

60 YEARS OF THE UNIVERSAL DECLARATION OF HUMAN RIGHTS: TOWARDS AN INDIVIDUAL RESPONSIBILITY TO PROTECT

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INTRODUCTION

“The idea that the protection of human rights knows no international boundaries and that the international community has an obligation to ensure that governments guarantee and

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protect human rights has gradually captured the imagination of mankind.”¹

The Universal Declaration of Human Rights (“UDHR”)² is the founding document of the law of human rights. But in addition to its role as the progenitor of an ever-increasing body of convention-based human rights law, the normative impact of the UDHR can be felt in the activist efforts of individuals and groups who protest violations of, and ensure respect for, the human rights of people whom they have never met. Despite the fact that the body of human rights law stemming from the UDHR only enshrines obligations upon states and organizations made up of states, the UDHR’s powerful moral focus has fostered the development of a contemporary “individual responsibility to protect” norm.

The UDHR’s moral, rather than legal, focus arose both out of the desire to respond forcefully to the evils perpetrated by Nazi Germany³ and the reluctance on the part of powerful states to take on legal obligations that would impinge upon their sovereignty. Consequently, while the UDHR represents a profound statement of global unanimity on the moral rights of individuals, its drafting history reveals a clear intent not to impose corresponding legal duties upon states.⁴ Although the UDHR was intended as an immediate precursor to an international bill of rights that *would* impose binding legal obligations upon states, nearly three decades passed before those obligations entered into force.⁵ In the intervening twenty-eight years, the global public’s growing awareness of the concept of

1. Thomas Buergenthal, *The Normative and Institutional Evolution of International Human Rights*, 19 HUM. RTS. Q. 703, 704 (1997).

2. Universal Declaration of Human Rights, G.A. Res. 217A, U.N. GAOR, 3d Sess., 1st plen. Mtg., U.N. Doc. A/810 (Dec. 10, 1948) [hereinafter UDHR].

3. See JAMES AVERY JOYCE, *THE NEW POLITICS OF RIGHTS* 45 (St. Martin’s Press 1978) (“The Universal Declaration was humanity’s unanimous response to the Nazi death camps, the fleeing refugees, and the tortured prisoners of war.”).

4. See Hersch Lauterpacht, *The Universal Declaration of Human Rights*, 25 BRIT. Y.B. INT’L L. 354, 356 (1948) (remarking that the drafters were relatively undisturbed by the idea of a acknowledging universal human rights without also providing a binding legal framework for the enforcement of those rights).

5. See International Covenant on Economic, Social and Cultural Rights Jan. 3, 1976, 933 U.N.T.S. 3; see also International Covenant on Civil and Political Rights, Mar. 23, 1976, 99 U.N.T.S. 171.

universal human rights was based upon the moral imperatives expressed by the UDHR.

This moral inflection to our understanding of human rights has persisted despite the creation of an extensive legal regime dedicated to promoting and protecting human rights. One of the most effective methods for encouraging state compliance with the dictates of human rights law has been the practice of focusing moral opprobrium upon violators, popularly known as “naming and shaming.”⁶ Cynics might suggest that this use of moral sanction has arisen solely because of imperfect legal enforcement. It is certainly true that states have little incentive to police one another’s compliance with the legal regime given that violations pose no obvious detriment to the potentially enforcing states. However, the power and efficacy of “naming and shaming” suggest that its persistent use must stem from more than just the inadequacy of legal enforcement: it is derived from the UDHR’s encapsulation of the idea that human rights are accompanied by moral obligations.⁷

This idea that the international community has moral obligations to individuals has recently been the subject of discussion in the debate over the emerging Responsibility to Protect (“R2P”) norm. R2P is an effort at providing new moral guidelines to humanitarian intervention that recharacterizes sovereignty as responsibility.⁸ States have an obligation to protect their citizens from humanitarian disaster, and when they fail, that obligation falls upon the international community.

6. See discussion *infra*, § II.b.

7. See UDHR, *supra* note 2, paras. 6, 8 (recognizing that U.N. member states have pledged to respect, observe, and protect human rights and proclaiming that every nation should strive to secure the human rights standards detailed in the UDHR).

8. See generally INTERNATIONAL COMMISSION ON INTERVENTION AND STATE SOVEREIGNTY, THE RESPONSIBILITY TO PROTECT: REPORT OF THE INTERNATIONAL COMMISSION ON INTERVENTION AND STATE SOVEREIGNTY, §§ 2.14-2.15 (Dec. 2001) [hereinafter ICISS REPORT] (challenging U.N. Charter signatories to recognize sovereignty not as control but as both an internal and external responsibility to protect, including 1) the responsibility of state authorities to the citizens, 2) the responsibility of national political authorities to citizens and to the global community, and 3) accountability on the part of state actors for their actions).

In addition to laying the groundwork for the emerging R2P norm, the UDHR has also fostered the idea that it is incumbent upon the *individual*, as a member of the global community, to promote and protect human rights.⁹ This conviction can be seen in the literature of current campaigns to end genocide that implicitly base their calls for individual participation on a moral obligation grounded in human rights.¹⁰ In this way, the UDHR's normative impact as the moral compact of the global community continues to grow.

I. THE UDHR'S MORAL FOCUS

Mary Robinson, the former U.N. High Commissioner for Human Rights, has described the UDHR as "one of the great aspirational documents of our human history."¹¹ The document arose out of the international community's horror-stricken desire to send a firm message of "never again" regarding the atrocities of the Holocaust.¹² However, the UDHR itself reflects the realities of compromise between the new commitment to human rights and resistance to relinquishing state sovereignty.¹³

Although the UDHR represents a "ringing declaration that all human beings are born free and equal in dignity and rights,"¹⁴ its drafters were careful to ensure that its provisions would have no binding legal effect.¹⁵ The mandate to impose legal obligations upon

9. UDHR, *supra* note 2, pmbl. para. 8.

10. *See, e.g., infra* notes 93-100 and accompanying text (examining techniques used to call individuals to action to respond to the current situation in The Sudan).

11. Mary Robinson, UN High Comm'r for Human Rights, Romanes Lecture at Oxford University: Realizing Human Rights: "Take Hold of it Boldly and Duly . . ." (Nov. 11, 1997), <http://www.un.org/rights/50/dpi1938.htm>.

