THE BEST OFFENSE IS A STRONG DEFENSE: APPRECIATING THE STRENGTH OF EDUCATION AS THE STRONGEST ALTERNATIVE TO INTERVENTIONISM

David P Vincent, University of San Diego

Available at: https://works.bepress.com/david_vincent/4/
THE BEST OFFENSE IS A STRONG DEFENSE:
APPRECIATING THE STRENGTH OF EDUCATION AS THE
STRONGEST ALTERNATIVE TO INTERVENTIONISM

DAVID P. VINCENT*

I. INTRODUCTION................................................................................................................................................. 1

II. THE SYRIAN REVOLUTION VIS-À-VIS THE UNIVERSAL DECLARATION OF HUMAN RIGHTS .................. 4

III. THE PLACE AND PURPOSE OF INTERNATIONAL LAW AND DEVELOPING SOLUTIONS TO ENSURE COMPLIANCE .... 11

   A. Pacta Sunt Servanda – A Principle and its Limits ............................................................................................... 13

   B. The Policy Challenge: Intervention vs. Education................................................................................................. 17

      1. The Implications of Interventionism.................................................................................................................. 18

      2. The Implications of Education.......................................................................................................................... 21

IV. CONCLUSION.......................................................................................................................................................... 27

* J.D. candidate, University of San Diego School of Law, expected graduation May 2012; B.A. Political Science and Psychology, University of California, San Diego. For conversations, comments, and confidence, thanks to Professor Jorge A. Vargas.
Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter [. . .].

- Charter of the United Nations, Article 2, par. 7.

I. INTRODUCTION

Since its establishment in 1945, thousands of treaties and international agreements were formulated under the aegis of the United Nations in furtherance of the goals enunciated in the Preamble to the United Nations Charter. The mandate of the United Nations, illustrated by Article 1 of its charter, articulates the commission of the international organization “to maintain international peace and security” and “to be a centre (sic) for harmonizing the actions of nations in the attainment of these common ends.” However, although in many instances these multilateral treaties are signed by a majority of the United Nations’ 193 member states, there is often time little incentive to prevent a nation from fully realizing its good faith obligation to a United Nations treaty or international agreement.

---

2 These documents are collected by the United Nations Treaty Series. The United Nations Treaty Series is a collection of treaties and international agreements that have been registered (or filed and recorded) with and published by the Secretariat of the United Nations since 1946, pursuant to Article 102 of the United Nations Charter. The collection currently contains over 158,000 treaties and related subsequent actions that have been published in hard copy in over 2,200 volumes; see U.N. Charter Preamble.
5 See Hugh J. Marbury, Hazardous Waste Exportation: The Global Manifestation of Environmental Racism, 28 Vand. J. Transnat’l L. 251, 259-65 (1995) (noting the fact that most UN treaties and agreements have no economic or noneconomic incentives to prevent signatories from evading their duties and/or responsibilities under the document at issue).
Some commentators argue the primary purpose of the United Nations is the enforcement of international peace and security, others assert that the United Nations has a secondary and equally important purpose: the international protection of human rights.\textsuperscript{6} In furtherance of such an end, the United Nations General Assembly unanimously adopted the Universal Declaration of Human Rights (hereinafter “Universal Declaration”) on December 10, 1948.\textsuperscript{7} The Universal Declaration contains, in addition to its preamble, thirty articles that outline what the drafters believed to be the inalienable rights of the people of this world.\textsuperscript{8} Some of the rights championed by the Universal Declaration are: the right to life, liberty, and security of person; right to participate fully in cultural life; freedom from torture or cruel, inhumane treatment or punishment; and the freedom of thought, conscience and religion.\textsuperscript{9} Documents such as the Universal Declaration of Human Rights proclaim the ideals of international community aspiring to respect the human rights of people of all nations.\textsuperscript{10} However, the most fundamental precepts of international law prohibits international organizations from placing binding requirements on member states, as this would be antithetical to the fundamental legal principle of territorial sovereignty; rather, it is the nonbinding but “good faith” obligations of the members states which requires that they act in accordance with the propositions contained within the legal agreements


\textsuperscript{7} The Universal Declaration was adopted by the General Assembly on 10 December 1948 by a vote of 48 in favor (including the Syrian Republic and the United States of America), 0 against, with eight abstentions: the USSR, Ukrainian SSR, Byelorussian SSR, Yugoslavia, Poland, South Africa, Czechoslovakia and Saudi Arabia. UNITED NATIONS ASSOCIATION IN CANADA, \textit{Questions and Answers about the Universal Declaration}, available at http://www.unac.org/rights/question.html (last visited Mar. 9, 2012).

\textsuperscript{8} \textit{Id.}

\textsuperscript{9} \textit{Id.}

to which they are a party. However, the lack of effective enforcement mechanisms to keep member states in compliance with their international obligations has been an oft-criticized aspect of international organizations.

Members of the United Nations, largely considered the preeminent international organization, are members in good faith; as such, they are expected to comply with the principles contained within the United Nations Charter and all other treaties and conventions to which the member state is a party. The idea that countries and states enter into international agreements in good faith is the most basic component that produces harmony in relations among states in the international community. Without the viable principle of good faith in international dealings, a nation could become a party to an international agreement and agree to comply with a set of principles and subsequently turn its back on those principles. This is certainly not the sort of world for which the fifty-one original members of the United Nations – states committed to maintaining international peace and security, developing friendly relations among nations and promoting social progress, better living standards and human rights – would have ever imagined.

This paper addresses potential solutions to this chronic problem of international organizations, focusing specifically on the incongruence of the egregious human rights violations occurring within Syria with the state’s December 1948 signing of the United Nation’s Universal Declaration of Human Rights.

