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## **Editorial WebJCLI Special Edition:**

# **The Sixtieth Anniversary of the Universal Declaration of Human Rights**

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The facts speak for themselves: every second a child dies of malaria; life expectancy in Swaziland for a man is 29 years; 2.5million children die from diarrhoeal and pneumonia illnesses which could be prevented by clean water for handwashing; some detainees in the United States of America's Camp Delta at Guantanamo Bay, Cuba, have now been detained for seven years without a trial, albeit President Obama has promised to close the facility. There can be no doubt that human rights are infringed daily and globally, these examples are the tip of a tragically large iceberg.

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## **Introduction**

Six decades ago, 1948 was a milestone of friction in the history of the world:

the Berlin airlift highlighted the beginning of the Cold War as the Soviet Union established control over Eastern Europe; the State of Israel was controversially established in the middle of the Arabic nations of the Middle East; British troops withdrew from India, Burma (Myanmar) and Ceylon (Sri Lanka) gained independence from Britain. Against this background of world events, the General Assembly of the United Nations adopted the Universal Declaration of Human Rights on 10 December: the first internationally agreed tabulation of the basic rights and freedoms to which all human beings are entitled. Sixty years later, many of those causes of friction remain: contentions with inter alia Iran and Georgia indicate that a renewed Cold War is not unfeasible; Israel is undertaking a ground offensive against Hamas in Gaza; tensions were raised between India and Pakistan with the Mumbai attacks in November 2008; and while Burma (Myanmar) has faded from the news, Aung San Suu Kyi remains under house arrest and tensions in Sri Lanka continue to boil over. Nevertheless, the United Nations Universal Declaration of Human Rights, billed 'a common standard of achievement for all peoples', remains relevant (albeit as aspirational) just as it was sixty years ago. While some may argue that human rights are proven unrealistic and should thus be 'retired' now they approach pensionable age, others continue to advocate in their favour. Undoubtedly human rights are now ingrained in international law and all states take care to justify legal and policy initiatives impacting on civilians in terms of human rights.

## Overview of this special edition

In this special edition of the Web Journal of Current Legal Issues, contributions have been secured in each section of the journal. There are a number of informed reflections and critiques on various aspects of human rights, submitted by a diverse group of scholars. International Human Rights are not normally the sole focus of this journal. However, December 2008 marks the sixtieth anniversary of the adoption of the Universal Declaration of Human Rights. 2008 is also the tenth anniversary of the UK Human Rights Act receiving royal assent. Around the world, no country can avoid the impact of human rights. International law is clearly no longer the sole preserve of countries – individuals now derive rights and freedoms from international human rights treaties. These can be enforced against the State. Ideally each state should ensure that national law gives effect to the rights and freedoms the state has accepted. Individuals should have a right of action within the state to enforce those rights and freedoms, with a system of compensation for those suffering infringements attributable to the State. Inevitably for this to work, everyone has to know what their rights and duties, thus the UN has made considerable advances towards human rights education for all.

## Articles

In the first section of the journal, a diverse range of topics are explored, providing a comprehensive overview of the impact and scope of the Universal Declaration of Human Rights. Human rights permeate through many aspects of law and policy, as this edition hopefully demonstrates. Rather than following a 'traditional' approach, analysing various articles of the Declaration, this edition presents a selection of expert commentary and analysis on workers' rights, prisoners' rights, minority rights and reconciliation.

Lee Swepston, the former senior adviser on human rights at the International Labour Organisation, provides a fascinating insight into the complex relationship between the

Universal Declaration and the standard-setting work of the International Labour Organisation. The International Labour Organisation was established ninety years ago (1919) alongside the League of Nations, predecessor of the United Nations. Even with the advent of the United Nations and its human rights treaties, the ILO remains the vanguard for worker's rights. As Professor Sweptston's article demonstrates, workers' rights permeate through a range of rights and freedoms in the Universal Declaration and the Universal declaration drew on the work of the ILO. The result is a comprehensive web of treaties and recommendations on all aspects of workers' rights, contributing to the equal enjoyment of rights by all people.