12. *See* Johannes Morsink, *World War Two and the Universal Declaration*, 15 HUMAN RTS. Q. 357, 357-58 (1993) (explaining that the drafters intended the UDHR not only as a response to the Second World War, but also as a way to enshrine universal human rights in a way that would outlast the memories of the War).

13. *See* Lauterpacht, *supra* note 4, at 356 ("The practical unanimity of the Members of the United Nations in stressing the importance of the [UDHR] was accompanied by an equally general repudiation of the idea that the [UDHR] imposed upon them a legal obligation to respect the human rights and fundamental freedoms which it proclaimed.")

14. Oscar Schachter, *The Genesis of the Declaration: A Fresh Examination*, 11 PACE INT'L L. REV. 27, 57 (1999).

15. *See* Tai-Heng Cheng, *The Universal Declaration of Human Rights at Sixty:*

states was reserved for the International Covenant on Civil and Political Rights (“ICCPR”) and the International Covenant on Economic, Social, and Cultural Rights (“ICESCR”), which followed twenty-eight years later.

A. THE CALL FOR A HUMAN RIGHTS DOCUMENT

With the world still reeling from the horrors of the Holocaust, the international community struggled to reconstitute itself in the aftermath of World War II. The League of Nations’s failure to prevent the war made it clear that a new international organization was needed to promote international peace and security.¹⁶ Although the term “United Nations” initially referred to those nations united in war against the Axis powers,¹⁷ the Allies quickly began to use it in their discussions of a successor organization to the League of Nations.

Nazi Germany’s persecution of Jews and other minorities had made it apparent that a government’s abuse of its citizens could no longer be considered a matter of purely domestic concern,¹⁸ and in the early 1940s global public opinion militated strongly for “some sort of human rights plank in the eventual peace treaties.”¹⁹ The drafters of the U.N. Charter agreed that providing for human rights should be one of the primary aims of the new global organization, committing the newly formed United Nations to work to “achieve international co-operation in solving international problems of an

Is It Still Right for the United States? 41 CORNELL INT’L L.J. 251, 262 (2008) (observing that contemporaneous records of the drafting committee’s discussions emphasized the committee’s determination that the power of the UDHR would lie in its moral correctness rather than the imposition of legally binding obligations).

16. See Buergenthal, *supra* note 1, at 706 (discussing the theory that Hitler’s rise to power may have been prevented if there had been a stronger international organization than the League of Nations in existence).

17. United Nations, Joint Declaration of the United Nations on the Cooperative War Effort of the Democracies (Jan. 2, 1942), in DEP’T ST. BULL., Jan. 3, 1942, at 3 (welcoming other nations to be part of a Joint Declaration by the United Nations if those other nations also opposed Hitler).

18. See Morsink, *supra* note 12, at 358 (“The horrors of the Holocaust shocked the delegates and the countries they represented into a reaffirmation and reiteration of the existence of human rights.”)

19. JOHANNES MORSINK, *THE UNIVERSAL DECLARATION OF HUMAN RIGHTS: ORIGINS, DRAFTING, AND INTENT 1* (Univ. of Pa. Press 1999).

economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion.”²⁰ In line with this goal, Article 55 of the Charter states that “the United Nations shall promote . . . universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.”²¹

Despite proposals to define these “human rights and fundamental freedoms,” the Charter did not itself enumerate them.²² That task was given to the newly established Commission on Human Rights (“the Commission”). The Commission was asked to prepare an international bill of rights which would “serve as a common standard of achievement for all peoples of all nations.”²³

B. THE DRAFTING OF THE UDHR

The Commission on Human Rights, chaired by U.S. representative Eleanor Roosevelt, met for the first time in early 1947. It comprised eighteen members, with five representing the great powers, and thirteen representing the rotating members.²⁴ In response to the call for an international bill of rights the commission decided that it would produce three instruments: first, “a non-binding declaration to be adopted by the General Assembly under its recommendatory authority,” second, a bill of rights, and third, a “Methods of Implementation” document.²⁵ The French representative, René

20. U.N. Charter art.1, para. 3.

21. U.N. Charter art. 55(c).

22. See Schachter, *supra* note 14, at 53 (explaining how the major powers preferred including human rights as a purpose or objective within the Charter without enumerating rights within the Charter or forming a separate treaty, as suggested by the Latin American group).

23. See Eleanor Roosevelt, U.S. Representative to the General Assembly, Statement during the General Assembly’s Adoption of the UDHR (Dec. 9, 1948), in DEP’T ST. BULL., Dec. 19, 1948, at 751 (emphasizing that the UDHR is not intended to be a treaty or an international agreement but a set of broad principles of rights and freedoms).

24. See MORSINK, *supra* note 19, at 4.

25. Schachter, *supra* note 14, at 55.

Cassin, was primarily responsible for the drafting process of the UDHR; he later received a Nobel Peace Prize for his work.²⁶

Cassin's draft was grounded in natural law principles²⁷ and visualized the structure of human rights as a temple founded on four pillars: civil, social, political, and economic rights.²⁸ While considering the UDHR, some representatives of the Economic and Social Committee ("ECOSOC") expressed concern about the lack of enforcement provisions.²⁹ However, the ECOSOC unanimously agreed to forward the draft to the U.N. General Assembly.³⁰

The draft UDHR was next taken up by the Third Committee of the General Assembly, where things did not go as smoothly.³¹ Cold War tensions had "reached a new level of intensity"³² and the Soviet Union insisted that the Third Committee reproduce the work of the commission and "debate and vote on the whole Declaration, article by article and line by line."³³ Eventually, after over two months of debates, and owing in large part to the diplomatic efforts of Eleanor Roosevelt and Charles Malik of Lebanon, the UDHR was forwarded to the General Assembly where it was adopted on December 10,

26. See Mary Ann Glendon, *Knowing the Universal Declaration of Human Rights*, 73 NOTRE DAME L. REV. 1153, 1158 (1998) (highlighting Cassin's career as a preeminent comparative lawyer who was previously employed as Charles de Gaulle's principal legal advisor in World War II and was responsible for rehabilitating the French administrative system after the war).