---

11 Id.
13 The United Nations Charter provides that “[m]embers ... shall fulfill in good faith the obligations assumed by them in accordance with the present Charter.” U.N. CHARTER Art. 2, para. 2.
14 Id.
15 Pers comm., Jorge A. Vargas, 02/12/2012.
16 Pers comm., Jorge A. Vargas, 02/12/2012.
Though the situation in Syria is particularly offensive, it serves only as an example of the habitual problem of noncompliance with many member state’s voluntarily assumed obligations as a party to a treaty, convention, or other international organization agreement. This problem is certainly not endemic only to Syria, the Middle East, or to violations of human rights. The example of Syria serves only as a test case for finding effective solutions to prevent the inevitable reappearance of future such problems of noncompliance.

II. THE SYRIAN REVOLUTION VIS-À-VIS THE UNIVERSAL DECLARATION OF HUMAN RIGHTS

The “Arab Spring,” the revolutionary wave of demonstrations and protests occurring in the Arab world that began in December 2010, has deposed or otherwise removed from office the rulers in Tunisia, Egypt, Libya, and Yemen. Civil uprisings and other major protests have taken place in scores of other Middle East and North African countries. However, it is important to note that the Arab Spring movement is the result of decades of despair, frustration,

23 Through February 29, 2012, civil uprisings have erupted in Bahrain and Syria; major protests have broken out in Algeria, Iraq, Jordan, Kuwait, Morocco, and Oman; and minor protests have occurred in Lebanon, Mauritania, Saudi Arabia, Sudan, and Western Sahara. Clashes at the borders of Israel in May 2011, as well as protests by Arab minority in Iranian Khuzestan, have also been inspired by the regional Arab Spring. See Middle East and North Africa in turmoil, WASHINGTON POST, available at http://www.washingtonpost.com/wp-srv/special/world/middle-east-protests/ (last visited Feb. 29, 2012).
and angry citizens against many of the existing dictatorial powers in the region.\textsuperscript{24} The demonstrations, while often peaceful, in many instances have lead to government-sanctioned human rights abuses.\textsuperscript{25}

Aside from the decades of tyranny and human rights abuses, the moment recognized as the catalyst for stimulating the Arab Spring throughout North Africa and the Arab states of the Middle East is widely credited as the self-immolation of Mohamed Bouazizi in Tunisia on December 17, 2010 in protest of civic and governmental corruption as well as the regional economic turmoil.\textsuperscript{26} This watershed event marked the moment that the region, and the world, decided to turn its attention to the decades of political and social inequity that had plagued the region for decades.\textsuperscript{27}

Bashar al-Assad, who succeeded his father as President of Syria in July 2000, stated in early 2011 that there was no chance the political upheaval contemporaneously shaking the Arab world would spread to Syria.\textsuperscript{28} As in the rest of the region, the Syrian revolution is the most recent manifestation of decades of sociopolitical problems in the nation;\textsuperscript{29} the political and social

\begin{itemize}
\item\textsuperscript{24} Pers comm., Jorge A. Vargas, 04/19/2012.
\item\textsuperscript{27} Pers comm., Jorge A. Vargas, 02/12/2012.
\item\textsuperscript{29} Pers comm., Jorge A. Vargas, 02/12/2012.
\end{itemize}
frustrations within Syria antedate Bashar al-Assad and stem back to the beginning of his father’s dictatorial regime.  

After the success of the protests in Tunisia, a wave of unrest subsequently struck the nations of Algeria, Jordan, Egypt, and Yemen, and quickly spread to other countries within the region. Public demonstrations in Syria began January 26, 2011, and quickly developed into a nationwide uprising. Protesters demanded the resignation of Assad, the overthrow of his government, and an end to the rule of Ba'ath Party, which ruled Syria continuously since the March 8 Revolution of 1963, which brought the Ba'athist group to power.

In January 2011, the fears stemming from the collapse of the neighboring Lebanese government as well as the self-immolation of Syrian Hasan Ali Akleh as “a protest against the Syrian government” lead to government-sanctioned violent conflict within the nation of Syria, which continues through the time of this paper’s writing. The current situation in Syria is an example of a member state failing to meet its obligations under specific United Nations treaties and conventions; here, Syria has failed to comply with its responsibilities within the Universal Declaration of Human Rights.

---

30 Pers comm., Jorge A. Vargas, 04/19/2012.
33 Id.
In the wake of the initial uprisings, the Syrian government deployed the Syrian Army to quell the uprising, and several cities were besieged.\textsuperscript{36} According to witnesses, the Syrian Army summarily executed soldiers who refused to open fire on civilians.\textsuperscript{37} According to various sources, including the United Nations, up to 9,100–11,000 people have been killed, primarily comprised of protesters,\textsuperscript{38} and many hundreds of children according to UNICEF.\textsuperscript{39} Many more have been injured, and tens of thousands of protesters have been imprisoned.\textsuperscript{40} The Syrian government refers to the thousands of civilian casualties as the deaths of "armed terrorist groups."\textsuperscript{41} The government’s claims that the violence is the result of insurrection are largely disputed both inside and outside of the state of Syria, including by the Resolutions of the United Nations’ Security Council and the determinations of the Joint Special Envoy for the United Nations and the Arab League.\textsuperscript{42}

The juxtaposition of this ongoing situation with the principles of the Universal Declaration of Human Rights, to which Syria was an original party over six decades ago, is difficult to reconcile. Perhaps, an explanation of the principles enshrined within the Universal


\textsuperscript{39} AGENCE FRANCE-PRESSE (Geneva), \textit{UNICEF says 400 children killed in Syria unrest, Google News} (Feb. 7, 2012), http://www.google.com/hostednews/afp/article/ALeqM5jn_Hwm1c4s57hZroY2XO3gtvHl_g?docId=CNG.d4e0242216423f0d6a53de60d07900.f1.


