL HUMAN RIGHTS LAW IN
THE TWENTY-FIRST CENTURY:
EFFECTIVE MUNICIPAL
IMPLEMENTATION OR PAEAN TO
PLATITUDES

*Neil H. Afran**

Since the end of World War II, the international community has witnessed a revolutionary codification of international norms in the field of human rights. Dozens of treaties, conventions, resolutions, and proclamations have come into legal force through the various bodies of the United Nations and regional organizations. It is difficult to criticize either the pace or the substance of this "legislative" effort. The promise of the human rights revolution, however, has yet to be fulfilled.

The fault lies neither with the tremendous efforts of the treaty drafters nor with the international civil servants who have dedicated their considerable efforts to universal ratification and implementation. Rather, states have largely failed to implement the provisions of these treaties and have even taken significant reservations that have virtually emasculated the intent, if not the actual substance, of the instruments. The blame also lies with those of us who are responsible for and capable of convincing our respective governments that to delay ratification and domestic implementation is to obstruct the will of the peoples of the Earth, who collectively demand universal human rights, predictable and uniform, without distinction between nation-states. Indeed, the most influential actors capable of lobbying for universal implementation of international human rights treaties are the increasing numbers of attorneys, law professors, and judges who know more about the mechanics of municipal implementation than any other professional sector of modern society.

It must be acknowledged though, that in some societies today, governments still disregard, at times even scorn, the rule of law as evidenced by the persecution of courageous advocates who seek to enforce the international human rights treaties by

* Assistant Professor of Law and Director, International Human Rights Clinic, Touro College Jacob D. Fuchsberg Law Center, Huntington, New York.

which their own governments purport to abide. Fortunately, most governments today have transformed themselves into respectable participants in international society, no longer ideologues or dictatorships. Therefore, the time has arrived, without further delay, for international society to fulfill the promise of the last half of the twentieth century by ushering in a new century of uniformity and universality in the human rights revolution.

This human rights revolution began in earnest with the Universal Declaration of Human Rights in 1948¹ and concluded most recently with the 1993 Vienna Declaration and Programme of Action² adopted by consensus of all 171 participating states at the second World Conference on Human Rights. Forty-five years of human rights work by the United Nations and regional international organizations has produced a legal blueprint based on which the rule of law can be implemented worldwide. The World Conference on Human Rights was convened to consider precisely this issue of implementation, both within the U.N. system and within each state's municipal laws and policies.

Those who attended the Conference can appreciate the monumental task of fulfilling this goal of universal implementation notwithstanding the vast differences that still separate the developing world from industrial and post-industrial states and non-democratic societies from emerging and stable democracies. General Principle Five of the Vienna Declaration, adopted by all participating states without dissent, captures the essence of the progress that has been made by states across the global governmental spectrum:

All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all

1. Universal Declaration of Human Rights, G.A. Res. 217A, U.N. GAOR, 3d Sess., pt. 1, at 71, U.N. Doc. A/810 (1948).

2. Vienna Declaration and Programme of Action, U.N. Doc. A/CONF.157/24/pt. I (1993), 32 I.L.M. 1661 (1993).

human rights and fundamental freedoms.³

Never before in history have so many states from vastly divergent perspectives agreed to the universal and indiscriminate application of human rights.

Unfortunately, words are not equal to deeds and many state actors who solemnly pledged their allegiance to implementation have already violated that pledge, some never having had the intention of fulfilling it. Every participant and observer at the World Conference realized that governmental actors often resort to platitudinous commitments in the interest of reaching consensus and to appease popular or "politically correct" sentiment. Approaching the twenty-first century, the primary issue in the human rights field is the transformation of words into action, both executive and legislative.

The World Conference has succeeded in convincing the General Assembly of the United Nations to establish the post of High Commissioner for Human Rights in an effort to provide greater administrative coordination between the various U.N. bodies and organizations involved with human rights around the world. Perhaps the only immediate result of the World Conference was internal U.N. housekeeping and public relations improvements. The World Conference must realize the larger goal of universal municipal implementation so that in the new era, the world will never again witness the human rights tragedies of previous generations.

To the extent that human rights violations occur as the result of armed conflict, either civil or international, even a maximum effort at municipal implementation may be of little value because the condition of war is a breakdown of the rule of law. If the causes of war are so fundamental and entrenched within a society or between states, it is doubtful that international humanitarian law will be honored to protect human rights of civilians, as has been witnessed most recently in the former Yugoslavia. One of the main battles for human rights advances in the twenty-first century will likely take place in the context of the ethnic, religious, and class conflicts of nation-states. This is increasingly evident as the world community invests greater military re-

3. *Id.* art. 5, 32 I.L.M. at 1665.

sources in regional security arrangements as well as traditional multinational peacekeeping.