27. See Schachter, *supra* note 14, at 55-6 ("[I]t is pretty clear that the philosophic perspective of the drafting bodies was in the natural law orientation. Nobody even suggested that the [UDHR] or the other instruments should be based on existing positive law.").

28. See HUMAN RIGHTS IN THE WORLD COMMUNITY: ISSUES AND ACTION 162 (Richard Pierre Claude et al. eds., Univ. of Pa. Press 3d ed. 2006) (describing Cassin's fifth aspect of his natural law formulation as the "pediment of the [human rights] temple," which symbolized the harmonization of human rights provisions and governments' support of human rights).

29. See Cheng, *supra* note 15, at 265 (noting comments by the Dutch, New Zealand, Denmark and Soviet delegates that the UDHR would be "meaningless" if it lacked an enforcement mechanism).

30. See Glendon, *supra* note 26, at 1160.

31. See *id.* (quoting Eleanor Roosevelt's statement that "[w]e thought we were presenting such a good draft that there would be very little discussion. We found we were mistaken. In the big committee they argued every word And so we had some terrible times in Paris.").

32. Richard N. Gardner, *The Genesis of the Declaration: A Fresh Examination*, 11 PACE INT'L L. REV. 27, 39 (1999).

33. *Id.*

1948 by a vote of forty-eight in favor, none opposing, and eight abstaining.³⁴

C. THE NORMATIVE IMPACT OF THE UDHR

The newly-adopted UDHR was viewed by its framers as “a first step in a great evolutionary process.”³⁵ The delegates agreed that it would have no binding authority over states, but they hoped that it “would define the human rights which states undertook to recognize and would serve as a criterion to guide and stimulate them.”³⁶ The United States, in particular, was adamant that the UDHR “was not a legal document and possessed no legally binding force,”³⁷ but was instead “a declaration of basic principles of human rights and freedoms.”³⁸

In introducing the document, the President of the General Assembly pointed out that, although the UDHR neither effectuates human rights nor contains provisions for their enforcement, its impact would still be profound because:

It is the first occasion on which the organized community of nations has made a declaration on human rights and fundamental freedoms, and it has the authority of the body of the United Nations as a whole, and millions of people, men, women, and children all over the world, many miles from Paris and New York, will turn for help, guidance and inspiration to this document.³⁹

34. See Glendon, *supra* note 26, at 1162 (noting that the General Assembly gave Charles Malik of Lebanon and Eleanor Roosevelt a standing ovation); see also Gardner, *supra* note 32, at 39 (noting that the UDHR passed at 3:00 a.m. and that “the Soviet Union and its satellites, Saudi Arabia, and South Africa” abstained from the vote).

35. See Lauterpacht, *supra* note 4, at 354 (quoting the Verbatim Record of the General Assembly, U.N. GAOR, 3d sess., 183d plen. mtg. at 166, U.N. Doc. A/PV (Dec. 10, 1948)).

36. See Cheng, *supra* note 15, at 266 (quoting the Mexican Representative).

37. Lauterpacht, *supra* note 4, at 357.

38. Roosevelt, *supra* note 23, at 751.

39. See Lauterpacht, *supra* note 4, at 354 (quoting the Verbatim Record of the General Assembly, U.N. GAOR, 3d sess., 183d plen. mtg. at 166, U.N. Doc. A/PV (Dec. 10, 1948)).

Other delegates echoed this conviction of the UDHR's moral power throughout the drafting procedure. The Belgian representative described the UDHR as having "a moral value and authority which is without precedent in the history of the world."⁴⁰ He continued:

There will be, therefore, very great moral prestige and moral authority attaching to this [d]eclaration. Therefore the man in the street claiming certain rights would not simply be an isolated voice crying in the wilderness; it will be a voice upheld by all the peoples of the world represented at this Assembly.⁴¹

The drafters were explicit that the moral authority of the UDHR was not diminished by its lack of provision for legal enforcement. As the representative of the United Kingdom explained during the Third Committee debates, the UDHR had "great moral authority, through the proclamation of an ideal, even though it could not impose specific obligations."⁴² In the words of Professor Hersch Lauterpacht, who felt strongly that the document's authority *was* called into question by its lack of legal status, the drafters maintained that:

[A]ny . . . inconsistency between the fact of the general agreement as to what are fundamental human rights and the refusal to recognize them as juridically binding in the sphere of conduct was fully resolved by the acknowledgment of their validity in the realm of conscience and ethics.⁴³

Consequently, the incipient human rights regime was founded on a profound statement of the moral will of the international community whose passage "was dependent upon rejection of its bindingness upon sovereign states."⁴⁴ The UDHR's intentionally limited legal

40. *Id.* at 355.

41. *Id.*

42. *Id.* at 359-60 (quoting A/C.3/SR.89, p.2).

43. *Id.* at 357.

44. Kenneth Henley, *Human Rights and the Rule of Law*, in *UNIVERSAL HUMAN RIGHTS: MORAL ORDER IN A DIVIDED WORLD* 174 (David A. Ready et al. eds., Roman & Littlefield 2005) (explaining how the lack of legally binding authority in the UDHR exacerbated the "puzzle of vindication" which he identifies as both the absence of "practical reality to supposed human rights" and the absence of "any consensus about which rights should be universal and who possesses them").

impact would have lasting results upon the development and character of the international human rights regime.

II. HUMAN RIGHTS AS A MORAL ENTERPRISE

Although the adoption of the UDHR generated pro-human rights momentum, as a result of Cold War political tensions the drafting of the two conventions making up the International Bill of Rights was not complete until the late 1960s.⁴⁵ Even after the ICCPR and the ICESCR entered into legal force in 1976, policing compliance with human rights law remained heavily morally inflected. As such, NGOs developed the practice of “naming and shaming” governments into remedying human rights violations.⁴⁶

Despite the absence of perfect legal enforcement of human rights law, “[s]lowly, imperceptibly, how any state treated any human being became, in principle and to some extent in fact, ‘of international concern,’ *everybody’s* business.”⁴⁷ In this way, the UDHR fostered the belief that not only is compliance with human rights norms a moral duty on the part of states; the entire international community is morally obligated not to stand by in the face of a government’s abuse of its citizens.