Declaration and how it came to be will help to better elucidate the stark and disturbing contrast and help with the subsequent proposition of a solution to mitigate this and future examples of member states’ divorce from their obligations with international agreements. In 1945, the United Nations was founded in the aftermath of the World War II to replace the League of Nations, and to facilitate cooperation in international law, international security, economic development, social progress, human rights, and further the achievement of world peace.43 In the facilitation of these goals, the United Nations Charter "reaffirmed faith in fundamental human rights, and dignity and worth of the human person" and committed all member states to promote "universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion."44 Having borne witness to the atrocities and horrific human rights violations of World War II and the realization that guaranteeing individual rights was necessary to give effect to the Charter's provisions on human rights, the United Nations General Assembly adopted the Universal Declaration of Human Rights, recognizing that all human beings have equal and absolute rights.45

Over sixty years later, there are today numerous more specific and specialized human rights conventions focusing on the rights of women, children, and other groups. However, this paper focuses solely on the Universal Declaration and Syria’s signature to the declaration and subsequent failure to fulfill the duties to which it became a party as a means of describing the more general problem and proposing a viable solution. The Universal Declaration of Human

43 Pers comm., Jorge A. Vargas, 04/19/2012.
44 U.N. CHARTER, Preamble and Art. 56.
45 Drafting and Adoption: The Universal Declaration of Human Rights, Franklin and Eleanor Roosevelt Institute (Aug. 27, 1998), http://www.udhr.org/history/overview.htm.; see Universal Declaration of Human Rights, supra note 35. The Preamble states “[w]hereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.” Id.
Rights\textsuperscript{46} has been the foundation of much of the post-1945 codification of human rights, and the international legal system is replete with global and regional treaties based, in large measure, on the Universal Declaration.\textsuperscript{47} The Frenchman René Cassin, one of the drafters of the Universal Declaration of Human Rights, compared the Declaration to the portico of a Greek temple, with a foundation, steps, four columns and a pediment.

"Articles 1 and 2 are the foundation blocks, with their principles of dignity, liberty, equality and brotherhood. The steps represent the seven paragraphs of the preamble, setting out the reasons for the Declaration. The main body of the Declaration forms the four columns. The first column (articles 3–11) constitutes rights of the individual, such as the right to life and the prohibition of slavery. The second column (articles 12–17) constitutes the rights of the individual in civil and political society. The third column (articles 18–21) is concerned with spiritual, public, and political freedoms such as freedom of religion and freedom of association. The fourth column (articles 22–27) sets out social, economic, and cultural rights."\textsuperscript{48}

In Cassin's model, the last three articles of the Universal Declaration provide the pediment that binds the structure together.\textsuperscript{49} These articles are concerned with the duty of the individual to society and the prohibition of use of rights in contravention of the purposes of the United Nations.\textsuperscript{50}

Over the past few months, nearly every foreign reporter has been removed from Syria.\textsuperscript{51} However, since the Syrian uprising began in January 2011, reporters have documented countless instances of the Syrian government depriving its citizens of rights enshrined by the Universal

\begin{footnotesize}
\begin{enumerate}
\item Universal Declaration of Human Rights, \textit{supra} note 35.
\item Mary Ann Glendon, \textit{A world made new: Eleanor Roosevelt and the Universal Declaration of Human Rights} 62-64 (Random House) (2002).
\item \textit{Id.}
\item \textit{Id.} at Chapter 10.
\item \textit{Id.}
\end{enumerate}
\end{footnotesize}
Declaration of Human Rights.\textsuperscript{52} Although a signatory to the Universal Declaration in 1948, Syria has subsequently been accused with reports and documentaries from international organizations and NGOs of violating a number of the principal human rights memorialized in the Universal Declaration.\textsuperscript{53}

Reports of the actions of the Syrian government, in the time since the Syrian uprising, document egregious violations of the Universal Declaration. Article 3 of the Universal Declaration guarantees “the right to life, liberty and security of person.”\textsuperscript{54} Article 5 grants all persons freedom from “torture or [. . .] cruel, inhuman or degrading treatment or punishment.”\textsuperscript{55} Article 9 assures that “No one shall be subjected to arbitrary arrest, detention or exile.”\textsuperscript{56} Article 19 grants all persons “the right to freedom of opinion and expression [. . .].”\textsuperscript{57} Article 20 ensures that “Everyone has the right to freedom of peaceful assembly and association.”\textsuperscript{58} Additionally, Article 21 allows “Everyone [. . .] the right to take part in the government of his nation, directly or through freely chosen representatives [. . .].”\textsuperscript{59} To name just a handful of instances emblematic of the systematic abuses of the Universal Declaration by the government of Syria: In April 2012, the American ambassador to Syria, Robert Ford, reported that the Syrian government continued with arrests, sweeps, and the artillery bombardment of political groups that opposed the Assad regime in direct violation of the principles illustrated through Articles 3, 5, 9, 19, and

\textsuperscript{52} Pers comm., Jorge A. Vargas, 04/19/2012.
\textsuperscript{53} Pers comm., Jorge A. Vargas, 04/19/2012.
\textsuperscript{54} Universal Declaration of Human Rights, supra note 35, Art. 3.
\textsuperscript{55} Id. at Art. 5.
\textsuperscript{56} Id. at Art. 9.
\textsuperscript{57} Id. at Art. 19.
\textsuperscript{58} Id. at Art. 20.
\textsuperscript{59} Id. at Art. 21.
20 of the Universal Declaration; a citizen journalist in Syria who had been instrumental in assisting those covering the conflict and helping to evacuate wounded journalists was seized and tortured by the Syrian government in violation of Articles 5, 9, and 19 of the Universal Declaration; and lastly, until February 2012, the Syrian Constitution entrenched the nation’s political power within the Ba’ath party, not permitting for democratic elections or term limits.

The situation in Syria has deteriorated in the time since the Arab Spring began in December 2010. In that short period, the Syrian government has violated what the nation itself has determined, since 1948, to be “the inalienable rights of its citizens and the people of our world” in the Universal Declaration of Human Rights. The following part of this Article will describe the limits of the internal mechanisms within the United Nations to deal with such conflicts. This discussion will set the stage for the development of this paper’s legal argument – that the United Nations must educate rather than intervene to persuade member states to fulfill their duties as signatories to treaties and conventions. This is the most effective mechanism by which the member states may memorialize their intent and solidify their good faith obligations of Article 2, para. 2, of the United Nations Charter without having the international community infringe on the fundamental sovereign rights of United Nations member states.

