

The United Nations

Human Rights Conventions and Treaties:

*Process of Creation, Limiting the
Effect of Conventions, Conventions
Important to Human Rights, and
Mechanisms of Enforcement*

This presentation will:

- ✧ Define a treaty or convention.
- ✧ Explain the process of creating a UN convention.
- ✧ Explain how countries limit the applicability of some conventions and treaties through derogations, reservations and limitations.
- ✧ Highlight six UN conventions important to human rights.
- ✧ Explain the UN's enforcement agencies and measures to ensure the appropriate application of conventions.

Definition of Treaty or Convention:

- ✧ “Treaty” and “convention” are interchangeable terms for a legally binding document of international law.
- ✧ Unlike declarations such as the UDHR, UN conventions and treaties create binding and enforceable law to the signing states.

Process of Creating a Treaty or Convention:

- ✧ Working groups draft a treaty and propose it to the General Assembly.
- ✧ The UN General Assembly adopts the treaty and proposes it to member states for signatures.
- ✧ Member states sign and ratify the treaty or may also object to the treaty.
- ✧ The treaty enters into force.

First Step: Drafting of the Convention

- ✧ Working Groups are formed, comprised of representatives from member states as well as from nongovernmental organizations.
- ✧ These Groups conduct studies, receive recommendations from international organizations and state members on specific issues.
- ✧ With this information, the Groups draft a treaty or convention to propose to the UN General Assembly for adoption.

Second Step: UN General Assembly Adopts the Treaty

- ✧ Once the treaty or convention has been proposed by Working Groups, the General Assembly holds a vote amongst the member states for adoption of the treaty.
- ✧ Adoption of a treaty or convention requires a two-thirds majority vote.
- ✧ In contrast, lesser decisions of the General Assembly usually require only a majority vote.

Third Step: State Involvement Signature and Ratification of the Treaty

- ✧ Member states sign and then ratify a treaty.
- ✧ A signature alone is still subject to ratification, giving the signing state signatory status only. A **signature is not legally binding** until the treaty is ratified. Signatures merely declare that the state agrees with the principles of the treaty or convention.
- ✧ **Ratification** by a state indicates their consent to be legally bound to the terms of that treaty.
- ✧ In the United States, the President signs a treaty and only **Congress may ratify a treaty**.
- ✧ The time gap between signing and ratification can be many years, thereby delaying enforcement of the treaty on a particular state.

State Objection to a Treaty

- ✧ However, any state may object to a treaty.
- ✧ This is a formal declaration of objection to the treaty, having significance beyond merely not signing that treaty.
- ✧ A declaration of objection has the effect of putting all other countries on **notice that this state does not intend for the treaty to have any legal effect** between them and another country.
- ✧ Objections may also be made to other states' reservations, such that the objecting state does not intend to honor that particular reservation.

Last Step: Entry Into Force

- ✧ The treaty's provisions specify when the treaty is to enter into force.
- ✧ Included in the provisions is either a **specific date** for the treaty to take effect OR that the treaty is to take effect **upon certain conditions being met**.
- ✧ Finally, the treaty will come into legal force for all the ratifying countries according to the guidelines set forth in its provisions.

Limiting the Effect of a Convention through Derogations, Reservations or Limitations.

- ☆ **Derogation**- the suspension of a treaty for a temporary period of time.
- ☆ **Reservation**- the alteration of certain provisions of a treaty so as to render them unenforceable on the reserving state.
- ☆ **Limitation**- the interpretation of provisions according to local laws rather than by strict adherence to international norms.

Derogations

- ✧ Derogation has the effect of **suspending part of the treaty** for a temporary period of time.
- ✧ Derogations should only be made in a time of **state emergency**, where suspension is necessary for the safety and welfare of that nation. It is presumed that once the state of emergency has lifted, the state will no longer derogate.
- ✧ There is no derogation from the five **non-derogable rights**, rights which are seen as so fundamental that a state may not suspend them even in a time of war.
- ✧ A major problem with derogation is that a state may remain in the necessary state of public emergency for years on end.

Reservations

- ✧ A reservation has the effect of excluding or legally altering certain provisions of a treaty, thereby precluding their compliance with those provisions.
- ✧ Along with the signature or ratification, the state will submit specific language of "we ratify subject to..."
- ✧ Ratifications are allowed so long as they are **not incompatible with the "object and purpose" of the treaty.**
- ✧ The UN Human Rights Committee will decide if the proposed reservation is “legal”, in that it is not contrary to the purpose of the treaty.
- ✧ Some treaties do not allow for reservations.

Limitations

- ✧ The **Universal Declaration of Human Rights** allows for states to make limitations to treaties as determined by the written laws of that particular state.
- ✧ Unlike reservations or derogations, limitations are invoked by **local state laws** rather than written into the treaty itself.
- ✧ Limitations allow for the interpretation of treaties to be **culturally relative**, in that the states are allowed national discretion in defining certain elements of the provisions and do not have to interpret strictly according to international norms.
- ✧ While the UDHR provides for this margin of appreciation, limitations must be in the written laws of the state and limitations may not arbitrarily applied.
- ✧ Limitations are **never allowed from the five categories of non-derogable rights**, like torture or freedom from slavery.