A. THE DELAY IN ACHIEVING AN INTERNATIONAL BILL OF RIGHTS

The adoption of the UDHR proved to be a high water mark for global consensus on the substance of human rights. Progress on the International Bill of Rights was quickly stymied by Cold War ideological divisions.⁴⁸ In 1952, the General Assembly agreed to split

45. See Glendon, *supra* note 26, at 1173 (noting the disappointment of the UDHR’s framers at the “scandalous politicization of U.N. agencies” that stalled the implementation of human rights projects under the UDHR).

46. See Kenneth Roth, *Defending Economic, Social and Cultural Rights: Practical Issues Faced by an International Human Rights Organization*, 26 HUM. RTS. Q. 63, 67 (2004) (noting that “the core of [NGOs’] methodology is [their] ability to investigate, expose, and shame”).

47. Louis Henkin, *Human Rights and State “Sovereignty”*, 25 GA. J. INT’L & COMP. L. 31, 34 (1995) [hereinafter Henkin, *Human Rights*].

48. See Leslie Armour, *Economic Rights and Philosophical Anthropology*, in PHILOSOPHICAL THEORY AND THE UNIVERSAL DECLARATION OF HUMAN RIGHTS 41 (William Sweet ed., Univ. of Ottawa Press 2003) (remarking that at the time that the UDHR was adopted, human rights were divided into “traditional personal

the project into two separate conventions,⁴⁹ with the ICCPR representing the liberal democratic focus on individual rights, and the ICESCR representing the Eastern Bloc's focus on collective rights.⁵⁰

The drafts of these documents were presented to the General Assembly in 1954, but were not adopted until December 16, 1966.⁵¹ They came into force ten years later following ratification by thirty-five parties.⁵² These two conventions were "only the inaugural salvo of what would become a streak of successive international treaties that sought to entrench minimal guarantees for human rights protections."⁵³ States have subsequently widely acceded to a number of international covenants that create domestic legal obligations vis-à-vis their citizens.⁵⁴

rights and liberties" on one hand, and "economic rights" on the other).

49. See JOYCE, *supra* note 3, at 59 (concluding that the two Covenants are effectively part of one piece used to implement the Charter as the General Assembly simultaneously adopted both in 1966, and further noting that a number of members of the Human Rights Commission asserted that it would be not only impossible but also meaningless to recognize the rights enumerated in one Covenant without also recognizing the rights enumerated in the other).

50. See Armour, *supra* note 48, at 41 (differentiating between the West and the Eastern Bloc by explaining the expansiveness of freedom of speech and religion and political freedoms in the West versus the low unemployment rates, universal healthcare, and general accessibility of free education in Eastern Bloc nations).

51. G.A. Res. 2200, at 49, U.N. GAOR, 21st Sess., Supp. No. 16, U.N. Doc. A/6316 (Dec. 16, 1966).

52. See JOYCE, *supra* note 3, at 46; see also Office of the High Commissioner for Human Rights, Ratifications and Reservations, <http://www2.ohchr.org/english/bodies/ratification> (follow "International Covenant on Civil and Political Rights" hyperlink) (last visited Sept. 15, 2009) (listing the current 164 parties to the ICCPR); *id.* (follow "International Covenant on Economic, Social and Cultural Rights" hyperlink) (listing the current 160 parties to the ICESCR).

53. Robert Charles Blitt, *Who Will Watch the Watchdogs? Human Rights Nongovernmental Organizations and the Case for Regulation*, 10 BUFF. HUM. RTS. L. REV. 261, 268 (2004).

54. Louis Henkin, *Lecture, That "S" Word: Sovereignty, and Globalization, and Human Rights, Et Cetera*, 68 FORDHAM L. REV. 1, 5 (1999) [hereinafter Henkin, *Lecture*] (observing that states have chosen to adopt international covenants despite their reluctance to relinquish their sovereignty); see also Office of the High Commissioner for Human Rights, Ratifications and Reservations, *supra* note 52 (listing the current states that are party to the human rights conventions as follows: 140 states are currently parties to the Genocide Convention; 193 to the Convention on the Rights of the Child; 146 to the Convention Against Torture; 173 to the Convention on the Elimination of All Forms of Racial Discrimination; and 185 to the Convention on the Elimination of Discrimination Against Women).

Although the adoption of the ICCPR and ICESCR signified a “seismic shift” that “mov[ed] the notion of human rights from one of vague moral principles to legally binding norms,”⁵⁵ it did not draw global attention the way the proclamation of the UDHR had.⁵⁶ Although the new legal obligations provided a welcome tool for promoting respect for human rights by states, their late arrival on the scene meant that they were incorporated into a pre-existing system of policing compliance, one based upon the moral imperatives of the UDHR. In the absence of binding international law, the UDHR alone had provided only “the blueprint that would serve to guide virtually all human rights developments from 1948 forward.”⁵⁷ This resulted in an entrenched reliance on tools for encouraging compliance that were dependent on moral rhetoric arising out of the UDHR’s resounding call to responsibility.

B. “NAMING AND SHAMING”

Describing the international human rights regime in 1998, Louis Henkin said: “[s]tates can be shamed, and the system resorts increasingly to mobilizing shame.”⁵⁸ This mobilization of shame has been a primary focus of the work of human rights NGOs.⁵⁹ Organizations like Amnesty International and Human Rights Watch report abuses of human rights in order to expose violators to moral opprobrium.⁶⁰

55. Blitt, *supra* note 53, at 268.

56. JOYCE, *supra* note 3, at 46 (attributing the scant attention paid to the two covenants to a general apathy with which the world regarded human rights absent a “blatant violation of human rights”).

57. Blitt, *supra* note 53, at 267.

58. Henkin, *Human Rights*, *supra* note 47, at 44.

59. See Leonard Rubenstein, *Response by Leonard S. Rubenstein*, 26 HUM. RTS. Q. 879, 881 (2004) (characterizing part of the “urgent business” of NGOs as informing public opinion and impacting the ways in which political leaders respond to human rights violations).