III. THE PLACE AND PURPOSE OF INTERNATIONAL LAW AND DEVELOPING SOLUTIONS TO ENSURE COMPLIANCE


64 The United Nations Charter provides that “[m]embers ... shall fulfill in good faith the obligations assumed by them in accordance with the present Charter.” U.N. CHARTER Art. 2, para. 2.
International law today is a dense, intricate body of rules and practices. It has spread far and wide into virtually all human activities that extend beyond national boundaries. Business and finance, air and sea transport, resource exploitation, television and radio, health, the rights of women and children, and the conduct of war are simply a short list of an interminable set of examples of issues governed by international law. Multilateral law-making treaties have proliferated, as have international organizations. To elucidate the complication within this body of legal theory, international law scholar and former director of the United Nations general legal division Oscar Schachter suggests, “It may be illuminating to apply a metaphor once suggested by the atomic physicist Robert Oppenheimer for his discipline.”

We may envisage international law as a large terrain made up of towns and villages with interconnecting paths and highways. The specialized branches of the law form the separate towns and villages, each centered on its own affairs. Narrow paths run from one to another, used occasionally. Across the entire terrain are the superhighways, the connecting links, which in the metaphor convey the general principles and concepts. Those who travel on the highways are generally only dimly aware of the lively activities in the towns and villages. Those who remain only in the local communities immersed in their specialties tend to lose sight of the interconnections and coherence of the larger whole. It may well be in the present complicated world of international relations that the real work of international law must fall to the specialists and the generalists cannot fully understand the intricacies of the specialized areas. Even if this is the case, it is still important to have the superhighways. International law seen as a unified system, with a core of basic concepts and processes, is much more than a

66 Id. at 1.
67 Id.
68 See id; see also, e.g. African Development Bank; Caribbean Organization; Commission for Environmental Cooperation; Inter-American Development Bank; International Atomic Energy Agency; International Bank for Reconstruction and Development; International Boundary and Water Commission; International Centre for Settlement of Investment Disputes; International Development Association; International Joint Commission; International Labor Organization; International Monetary Fund; Interparliamentary Union; North American Development Bank; Organization for American States; Organization for Eastern Caribbean States; Organization for Economic Cooperation and Development; Pan American Health Organization (including Pan American Sanitary Bureau); South Pacific Commission; United Nations; World Health Organization; World Trade Organization.
69 Schachter, *supra* note 65 at 1.
[sum] of separate legal regimes in particular fields. Just as facts become meaningful when they are linked to ideas and norms, so do ideas and norms gather strength as they become part of a coherent interrelated system.\textsuperscript{70}

This part of the paper will follow the abovementioned metaphor to illustrate the principles and interests of international law to develop a solution to the chronic problem of persuading states to enact domestic legislation that ratifies the treaties and conventions to which they are a party without infringing on the supreme principle respecting the territorial sovereignty of each member state.

\textbf{A. Pacta Sunt Servanda – A Principle and its Limits}

The international community, led by the United Nations, has accomplished a great deal in developing minimum, universally applicable human rights standards. However, many scholars and laypersons remain critical of the application and enforcement of the standards. Although the Universal Declaration of Human Rights is not binding on states, a wide array of international agreements and domestic legislation embrace its principles, making certain provisions binding as customary international law.\textsuperscript{71} Numerous international mechanisms exist to assist in the implementation and enforcement of these standards,\textsuperscript{72} although the persistence of human rights violations around the world attests to the difficulty of matching the reality to the ideal of the Universal Declaration. This section addresses the limits of the principle of \textit{pacta sunt servanda} and considers the implications and compatibility of the possible alternatives with international law.

\textsuperscript{70} \textit{Id.}


\textsuperscript{72} \textit{See generally} GUIDE TO INTERNATIONAL HUMAN RIGHTS PRACTICE (Hurst Hannum ed., 2d ed. 1992).
Article 26 of the Vienna Convention on the Law of Treaties is entitled *pacta sunt servanda*, Latin for “agreements must be kept.” It simply states, “Every treaty in force is binding upon the parties to it and must be performed in good faith.” Without adherence to these principals, there would be no purpose for any nation to enter into an international treaty. International law emphasizes the consent of the parties to determine whether treaties are legally binding instruments. In effect, treaties are contracts between the nations who are members to each treaty. Article 2, para, 2 of the United Nations Charter also states “Members . . . shall fulfill in good faith the obligations assumed by them in accordance with the present Charter.” Likewise, the notion of good faith requires the parties to a treaty to perform in accordance with the treaty under the Vienna Convention. A “treaty” is defined under Article 2 of the Vienna Convention as an “international agreement concluded between States in written form and governed by international law.” It also provides a “party” to a treaty is a “State which has consented to be bound by the treaty”.

Many international law scholars believe the definitions contained within the Vienna Convention enshrine the Universal Declaration of Human Rights as a treaty, rather than simply a “declaration.” As such, and according to the obligations under *pacta sunt servanda*, the countries who have signed the Universal Declaration are to comply with the principles contained

---

75 Pers comm., Jorge A. Vargas, 04/19/2012.
77 Id.
78 U.N. CHARTER, Art. 2, par. 2.
80 Vienna Convention, *supra* note 73, Art. 2, par. 1(a).
81 Vienna Convention, *supra* note 73, Art. 2, par. 1(g).
82 See Janis, *supra* note 76 at 20.
within the international agreement. However, there are no repercussions for failing to act in symmetry with the principles elucidated by the Universal Declaration as states are governed only by their own autonomy and not the will of the international community. As such, there is not much of an incentive under the current United Nations structure and framework to prevent countries from defaulting on their good faith obligations.