Is the task, therefore, of implementing the multi-thematic as well as single issue international human rights treaties feasible and likely in the twenty-first century, or will the promise of the Vienna Declaration follow in the same meandering path as that of the Proclamation of Teheran solemnly proclaimed by the first International Conference on Human Rights in 1968? Predicting human rights progress is impossible to any degree of certainty. One can only provide informed analysis of the general direction in which each state actor is proceeding. Because human rights is almost always an internal dynamic within each state, regional or even global predictions are of limited value. To have worthwhile effect, it is therefore imperative that the world begin to view human rights as globally pervasive and consistent regardless of each state's internal autonomy or sovereignty.

This process of non-discrimination has already been successfully implemented in Europe, among the members of the Council of Europe within the framework of the European Convention for the Protection of Human Rights and Fundamental Freedoms. Outside the Council of Europe, the Organization for Security and Cooperation in Europe has made significant progress in bringing nearly all the countries of Europe and Eurasia as well as the United States and Canada on one level playing field so that implementation can be discussed and debated on a constructive basis. In the Americas, a no less ambitious effort by the Organization of American States under the American Convention on Human Rights has yielded far fewer results but continues to promise eventual success as more states adhere to the jurisdiction of the Inter-American Court of Human Rights.

Outside of Europe, most states still refuse to consent to the jurisdiction of regional human rights courts or treaty committees, even though they have ratified the underlying treaties that create the adjudication or dispute resolution mechanisms. The mere ending of one century, even if a new millennium is thereby begun, will not lead to a new era distinguishable from the past. The new millennium, however, may inspire state actors to reconsider their treaty commitments in the field of human rights, particularly if internal popular sentiment in favor of domestic implementation is galvanized.

It seems doubtful that the United Nations or regional organizations can provide the stimulus for significant progress. The past half century has revealed that progress in enforcing and implementing human rights is extremely slow and not a high priority of the governments who remain in power precisely because of their refusal to abide by the rule of law as codified by the international human rights treaties. Lack of significant progress is exacerbated when leading rights-oriented states, such as the United States, refuse to ratify and implement these instruments. The hypocritical actions of the United States hamper world-wide efforts at implementation because prominent rights violators, especially the People's Republic of China, use this intentional inaction to counteract their own culpable conduct. More harm than good is done to the human rights revolution when one major non-implementing state condemns another major non-implementing state for non-implementation.

The new millennium will also bring a staggering Malthusian increase in world population, making it much more difficult for developing countries to concentrate on the technical aspects of implementing legislation while their people struggle for daily subsistence and protection from deadly disease and famine. Under present and foreseeable future worldwide economic conditions, limited financial assistance from industrial countries to these desperate developing states will not amount to much more than emergency aid. Even economic incentives, through trade arrangements and loan subsidies, will probably be ineffective in encouraging significant progress in municipal implementation.

The United Nations itself, for the most part, inherently lacks the power to move states toward implementation. The General Assembly functions primarily as an international deliberative body without lawmaking powers. The Security Council, in theory, has great power, but only to maintain "international peace and security." The Commission on Human Rights possesses more authority on implementation issues but lacks effective enforcement mechanisms beyond issuing reports and resolutions condemning those states that systematically and grossly violate human rights. The Secretary General and the High Commissioner for Human Rights have only moral suasion as their enforcement mechanism. Diplomacy alone achieves little more than cosmetic improvements and often results in further entrenchment.

If significant implementation of international human rights is to be accomplished in the twenty-first century, a renewed effort by non-governmental actors must be made so that government actors fully understand and appreciate the will of the peoples whom they purport to represent and govern. The World Conference on Human Rights set the tone for this unprecedented private/public confrontation with the official participation of more than 800 non-governmental organizations ("NGOs"), collectively representing millions, if not billions of the world's people. If the present is indicative of the future, NGOs will continue to proliferate and participate in the renewed effort to maximize the implementation of international human rights law. Indeed, it is doubtful that governments will take the sometimes difficult measures necessary to comply with their treaty commitments without the pressure and the threat of condemnation, which only NGOs can provide on a non-political basis. Legal NGOs, such as international and national bar associations, judicial conferences, and academic societies, are leading catalysts for change on both the municipal and international levels. Their efforts should form the forefront in this essentially legal movement to incorporate human rights standards into the constitutions, statutes, and policies of all states so that the twenty-first century will be one of universal respect for human rights and will also set the standard for the new millennium.