60. See Sandeep Gopalan, *Alternative Sanctions and Social Norms in International Law: The Case of Abu Ghraib*, 2007 MICH. ST. L. REV. 785, 820 (2007) (explaining that Amnesty International employs advertisements, print media, and the Internet as major tools in its shaming practices); see also *id.* at 829 (using the Human Rights Watch’s 2005 report, which highlighted the U.S. government’s use of torture at Abu Ghraib, as an example of the type of moral rhetoric that NGOs call on when disseminating information to the public in order to influence public opinion with respect to a human rights violation).

William Schultz, the executive director of Amnesty International, identifies the goal of these efforts: “The eyes of the world [will shine] on the prisons and into the dark corners of police stations and military barracks all over the world to try to bring international pressure to bear upon governments which are committing human rights violations.”⁶¹ Similarly, Kenneth Roth, the executive director of Human Rights Watch, argues that organizations like Human Rights Watch have an impact because they use their resources to hold officials accountable for their actions by exposing those actions to the public and “generat[ing] public outrage.”⁶²

The UDHR has provided a “point of departure for the concern and activism of [NGOs].”⁶³ These organizations have used the UDHR’s definition of human rights, and have identified actions that do not adhere to the UDHR as actions meriting a targeted response.⁶⁴ The use of targeted moral outrage and the mobilization of shame to police compliance with human rights obligations is not limited to NGOs. For example, naming and shaming has become widely used by domestic human rights organizations.⁶⁵

C. THE VALUE OF THE MORAL FOCUS

Critics of the international human rights regime “scoff at the primitive character of ‘human rights enforcement,’”⁶⁶ and suggest

61. Bill Steigerwald, *Human Rights and Wrongs*, PITTSBURGH TRIB. REV., Mar. 29, 2003, available at http://pittsburghlive.com/x/pittsburghtrib/opinion/columnists/steigerwald-/s_126235.html.

62. Roth, *supra* note 46, at 67.

63. WILLIAM KOREY, *NGOs AND THE UNIVERSAL DECLARATION OF HUMAN RIGHTS: “A CURIOUS GRAPEVINE”* 44 (St. Martin’s Press 1998) (emphasizing that the UDHR could be used to criticize governments for failing to comply with international obligations).

64. See Gopalan, *supra* note 60, at 882 (referring in particular to Amnesty International, and comparing its function to that of a prosecutor).

65. Leonard S. Rubenstein, *How International Human Rights Organizations Can Advance Economic, Social, and Cultural Rights: A Response to Kenneth Roth*, 26 HUM. RTS. Q. 845, 848 (2004) (“Indeed, naming and shaming has become so universal a methodology that it is a staple not only of international human rights organizations but also of national and community-based human rights groups, UN agencies and rapporteurs, and even government-sponsored human rights reports.”)

66. Henkin, *Human Rights*, *supra* note 47, at 41 (referencing the weak nature of enforcement resulting from the special character of international human rights law and human rights victims, which prevents “horizontal enforcement”).

that moral sanctions are a necessary substitute for legal sanctions “because international law instruments like the [UDHR] have no teeth.”⁶⁷ According to this line of thinking, we are reduced to supporting human rights in moral terms because the legal structure is insufficient.

While the lack of reliable legal sanction against violators indeed complicates efforts to vindicate the rights outlined in the UDHR, the reliance on moral arguments in the human rights context should not be viewed as a poor substitute for legal enforcement. Grounding human rights in the language of moral duty has promoted a widely-held view of human rights commitments as something more powerful, even inspiring, than legal obligation. It has fostered the growth of an international community founded on the idea of our shared responsibility for each others’ well-being. As noted by Professor Louis Henkin, human rights norms have gained a *jus cogens*-like status that “is not the result of practice but the product of common consensus from which few dare dissent.”⁶⁸

III. THE INDIVIDUAL OBLIGATION TO PROTECT

The widespread acceptance of the international community’s moral obligation to individuals has led to a recent “sophisticated attempt at establishing a moral guideline for international action in the face of humanitarian emergency,”⁶⁹ the emerging Responsibility to Protect (“R2P”) norm. The concept was first introduced in late 2001 by a commission sponsored by the government of Canada, but has quickly become part of the international discourse on humanitarian intervention and state sovereignty.⁷⁰ R2P is regularly

67. See Gopalan, *supra* note 60, at 820 (maintaining that sometimes the offending state may not have ratified a legal instrument, making moral arguments a necessity).

68. Henkin, *Human Rights*, *supra* note 47, at 39.

69. Graham Day & Christopher Freeman, *Operationalising the Responsibility to Protect – the Policekeeping Approach*, 11 GLOBAL GOVERNANCE 139, 139 (2005) (referring to the 2001 report of the International Commission on Intervention and State Sovereignty organized by U.N. Secretary-General Kofi Annan).

70. See, e.g., International Coalition for the Responsibility to Protect, Special Adviser with A Focus on the Responsibility to Protect, <http://www.responsibilityto-protect.org/index.php/edward-luck-special-adviser-with-a-focus-on-the-responsibility-to-protect> (last visited Sept. 15, 2009) (reporting that with the

invoked by human rights advocates campaigning for international action on ongoing mass atrocities like those currently occurring in the eastern Congo and Darfur.⁷¹ The R2P provides a doctrinal basis for the moral instinct that “a nation forfeits its right to sovereignty if it unleashes or is unable to prevent massive human-rights abuses on its soil.”⁷²

The gradual process of operationalizing the R2P norm has required the international community to reaffirm its commitment to the principles outlined by the UDHR, and its emerging norm has also had another, unlooked for, result. It has provided a paradigm, the “individual responsibility to protect” for discussing individual activism on human rights.⁷³ Campaigns comprising individuals and coalitions with large numbers of non-human rights professional members are an increasingly prominent and effective part of the human rights landscape. The success of these campaigns is dependent on an understanding that individuals are morally obligated to ensure the protection of human rights. This sense of an individual moral obligation can be traced directly back to the UDHR’s underlying philosophical premise that everyone bears the responsibility of promoting universal respect for human rights.

support of the General Assembly, U.N. Secretary-General Ban Ki-moon has appointed a Special Adviser focused on R2P, whose role is to develop conceptual clarity and consensus for the evolving norm).