Regardless of the plethora of international treaties and agreements created to protect human rights, commentators continually question whether it is even possible to enforce effectively such rights on an international level.\textsuperscript{83} One commentator noted that while there are numerous United Nations' votes, international instruments for protection, and state declarations, "for a large part of humanity, including a large part of what we generally call the 'Western' world, observance of human rights is presently a dream of things to come" as opposed to a reality.\textsuperscript{84} Infringements on a state's sovereignty are one of the primary reasons for the apparent failure to establish an effective international regime for the enforcement of human rights.\textsuperscript{85} Few states wish to become parties to treaties that interfere with their domestic policies, particularly those policies regarding domestic treatment of their citizens.\textsuperscript{86} Moreover, Article 2, para. 7 of the United Nations Charter prohibits the international organization from intervening in matters that are "essentially within the domestic jurisdiction of any state."\textsuperscript{87}

While the United Nations clearly recognizes human rights, many states do not live up to the obligations they agree to in the scores of United Nations treaties, conventions, as well as the

\textsuperscript{84} Id. at 71.
\textsuperscript{86} Id.
\textsuperscript{87} U.N. CHARTER, Art. 2, para. 7.
Universal Declaration. Much of this stems from the member states of the United Nations agreeing to become signatories to a particular agreement, and the international community relying on the good faith obligations of the nation to comport with the international agreements to which it is a party.\textsuperscript{88} This is not to say that there are not other options aside from relying on a member state’s good faith obligations; however, interventionism is in conflict with fundamental principles of international law, including Article 2, para. 7 of the United Nations Charter.

This fundamental principle in international law is paramount to the organization and operations of the United Nations.\textsuperscript{89} The principle places inelastic restrictions on the actions that an international organization, like the United Nations, can take to mitigate human rights abuses and ensure compliance with international agreements.\textsuperscript{90} The strict application of territorial sovereignty in the years since the foundation of the United Nations has given rise to a number of problems and, when faced with reality "on the ground," the application has led a number of legal scholars to ask whether the construct of territorial sovereignty should change to meet the dynamics of an evolving world.\textsuperscript{91}

This paper does not believe that international law need change substantively vis-à-vis territorial sovereignty to prove effective in solving the major issues of our day. Article 42 of the United Nations Charter authorizes the Security Council, in the event that non-military measures prove “inadequate,” to decide upon military measures “as may be necessary [. . .] to maintain or restore international peace and security.” Although these powers were interpreted narrowly

\textsuperscript{88} The United Nations Charter provides that “[m]embers ... shall fulfill in good faith the obligations assumed by them in accordance with the present Charter.” See U.N. CHARTER Art. 2, para. 2.
\textsuperscript{89} Pers comm., Jorge A. Vargas, 04/19/2012.
\textsuperscript{90} Pers comm., Jorge A. Vargas, 04/19/2012.
\textsuperscript{91} One of the more prominent, recent figures to argue for a more flexible approach to territorial integrity in line with historical norms was Prince Hans-Adam II of Liechtenstein, saying: “Let us accept the fact that states have lifecycles similar to those of human beings who created them. [. . .] Restrictions on self-determination threaten not only democracy itself but [also] the state that seeks its legitimation in democracy.”
during the Cold War, since then the Security Council has taken a very expansive view as to what constitutes “international peace and security” for this purpose, and in practice an authorization by the Security Council has almost invariably been universally accepted as conferring international legality on an action.\(^92\) It was under the power of Article 42 that the Security Council authorized the United Nations to intervene to protect civilians in places such as northern Iraq, Somalia, Bosnia and Herzegovina, and Kosovo.\(^93\) However, while interventionism can serve a legally valid, and focused purpose, its narrowly-tailored suitability within the United Nations framework need not expand to better serve the interests of the international community.

This paper does not seek to lend credence to the expansive interpretation of Article 42, and the author believes the principle of territorial sovereignty must be respected for the United Nations to operate effectively, and not dissuade reluctant nations from joining or remaining as members. The subsequent section of this paper will analyze the implications of interventionism, as well as an alternative remedy – education, in combatting the chronic problem of persuading states to comport with the text of the human rights treaties and conventions to which they are a party.

**B. The Policy Challenge: Intervention vs. Education**

The United Nations, the preeminent international organization in the world challenged with finding effective means of achieving international peace and security, has been faced with an interminable goal since the time of its foundation: persuading states to comply with the text of the treaties and conventions to which they are a party.\(^94\) The basic lines in the contemporary policy debate, one constantly being re-engaged at UN headquarters in New York and in capitals


\(^{94}\) See Evans, et al., *supra* note 92 at VII.
around the world, have been clearly enough drawn.\textsuperscript{95} This debate has largely centered on the question of whether international intervention is necessary or not.\textsuperscript{96} For some, the international community is not intervening enough; for others it is intervening much too often.\textsuperscript{97} For some, the new interventions herald a new world in which human rights trumps state sovereignty; for others, it ushers in a world in which big powers ride roughshod over the smaller ones, manipulating the rhetoric of humanitarianism and human rights. This paper weighs the implications of intervention, as permitted within the narrowly tailored articles of Chapter VII of the United Nations Charter, against the policy of refraining from intervention and relying on grassroots efforts of educating and enlightening to effect substantive change.

1. The Implications of Interventionism

“Humanitarian intervention” has been controversial both when it happens, and when it has failed to happen.\textsuperscript{98} In an address to the 54th session of the UN General Assembly in September 1999, Secretary-General Kofi Annan reflected upon “the prospects for human security and intervention in the next century.”\textsuperscript{99} He recalled the failures of the Security Council to act in Rwanda and Kosovo, and challenged the member states of the United Nations to “find common ground in upholding the principles of the Charter, and acting in defence (sic) of our common humanity.”\textsuperscript{100} The Secretary-General warned that “If the collective conscience of humanity . . . cannot find in the United Nations its greatest tribune, there is a grave danger that it

\textsuperscript{95} Id.
\textsuperscript{96} Id. at 12-20.
\textsuperscript{97} Id.
\textsuperscript{98} Id.
\textsuperscript{99} Id.
\textsuperscript{100} Id.
will look elsewhere for peace and for justice.” In his Millennium Report to the General Assembly a year later, he restated the dilemma, and repeated the challenge:

[I]f humanitarian intervention is, indeed, an unacceptable assault on sovereignty, how should we respond to a Rwanda, to a Srebrenica – to gross and systematic violations of human rights that offend every precept of our common humanity?