6 Important Human Rights Conventions :

- ✧ International Covenant on Economic, Social and Cultural Rights (**ICESCR**)
- ✧ International Covenant on Civil and Political Rights (**ICCPR**)
- ✧ International Convention on the Elimination of All Forms of Racism (**CERD**)
- ✧ Convention on the Elimination of All Forms of Discrimination Against Women (**CEDAW**)
- ✧ Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (**CAT**)
- ✧ Convention on the Rights of the Child (**CRC**)

International Covenant on Economic, Social and Cultural Rights (ICESCR)

- ☆ This convention codifies a host of legal principles from the UDHR.
- ☆ Specifically, it protects core economic and social rights of people, including the rights to **employment of one's choice, fair wages, safe and healthy working conditions, equal work opportunity, reasonable working hours, form trade unions, strike, social security, maternity leave** and other protections.
- ◆ Adopted on December 16, 1966 by the UN General Assembly.
- ◆ 145 signing state parties.
- ◆ 7 signatories.
- ◆ The United States signed ICESCR in October of 1977, but has not yet ratified.

International Covenant on Civil and Political Rights (ICCPR)

- ☆ This convention protects the internationally recognized basic and inherent rights of people.
- ☆ Specifically, it protects people's rights to **life, pardon from death penalty, freedom from torture or cruel punishment, freedom from scientific experimentation and slavery, liberty of movement, equality before the courts, freedom of thought and religion, peaceful assembly, and to marry and have a family.**
- ◆ **Adopted by the UN General Assembly on December 16, 1966.**
- ◆ **148 signing state parties.**
- ◆ **8 signatories.**
- ◆ **United States ratified the ICCPR on June 8, 1992, with exception including that these rights could not be enforced in US courts.**

International Convention on the Elimination of All Forms of Racial Discrimination (CERD)

- ☆ This convention affirms the elimination of racist practices and discrimination based on race or ethnic origin.
- ☆ CERD specifically advances **racial equality before the law, the condemnation of organizations which promote superiority and racial hatred, adoption of educational and cultural programs to promote racial tolerance,** and other measures to control racial discrimination.
- ◆ Adopted by the UN General Assembly on December 21, 1965.
- ◆ 162 signing state parties.
- ◆ 9 signatories.
- ◆ U.S. ratified CERD in October 1994, with the reservation that the U.S. Constitution grants greater freedom of expression and such will not be restricted by this Convention.

Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)

- ☆ This convention ensures the equality of women and prevention of their exploitation.
- ☆ CEDAW expressly provides for individual states' **legislative measures to protect the human rights and fundamental freedoms** of women, **to suppress prostitution, exploitation and traffic of women, equal right to vote and participate in government, equal access to education, employment, and health care**, and other rights.
- ◆ Adopted by the UN General Assembly on December 18, 1979.
- ◆ 170 signing parties.
- ◆ 3 signatories.
- ◆ United States signed CEDAW in July 1980, but has not yet ratified.
- ◆ Other signing-only states include Afghanistan and Sao Tome.

Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)

- ☆ This convention bans government sponsored torture under all circumstances and provides for victims' rights to fair prosecution.
- ☆ Specifically, CAT mandates that states **make torture illegal**, promptly and impartially **investigate and prosecute against torture**, **forbid the extradition of someone facing torture**, and other preclusions of torture and other acts that rise to cruel, inhuman or degrading treatment.
- ◆ Adopted by the UN General Assembly on December 10, 1994.
- ◆ 130 signing parties.
- ◆ 11 signatories.
- ◆ U.S. ratified CAT in October 1994, with reservation.

Convention on the Rights of the Child (CRC)

- ☆ The CRC enumerates three categories of children's rights: protections, provisions for basic needs, and program rights.
- ☆ Specifically, the CRC mandates for **minimal nutritional, health care and educational standards, social programs, children's freedom of thought and privacy, protection from abuse and economic and sexual exploitation, child's right to leisure and play**, and many other measures for the protection and **physical and emotional development** of children.
- ◆ Adopted by the UN General Assembly on November 20, 1989.
- ◆ 191 signing states.
- ◆ 2 signatories.
- ◆ United States is one of only two signatory countries, with Somalia being the other. The U.S. has yet to ratify the CRC.

Enforcing the Conventions

✧ Monitoring state
commitment
through progress
reports

✧ The role of Special
Rapporteurs

Monitoring State Commitment to the Treaty

- ◆ Once a treaty is ratified, the signing country has committed itself to providing the means by which the convention's principles maybe implemented: passing of laws, initiating government programming, and other means to achieve the aims.
- ◆ Each country is expected to make occasional reports to the United Nations General Assembly, updating on the actions that they have taken to implement the principles of the convention.
- ◆ Special Rapporteurs may be assigned to monitor a country's progress on a particular convention and conduct independence investigations on behalf of the United Nations.
- ◆ There are no set reprimands for when a country deviates from a ratified treaty. However, the effect of non-compliance with a ratified treaty may be more felt in the non-complying country's diplomatic relations with other member states.

The Role of Special Rapporteurs

- ✧ Special Rapporteurs are assigned to a specific country to follow-up on that country's progress in implementing their commitment to a convention's principles.
- ✧ SRs have expertise on a certain topic and operate much like lawyers in evaluating a country's commitment to the convention.
- ✧ SRs conduct country-based studies, including on-site investigations, to determine the country's progress and adherence to that convention.
- ✧ SRs meet annually with the UN sub-commissions to discuss their reports and provide recommendations for action against a non-complying country.

In Summation:

- ◆ The United Nations has created Human Rights conventions for which its member states have varying levels of commitment.
- ◆ To facilitate member states' compliance to the principles of a convention on some level, states are afforded individual limitations and reservations allowing them a degree of cultural relativity over adhering to strict international norms.
- ◆ While accountability for the deviation from conventions is not strictly enforced, the United Nations continues to monitor states' progress through the use of Special Rapporteurs and progress reports.