71. See *Protecting the Vulnerable: What Congo Means for Obama*, ECONOMIST, Nov. 13, 2008, at 55, available at http://www.economist.com/opinion/displaystory.cfm?story_id=12601948 (arguing for intervention in the Congo and noting that “the UN has accepted a responsibility to protect people in such cases”); see also William G. O’Neill, *The Responsibility to Protect Darfur*, CHRISTIAN SCI. MONITOR, Sept. 28, 2006, at 9, available at <http://www.csmonitor.com/2006/0928/p09s01-coop.html> (arguing that under the responsibility to protect the United Nations should send a peacekeeping force to Darfur, and further noting that the Security Council does not need Sudan’s consent in order to do so).

72. Alex Perry, *Why Congo’s Peacekeepers Are Coming Under Fire*, TIME, Oct. 28, 2008, <http://www.time.com/time/world/article/0,8599,1854483,00.html>.

73. See The Individual Responsibility to Protect, <http://www.ir2p.org/home> (last visited Sept. 21, 2009) (“States have a responsibility to protect their own populations from genocide and related crimes against humanity. Where they may fail, all of us must do all we can to prevent disaster.”).

A. THE MOVE TO R2P

Historically, international law upheld a strict rule against intervention.⁷⁴ However, there is increasing acceptance of the proposition that states that do not comply with their human rights obligations may not invoke the doctrine of nonintervention.⁷⁵ In conjunction with that proposition, it also appears that “the scope of morally permissible humanitarian intervention [is] growing.”⁷⁶

In 2001, the International Commission on Intervention and State Sovereignty (“ICISS”) was established by the Government of Canada in order to answer a question posed by then U.N. Secretary General Kofi Annan: “[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?”⁷⁷ The ICISS responded with a new approach to humanitarian action: the R2P. Describing the process, ICISS co-chair Gareth Evans said, “The whole point is to develop an international reflex response that goes, ‘Of course we have to do something. Let’s figure out what.’”⁷⁸

The ICISS sought to recharacterize sovereignty as responsibility rather than control, and noted a “transition from a culture of sovereign impunity to a culture of national and international accountability.”⁷⁹ It stated that the practice of states and of the

74. See, e.g., Peter R. Baehr, “Humanitarian Intervention” A Misnomer?, in INTERNATIONAL INTERVENTION IN THE POST-COLD WAR WORLD: MORAL RESPONSIBILITY AND POWER POLITICS 25 (Michael C. Davis et al. eds., M.E. Sharpe 2004) (contrasting the general understanding of “aggression,” or intervention into domestic matters, with the idea that protection of human rights extends beyond the borders of any one state).

75. *Id.*

76. Steven P. Lee, *Human Rights and Humanitarian Intervention*, in UNIVERSAL HUMAN RIGHTS: MORAL ORDER IN A DIVIDED WORLD 152 (David A. Ready et al. eds., Rowman & Littlefield 2005) (reasoning that respect for national sovereignty can fluctuate based on changing circumstances, especially when humanitarian intervention is authorized by the United Nations).

77. U.N. SECRETARY-GENERAL KOFI ANNAN, MILLENIUM REPORT OF THE SECRETARY GENERAL, ‘WE THE PEOPLES’: THE ROLE OF THE UNITED NATIONS IN THE 21ST CENTURY 48 (U.N. Dep’t of Public Info.2000); see also ICISS Report, *supra* note 8, at 1 (citing the genocide in Rwanda as an example of a situation where not intervening can be as controversial as intervening).

78. Perry, *supra* note 72.

79. See ICISS Report, *supra* note 8, § 2.18; see also *id.* § 2.20 (emphasizing

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Security Council demonstrated that a “basic consensus” existed that the international community must take action where states do not fulfill their duty to protect their citizens.⁸⁰

The ICISS’s report closed with a strong moral appeal “to embrace the idea of the responsibility to protect as a basic element in the code of global citizenship, for states and peoples, in the 21st century.”⁸¹ It concluded with reference to the principles elaborated in the UDHR:

Nothing has done more harm to our shared ideal that we are all equal in worth and dignity, and that the earth is our common home, than the inability of the community of states to prevent genocide, massacre and ethnic cleansing. If we believe that all human beings are equally entitled to be protected from acts that shock the conscience of us all, then we must match rhetoric with reality, principle with practice. We cannot be content with reports and declarations. We must be prepared to act. We won’t be able to live with ourselves if we do not.⁸²

At the 60th session of the U.N. General Assembly, 191 world leaders unanimously endorsed the R2P. They agreed that:

Each individual [s]tate has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity. This responsibility entails the prevention of such crimes, including their incitement, through appropriate and necessary means. We accept that responsibility and will act in accordance with it.⁸³

This endorsement affirmed the belief of the U.N. member states that mass humanitarian crises are everyone’s concern and bound the member states to the proposition that: “The international community, through the United Nations, also has the responsibility to use

that national law should still prevail and international options should only arise when national systems of justice cannot suffice).

80. *Id.* § 8.33 (remarking that there are two ways in which states can fail to fulfill their obligations: either by choice, or by their inability to do so).

81. *Id.*

82. *Id.* § 8.34. *See generally* UDHR, *supra* note 2 (including rights such as freedom and equality among fundamental human rights).

83. U.N. Doc. A/60/L.1*, ¶ 138 (Sept. 20, 2005) [hereinafter 2005 World Summit Outcome].

appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapters VI and VIII of the Charter of the United Nations, to help protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity.”⁸⁴

A few months later, Security Council resolution 1674, adopted on April 28th, 2006, reiterated the international community’s “responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity.”⁸⁵ These developments evince a belief on the part of the U.N. member states that honoring their commitment to universal human rights requires the elevation of the R2P from a vague normative commitment to a full-fledged practical obligation.

Current U.N. Secretary-General Ban-Ki Moon recently proposed a three-pronged approach to implementing the R2P. Citing concerns that states might misuse the R2P, the Secretary-General called for the full development of strategies and mechanisms for operationalizing the R2P in a January 12, 2009 report.⁸⁶ The Secretary-General’s three pillar strategy comprises (1) the state’s protection responsibilities,⁸⁷ (2) international assistance and capacity-building, and (3) “timely and decisive action” to save lives in the event of a failure of the first two pillars.⁸⁸ Although the Secretary-General’s report admits that it does not offer a full vision of how to employ and enforce the R2P, it represents a move toward turning the rhetoric behind the 2005 World Summit Outcome into concrete action.⁸⁹

84. *Id.* ¶ 139.