It is important to note the fundamental non-intervention principle of the United Nations, spelt out in Article 2, para. 4 of the Charter, which provides that “All Members shall refrain . . . from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations,” and in Article 2, para. 7, which prohibits the United Nations from intervening “in matters which are essentially within the domestic jurisdiction of any state.” What lays "essentially within the domestic jurisdiction" is not further defined and is indeed much contested, especially in the context of human rights issues.

A crucial qualification to the bedrock principle of non-intervention is Article 24 of the Charter, which “to ensure prompt and effective action by the United Nations” confers upon the Security Council the “primary responsibility for the maintenance of international peace and security.” There are important provisions relating to the pacific settlement of disputes in Chapter VI of the Charter, but the cutting edge of that responsibility is set out in Chapter VII, which describes the action the Security Council may take when it “determine[s] the existence of any threat to the peace, breach of the peace, or act of aggression.” According to Article 41 of

101 Id.
102 Id.
103 See U.N. CHARTER, Art. 2, para. 4; Id. at Art. 2, para. 7.
104 See Evans, et al., supra note 92 at VII.
105 See id. at Art. 24.
106 See id. at Art. 39.
the Charter, such action may fall short of the use of force, and consist of such measures as embargoes, sanctions, and the severance of diplomatic relations.\textsuperscript{107} However, should the Council consider that such measures are likely to be inadequate, “it may take such action by air, sea or land forces as may be necessary to maintain or restore international peace and security” – in other words, it may resort to or permit the use of military force.\textsuperscript{108}

There exists an important unresolved theoretical question regarding interventionism under the aegis of the United Nations. The question is whether the Security Council may ever exceed its own authority by violating the restraints embedded in the Charter, particularly the prohibition in Article 2, para. 7. This issue has only been tangentially considered by the International Court of Justice (hereinafter ICJ) in the \textit{Lockerbie} case, with the 1998 decision on preliminary objections affirming that the Charter binds the Security Council.\textsuperscript{109}

But the issue seems destined to remain a theoretical one, since there is no provision for judicial review of Security Council decisions, and therefore no way that a dispute over Charter interpretation can be resolved.\textsuperscript{110} It appears that the Council will continue to have considerable latitude to define the scope of what constitutes a threat to international peace and security.

Though the Security Council plays a substantial role in its service as the most powerful organ of the United Nations, there are many reasons for being dissatisfied with the role that the Security Council has played so far in its responses to violations of human rights. Over the last generation, the Security Council has authorized United Nations intervention in northern Iraq, Somalia, Bosnia and Herzegovina, and Kosovo.\textsuperscript{111} Prohibitions and presumptions against

\textsuperscript{107} See id. at Art. 41.
\textsuperscript{108} See id. at Art. 42.
\textsuperscript{110} See Evans, et al., \textit{supra} note 92 at VII.
\textsuperscript{111} See Phuong, \textit{supra} note 93, at 219-20.
intervention are explicitly spelled out in the Charter,\textsuperscript{112} and after the 1998 decision of the ICJ in \textit{Lockerbie}, the conflict of interventionism with international law is questionable at best.\textsuperscript{113} As such, the role of the Security Council becomes of paramount importance. There are a number of questions that can reasonably be asked about its authority and credibility: its legal capacity to authorize military intervention operations; its political will to do so; its unrepresentative membership; and its institutional double standards with the Permanent Five Security Council member state’s veto power. Of particular concern is the possibility that needed action will be held hostage to unrelated concerns of one or more of the permanent members – a situation that has too frequently occurred in the past.\textsuperscript{114} While this paper does not seek to reiterate the differing points of view on this conflict, it does hope to illustrate the concerns with a problematic reliance only on the actions of the Security Council and the fundamental importance of respecting a member state’s sovereignty. Therefore, this paper endeavors to show the strength and legitimacy of another option to harmonize the actions of member states with their obligations under treaties and conventions. This solution poses no foreseeable legal or diplomatic problems, and has a record of success in recent historical attempts. This option – an alternative to interventionism – is education and enlightenment.

2. The Implications of Education

The United Nations, whatever arguments may persist about the meaning and scope of various Charter provisions, is unquestionably the principal institution for building, consolidating

\textsuperscript{112} See Evans, et al., \textit{supra} note 92 at VII.

\textsuperscript{113} \textit{Id}.

\textsuperscript{114} In February 2012, permanent Security Council members Russia and China vetoed a Syrian peace plan that called for the ouster of Bashar Al-Assad due to what many international observers have deemed to be the importance of economics trumping the human rights violations in the region. Russia and China blocked the resolution because of what they perceived to be a potential violation of Syria’s sovereignty, which could allow for military intervention or regime change. Paul Harris; \textit{Syria resolution vetoed by Russia and China at United Nations}; \textit{THE GUARDIAN} (Feb. 4, 2012) \textit{available at} http://www.guardian.co.uk/world/2012/feb/04/assad-obama-resign-un-resolution.
and using the authority of the international community.\textsuperscript{115} It was set up to be the linchpin of order and stability, the framework within which members of the international system negotiated agreements on the rules of behavior and the legal norms of proper conduct in order to preserve the society of states.\textsuperscript{116} This paper reasons that although the United Nations, and more specifically the Security Council, has a significant interest under the United Nations Charter in peace and security matters, it certainly need not be the only remedial body to address these issues. The responsibility for protecting the lives and promoting the welfare of citizens lies first and foremost with the sovereign state, secondly with domestic authorities acting in partnership with external actors, and only thirdly with international organizations.\textsuperscript{117}

This paper finds credence for this argument, and for its belief that education serves as a viable alternative to intervention, though fundamental principles of international law and the historical examples of human rights advances in the nations of Chile and Mexico over the past generation. Throughout history, many countries have imposed certain behaviors or legislation that is completely divorced from the principles now enshrined within the Universal Declaration of Human Rights or other of the numerous international treaties or conventions. Every nation has its own history and traditions, and to believe that the best option to ensure compliance with a set of rules or norms is for an international organization to dictate the instruction of an order is to be myopic and self-righteous about one’s own perspective. The better option is to educate, and enlighten in a persuasive way. This is how the nations of Chile and Mexico came to realize greater recognition of human rights within their borders.

The following sections will describe the developments in these countries, and analogize them into a situation that could serve as a model for future solution to persuade states to comply

\textsuperscript{115} See Evans, et al., \textit{supra} note 92 at VII.

\textsuperscript{116} \textit{Id.}

\textsuperscript{117} \textit{Id.}
with the treaties and conventions to which they are a party without infringing on the supreme principle respecting the territorial sovereignty of each member state.

a. The Evolution of Human Rights in Chile

Despite the guarantee within Article 1 of the Chilean Constitutional that “All persons are born free and equal, in dignity and in rights,” many groups – particularly women – failed to realize this parity in equality for many years. When she was elected as Chile’s president in January 2006, Michelle Bachelet promised to be a different kind of politician. A pediatrician and twice-separated mother of three children, she was the first woman to be elected to the top job in a Latin American nation who was not the widow of a well-known husband. She promised a “citizens’ democracy” of greater participation. Her first cabinet was selected according to gender as much as party: half its members were women, several were independents and only two had previous ministerial experience. However, one of the most important things Bachelet did with respect to human rights was to educate the populace, prominently the women and children, of the nation of more than 17 million citizens. Bachelet organized seminars and conferences, and worked with schools and communities to educate citizens about the importance their constitutionally-guaranteed rights, and rights to which they were entitled as citizens of a United Nations member state party to numerous conventions concerning the rights of different groups.

---

118 See Chilean Constitution, Chapter 1, Art. 1.
119 Pers comm., Jorge A. Vargas, 04/19/2012.
121 Id.
122 Id.
123 Id.
124 Id.
125 Pers comm., Jorge A. Vargas, 04/19/2012.
President Bachelet opted in her campaign, and through her presidency, to make social protection and the promotion of equality of opportunity her main priority.\textsuperscript{126} Aside from simply promoting and enacting legislation, Bachelet provided an additional educational force to inform citizens of their rights through the organization of seminars, courses on human rights, promote conferences on human rights, and the like.\textsuperscript{127} Bachelet’s events and programs have demonstrated a trickle-down effect, where the attendees and parties subsequently become the voices within the internal domestic states that “move and shake the ground themselves.”\textsuperscript{128} They replicate the events and programs at a more local level – organizing seminars, educating children, enacting local legislation – all of which ensures compliance domestically and affects substantive, permanent change.\textsuperscript{129} This education brings enlightenment to the populace, bringing citizens an acknowledgement of their rights, and with it an augmented sense of power for the formerly docile groups.

Eighth and current Secretary-General of the United Nations, Ban Ki-moon, quickly realized the efficacy of President Bachelet’s actions in South America. Ban, with the assistance of United States Secretary of State Hillary Rodham Clinton, persuaded Bachelet to undertake a position with the United Nations in 2010, after her term as President had expired.\textsuperscript{130} Secretary-General Ban Ki-moon called July 2, 2010, a “watershed day.”\textsuperscript{131} That was when the General Assembly approved the creation of the United Nations Entity for Gender Equality and the

\begin{itemize}
  \item \textsuperscript{126} See \textit{The Economist}, supra note 120.
  \item \textsuperscript{127} Pers comm., Jorge A. Vargas, 04/19/2012.
  \item \textsuperscript{128} Pers comm., Jorge A. Vargas, 04/19/2012.
  \item \textsuperscript{129} See Evans, et al., \textit{supra} note 92 at VII.
  \item \textsuperscript{131} \textit{Id}.
\end{itemize}
Empowerment of Women – known simply as U.N. Women. This organization intended to give, in Ban’s words, “a much stronger voice for women and for gender equality” around the world, the organization replaced four underfunded and obscure bureaucracies devoted to women with a single entity that would finally give half the world’s population the high-profile platform it deserved. Ban, a strict adherent to the principle of territorial sovereignty, did not ask that Bachelet sign legislation, send recommendations, or anything else that could be deemed intrusive to a member state’s territorial sovereignty. Ban realized the effectiveness of Bachelet’s use of education in Chile, and hopes that she can replicate the success of her domestic programs internationally by instructing others across the globe on how they can do the same.

b. The Evolution of Human Rights in Mexico

A human rights revolution, similar to that which took place in Chile, has taken place within the nation of Mexico over the past generation. Five years after taking power, President Felipe Calderón announced additional steps to respect and protect human rights. Calderón also changed the name of Title 1, Articles 1-27, of the Political Constitution of the United Mexican States (Constitución Política de los Estados Unidos Mexicanos) and the names of the constitutional rights that had previously been called “Individual guarantees” (Garantías individuales) to being labeled “Human rights” (derechos humanos). This is more of a rhetorical action than anything substantial; but one must look to the history that allowed for this to truly understand the significance.

---

132 Id.
133 Id.
134 Id.
135 Id.
137 Pers comm., Jorge A. Vargas, 04/19/2012.
138 Pers comm., Jorge A. Vargas, 04/19/2012.
In 1990, then-President Carlos Salinas de Gortari established the National Human Rights Commission (Comisión Nacional de los Derechos Humanos) (hereinafter “national commission” or “commission”). This national commission helped draw attention to human rights violations and exerted pressure on government agencies to take action; the commission protected human rights in accordance with the rights illustrated by the Universal Declaration of Human Rights and other human rights conventions of the United Nations. This national commission was an idea that was unprecedented anywhere else in the world.