85. S.C. Res. 1674, ¶ 4, U.N. Doc. S/RES/1674 (Apr. 28, 2006).

86. U.N. Secretary-General Ban Ki-moon, Report of the Secretary-General on *Implementing the responsibility to protect, delivered to the General Assembly*, U.N. Doc. A/63/677 (Jan. 12, 2009) (specifically responding to the R2P as discussed in paragraphs 138 and 139 of the 2005 World Summit Outcome).

87. *Id.* at 10 (asserting that the responsibility to protect belongs to the state in the first instance, “because prevention begins at home and the protection of populations is a defining attribute of sovereignty and statehood in the twenty-first century”).

88. *Id.* at 2; *see also* U.N. News Service, *Ban calls for three-pronged strategy to implement ‘responsibility to protect,’* (Jan. 30, 2009), <http://www.un.org/apps/news/story.asp?NewsID=29732&Cr=protect&Cr1=peace>.

89. U.N. Secretary-General Ban Ki-moon, *supra* note 86, ¶ 67 (emphasizing that, rather than attempting to renegotiate the wording of paragraphs 138 and 139 of the 2005 World Summit Outcome, it would be more beneficial to focus on finding ways to implement the policy contained within them).

Some commentators point out that the “uncertainty surrounding the consequences of noncompliance” by the international community may “shed doubt on the notion that the R2P was meant to be an emerging hard norm of international law.”⁹⁰ However, this uncertainty about the possibility of legal enforcement has not stopped the concept from inserting itself into the dialogue surrounding international human rights.⁹¹ Although attempts to move beyond rhetoric and to actually invoke the R2P have so far met with limited success,⁹² supporters hope that the power of the norm to capture the imagination will generate a groundswell of support for the idea that the international community is morally obligated to intervene in cases of extreme humanitarian crisis. In the words of former U.S. Ambassador for War Crimes Issues, David Scheffer:

If we can reach the point where school children and their parents exclaim, “R2P Ends Atrocity Crimes,” and policymakers ultimately comprehend this siren call of their peoples stamped on bumper stickers and broadcast through enlightened corporate sponsors, then we will know that the responsibility to protect has a fighting chance of diminishing, perhaps even ending, atrocity crimes in our own time, on our watch, and within our moral universe.⁹³

B. INDIVIDUAL ACTIVISM AND GLOBAL CITIZENSHIP

Today, some of the most vigorous campaigning for state compliance with human rights obligations is done by private individuals and coalitions of individual activists. Amnesty International is an early example of the involvement of non-

90. See Carsten Stahn, *Responsibility to Protect: Political Rhetoric or Emerging Legal Norm?*, 101 AM. J. INT'L L. 99, 118 (2007) (implying that with a lack of strict enforcement mechanisms, responsibility to protect may have been intended simply as “soft law or a political principle”).

91. See David Scheffer, *Atrocity Crimes Framing the Responsibility to Protect*, 40 CASE W. RES. J. INT'L L. 111, 111 (2007) (stating further that “it has invited both praise and skepticism”).

92. See, e.g., S.C. Res. 1706, U.N. Doc. S/RES/1706 (Aug. 31, 2006) (expanding the mandate of the U.N. peacekeeping mission in Darfur, and authorizing the United Nations Mission in Sudan to “use all necessary means” to protect the civilian population).

93. Scheffer, *supra* note 91, at 135.

professional activists in the effort to enforce international human rights law.⁹⁴ In the words of Harold Koh, Legal Advisor for the U.S. State Department:

International human rights law is enforced, I would say, not just by nation-states, not just by government officials, not just by world historical figures, but by people like us, by people with the courage and commitment to bring international human rights law home through a transnational legal process of interaction, interpretation, and internalization.⁹⁵

Especially on issues where mass atrocity is involved, Koh's "people like us" are often the loudest voices calling for an end to the violence and respect for human rights. Movements like the Save Darfur coalition, which comprise a huge network of individual activists in addition to NGOs, are at the vanguard of the campaign to end ongoing mass atrocities and ensure protection of human rights.⁹⁶ It appeals to potential members' sense of moral outrage and offers individuals the opportunity to "help end the genocide by taking small steps that can make a big difference for the people of Darfur."⁹⁷ One of its most visible efforts has been the Global Days for Darfur; during the second Global Day, participants gathered outside of Sudanese embassies worldwide and blew rape whistles and set off alarms to draw attention to issue of sexual violence in Darfur.⁹⁸ These rallies along with massive letter writing campaigns and teach-ins represent a commitment to the idea that individual moral choices

94. See JOYCE, *supra* note 3, at 2 (noting that in the late 1970s "Amnesty International has mobilized its 100,000 members in professional, religious and local groups in fifty countries in the battle against torture").

95. Harold Hongju Koh, *How Is International Human Rights Law Enforced?*, 74 IND. L.J. 1397, 1417 (1999).

96. See generally Save Darfur, <http://savedarfur.org> (last visited Sept. 21, 2009) (stating that the coalition's purpose is to "utilize media outreach, public education, targeted coalition building and grassroots mobilization to pressure policymakers and other decision-makers in the United States and abroad to help the people of Darfur").

97. See Save Darfur, Take Action, http://www.savedarfur.org/pages/take_action (last visited Sept. 21, 2009) (giving examples like lobbying a member of Congress, planning local events and educating others).

98. See Save Darfur, About Us, http://savedarfur.org/pages/global_campaigns/ (last visited Sept. 21, 2009).

can have a big impact in combating ongoing atrocities around the world.

Similarly, the Genocide Intervention network invites potential members to “mak[e] a powerful statement to our political leaders that there is a large and committed group of citizens who are concerned about ending and preventing genocide.”⁹⁹ STAND, the student wing of the Genocide Intervention Network, “is devoted to creating a sustainable student network that actively fights genocide wherever it may occur.”¹⁰⁰ These network creation efforts are dependent on mobilizing moral outrage and a shared belief that individuals have a moral duty to take action to help others, even if their efforts ultimately do not have much impact on the lives of those they are trying to help.