The establishment of the commission in Mexico was so effective that the government authorized the creation of state human rights commissions for each of Mexico’s thirty-one states. These commissions, like the subsequent work of President Bachelet in Chile, promoted educating the nation’s population of their constitutionally-guaranteed rights and rights through Mexico’s membership and being a signatory to United Nations human rights treaties and conventions. These thirty-two total commissions were established, and created an atmosphere that allowed the populace to finally understand the essence of human rights. This has helped the states and federal government of Mexico to provide adequate protection for women, children, indigenous peoples, and undocumented aliens, amongst others.

This example tends to convey, again, that it is by acts and deeds and by the “clicking of the minds” of the people of a state to comprehend the legal notions and principles of what constitutes human rights that affects true change at the domestic level. When a state/nation achieves a “critical mass” of people understanding these legal principles, it is only at that time

---

140 Id.
141 Id.; Pers comm., Jorge A. Vargas, 04/19/2012.
142 Pers comm., Jorge A. Vargas, 04/19/2012.
143 Pers comm., Jorge A. Vargas, 04/19/2012.
144 Pers comm., Jorge A. Vargas, 04/19/2012.
that these rights can be called “human rights.” Even a populace protected by legislation or decree that is unfamiliar with their/its rights is not protected without a knowledge of what their rights entail and guarantee.

What Chilean President Michelle Bachelet and Mexican Presidents Carlos Salinas de Gortari and Felipe Calderón did within their respective nations was to perpetuate this knowledge. This “contagion” took time to take substantive effect on the populace, but today the nationals of these nations thrive with a greater understanding of their human rights and guarantees. Until the populace gains this knowledge, the rights guaranteed to them are meaningless. This model of education and enlightenment is not a new idea, but its successes in these countries are emblematic of the progress that can be had with similar models throughout the world. Lastly, the fact that this option imposes no intrusion on the territorial sovereignty guaranteed by international law makes it the most viable, practical model for addressing the problem of guaranteeing human rights to the citizens of member states that are parties to international treaties or conventions.

IV. CONCLUSION

Whether it is the tragic human rights violations occurring today in Syria, or the inevitable dissonances with international treaties and conventions to come of the future, the international community must recognize the importance and strength of education as a solution to persuading member states to comply with their international obligations. Diplomacy is a very delicate and sensitive issue.\textsuperscript{145} The harmonious interactions and communications among members of the international community are based on the principle of respect to the sovereign powers of the state.\textsuperscript{146} International organizations play a secondary role vis-à-vis the supreme power of each

\textsuperscript{145} Pers comm., Jorge A. Vargas, 04/19/2012.
\textsuperscript{146} Pers comm., Jorge A. Vargas, 04/19/2012.
member state.\textsuperscript{147} Therefore, grassroots movements to educate a populace should and the benefits such actions have had in the recent history of Chile and Mexico should be given great respect and esteem and seen as the first option in the attempts of the international community to comply with the text of treaties or conventions to which it is a party. The repercussions of interventionism are too precarious to risk, especially in the light of the successes of the alternative available in education and enlightenment.

The responsibility for protecting the lives and promoting the welfare of citizens lies first and foremost with the sovereign state, secondly with domestic authorities acting in partnership with external actors, and only thirdly with international organizations.\textsuperscript{148} Think of the tremendous and egregious violations inflicted upon certain persons today in many countries, contrary not only to the Universal Declaration of Human Rights but also to specific treaties and conventions that protect certain groups. It is not simply an absence of political will to intervene, but the United Nations’ fundamental notion of noninterventionism, spelt out in Article 2, para. 4 of the Charter, providing that “All Members shall refrain . . . from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations,” and in Article 2, para. 7, which prohibits the United Nations from intervening “in matters which are essentially within the domestic jurisdiction of any state.”\textsuperscript{149} Despite these prohibitions, the Security Council has authorized intervention in northern Iraq, Somalia, Bosnia and Herzegovina, and Kosovo.\textsuperscript{150} However, the precarious specter of interventionism through an expansive reading of the United Nations Charter frightens many member states; understandably so, as sovereignty is the basis of the

\textsuperscript{147} Pers comm., Jorge A. Vargas, 04/19/2012.
\textsuperscript{148} See Evans, et al., supra note 92 at VII.
\textsuperscript{149} See U.N. CHARTER, Art. 2, para. 4; \textit{Id}. at Art. 2, para. 7.
\textsuperscript{150} See Phuong, \textit{supra} note 93, at 219-20.
creation of the legal entity that is the state.\textsuperscript{151} The tradition, evolution, interpretation, and application of the notion of sovereignty under the light of international law must not sway so far as to intervene into the territorial sovereignty of a member state.\textsuperscript{152} The prospect of interventionism must not permeate the discussions of the United Nations, or the international organization may begin to see an increased reticence of nations to join the United Nations, remain members, or sign onto a treaty or convention where noncompliance may beget international involvement in a member state’s domestic affairs.\textsuperscript{153}

The solution of education provides a tried and tested alternative to interventionism. The authority of the United Nations is underpinned not by coercive power, but by its role as the applicator of legitimacy. Attempts to enforce authority can only be made by the legitimate agents of that authority; here, that requires a reliance on that primary entity within international law – the state.\textsuperscript{154} The successes seen within the nations of Chile and Mexico lend credence to the notion that domestic, grassroots movements can provide as much, or even a greater influence, upon a populace as does coercive intervention. Therefore, arguments can be made both under the notions of efficiency and maintaining the strength and tradition of international law that education must trump interventionism as a remedy to the chronic problem of persuading states to comply with the text of the treaties and conventions to which they are a party without infringing on the fundamental principle of territorial sovereignty.

\textsuperscript{151} Pers comm., Jorge A. Vargas, 04/19/2012.  
\textsuperscript{152} Pers comm., Jorge A. Vargas, 04/19/2012.  
\textsuperscript{153} Pers comm., Jorge A. Vargas, 04/19/2012.  
\textsuperscript{154} Pers comm., Jorge A. Vargas, 04/19/2012.