College students have been particularly quick to adopt the moral rhetoric of an individual responsibility to act and have been an extremely vocal constituency in the fight against genocide. On its website, STAND notes that the anti-genocide effort “has been called the fastest-growing student movement in the world today.¹⁰¹ STAND itself has over 850 chapters at schools worldwide.¹⁰² Additionally, social networking websites indicate evidence of numerous groups dedicated to raising awareness of and fighting genocide.¹⁰³

These organizations that rely upon exhortations to, for example, “Act Now to Protect Civilians in Eastern Congo”¹⁰⁴ share a basic

99. Genocide Intervention Network, Frequently Asked Questions, <http://www.genocideintervention.net/network/faq> (last visited Oct. 30, 2009).

100. STAND, <http://www.standnow.org/about>; *see also* STAND, <http://www.standnow.org/about/who> (last visited Oct. 30, 2009) (noting that STAND was originally called “S.T.A.N.D.: Students Taking Action Now Darfur!” and later changed its name to “STAND, the student-led division of the Genocide Intervention Network” in order “to reflect STAND’s broadened focus on multiple conflicts and new partnership” with the Genocide Intervention Network).

101. STAND, <http://www.standnow.org/about/success> (last visited Sept. 21, 2009).

102. *Id.*

103. *See, e.g.*, Facebook, <http://www.facebook.com> (last visited Sept. 21, 2009) (returning a list of over 500 groups in a search for “genocide”).

104. *See* STAND Act Now to Protect Civilians in Eastern Congo!, <http://www.standnow.org/blog/act-now-protect-civilians-eastern-congo> (claiming that advertisements in major European newspapers prompted the UK government to change its position in favor of sending troops to the Democratic Republic of Congo).

premise that we, as individuals, are responsible for each other. A new initiative called the Individual Responsibility to Protect (“iR2P”) makes this assumption explicit. It asks individuals to sign a pledge beginning “*I believe I have an individual ‘responsibility to protect’*” and to “avow[] to use whatever influence is at their disposal to help save lives wherever and whenever communities are at risk of mass atrocities.”¹⁰⁵ This commitment echoes the language of the UDHR requiring “every individual” to work “to promote respect for these rights and freedoms” and “to secure their universal and effective recognition and observance.”¹⁰⁶

This emerging iR2P norm owes its existence partially to the fact that the combination of international political realities and absence of strong legal enforcement of human rights means that, all too often, states can get away with shirking their obligations to comply with international human rights law. Consequently, in the words of John Prendergast,¹⁰⁷ “what we need, all over this country, is people who are willing to stand up and make noise whenever there is a situation that demands the United States['] attention and our action.”¹⁰⁸ In this way, an individual ethic of responsibility has arisen at least in part in order to fill the gap left by states.

But although this ethic of responsibility plays a utilitarian role, its origins are more complex than simply filling a compliance gap. The emergence of the iR2P norm is directly traceable to the UDHR. James Avery Joyce makes the point that the “sweeping” language of the UDHR “leaves nobody any excuse to think that responsibility for observing its terms is a job to be left to someone else.”¹⁰⁹ The drafters’ intention was to make clear that states could not escape their responsibility to protect and promote human rights, but their paradigm-shifting call for accountability has resulted in a move from a world order in which a state’s treatment of its citizens was considered nobody’s business to a shared belief that we are all

105. The Individual Responsibility to Protect, <http://www.ir2p.org/pledge/>.

106. UDHR, *supra* note 2, pmbl.

107. See Enough, About Us, <http://www.enoughproject.org/about> (describing John Prendergast as an Africa expert and co-founder of Enough, which works “to build a permanent constituency to prevent genocide and crimes against humanity”).

108. STAND, Testimonials, <http://www.standnow.org/testimonials>.

109. JOYCE, *supra* note 3, at 51. See generally UDHR, *supra* note 2, pmbl.

individually responsible for preventing suffering, wherever it may occur.

CONCLUSION

The UDHR's affirmation of "the inherent dignity and of the equal and inalienable rights of all members of the human family"¹¹⁰ was drafted as a direct moral response to the evils of Nazi Germany.¹¹¹ That its preamble noted that "disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind"¹¹² indicates the pressing need the drafters felt to "come to an agreement about a universal moral code."¹¹³

The contemporary normative impact of this "moral consensus about human rights"¹¹⁴ is profound. Despite the increasing legal entrenchment of the international human rights regime, the effort to police compliance with human rights remains a fundamentally moral enterprise. Although this occurred in part because of the delays to legalization caused by Cold War politics and the resistance to applying legal sanctions to violators arising out of state sovereignty, it also owes a great deal to the enduring power of the UDHR's call for moral responsibility.

The UDHR's fundamental premise that all members of the international community share the responsibility for ensuring the universal protection of human rights underlies current efforts to operationalize the emerging Responsibility to Protect norm. The spirit of the UDHR can be seen even more clearly in the increasing numbers of individual activists campaigning for an end to mass atrocities out of a sense of moral responsibility for the fates of far away victims whom they will never meet. This concept of an individual Responsibility to Protect bears out Elie Wiesel's statement that: "The defense of human rights has, in the last fifty years, become

110. UDHR, *supra* note 2, pmbl.

111. See MORSINK, *supra* note 19, at 37 (describing the process of selecting certain articles for inclusion and arguing that "the motif that runs throughout these adoptions and rejections is that the [UDHR] was adopted to avoid another Holocaust or similar abomination").

112. UDHR, *supra* note 2, pmbl.

113. MORSINK, *supra* note 19, at 36.

114. *Id.*

a kind of worldwide secular religion.”¹¹⁵ It demonstrates that the UDHR’s strong moral call to shared responsibility was ultimately powerful enough to reach beyond its intended recipients in state houses and parliaments, and to be heard by ordinary citizens around the world.

115. Elie Wiesel, *Voices: A Tribute to Human Rights*, in *THE UNIVERSAL DECLARATION OF HUMAN RIGHTS: FIFTY YEARS AND BEYOND* 3 (Yael Danieli et. al. eds., Baywood Publ’g Co. 1999).