Steve Foster provides a comprehensive analysis of the prohibition on torture, inhuman and degrading treatment as it applies to lawful prisoners. This is a vexed topic given that those people are overtly subject to state control over every aspect of their daily lives. While deprivation of liberty is a lawful sanction for those lawfully convicted of crimes, prisoners are in an inherently vulnerable situation from a human rights perspective, dependant upon state officers (prison guards) acting in accordance with the applicable international and regional standards. Providing a link with the Human Rights Act 1998, Dr Foster examines the practice of the European Court of Human Rights and English courts in ensuring detention meets appropriate minimum standards. Although courts are willing to adjudicate on complaints, they are less willing to articulate general standards of care (beyond the existing international guidelines).

History is revisited in an article which addresses one of the outstanding 'problems' in international human rights – the fate of minorities. Dr Rhona Smith provides an historical overview of minority rights, challenging the evinced wisdom of excluding them from the Universal Declaration. Sixty years on, the fate of minorities remains undecided, left to the ad hoc vagaries of a panoply of treaties and declarations, and the ministrations of treaty bodies and various fora. While workers' rights survived the collapse of the League of Nations and continued to gather momentum (see Lee Sweptston's article) minority rights were indelibly tarnished when the League collapsed and only now are they beginning the recovery process.

Demonstrating how an historical abomination (slavery) still has repercussions today, Dr Christien van den Anker discusses modern forms of slavery. Although slavery has long been abolished and is accepted as a heinous international crime, many modern forms of slavery tragically remain. This article focuses on a very topical example - human trafficking. While many states welcome migrant workers, global politics and economics mean that illegal migrants and trafficked people continue to be of concern. A theoretical socio-economic analysis contextualises the key issues (problems and solutions) in light of major research projects Dr van den Anker has been involved in. It becomes clear that the problem is multi-faceted thus so too are the solutions. However, migration control, labour laws and inspection regimes and welfare provisions are potentially determinative. A cosmopolitanism approach is evinced as a framework for addressing soem of the underlying and practical issues surrounding trafficking.

Anja Mihr's article on reconciliation is a fitting end to the section. While today international human rights obligations are widely recognised and accepted by all states, transforming the rhetoric into reality is proving a slow process. Around the

world, post-conflict nation-building activities are being undertaken: Iraq, Afghanistan, Timor L'Este, Cambodia, Bosnia-Herzegovina etc.. Dr Mihr's article is a broad analysis of the theory and practice of reconciliation, its relationship with the rule of law and its importance in post-conflict states. Her arguments are illustrated with reference to two major genocides occurring at either end of the twentieth century, both with devastating consequences: Armenia and Rwanda. As is apparent, a different approach was taken to reconciliation in each instance, the repercussions of these approaches evident today. Given the tragedies of conflict unfolding daily around the world, the need for an effective approach to reconciliation is imperative.

## Case Notes

In the second section, Case Notes, two contributions appear: one reflecting on English practice, ten years after the passing of the Human Rights Act; the other reviewing recent UN jurisprudence on enforced disappearances.

Kevin Kerrigan and Michael Stockdale focus on English cases raised under the Human Rights Act 1998 (which gives effect to much of the European Convention on Human Rights). The scope and nature of a fair trial is considered, a right which is heavily developed in England and by the European Court of Human Rights. Although an absolute right, there are various competing interests which must be considered. In the cases discussed, the issue of anonymity of witnesses pitches the right of the accused to a fair trial against the right to life, liberty and security of an essential (ie with key evidence necessary for the conviction) witness. Balancing the interests of the defendant and witness with the need to ensure justice is served poses real issues for human rights.

Meanwhile Rhona Smith introduces UN jurisprudence, focussing on two of the most recent opinions of the Human Rights Committee on enforced disappearances. With the 2006 UN Convention on the topic attracting little interest, the existing range of treaties must be deployed to provide remedies. Often, disappearances are an issue addressed during the reconciliation process (see Anja Mihr's article) and enforced disappearances fall within the international definition of war crimes (see Christian Ranheim's Legal Tools Programme). Although imperfect, the UN treaty bodies have proven willing to extend conventional human rights to those who have disappeared without trace, obviating evidentiary issues.

## Comments

Two fascinating topical issues are addressed in the Comments section: whether animals (to be precise other great apes) should have rights recognised and how far the reach of human rights can be extended in response to scientific and technological advancement. With the Universal Declaration of Human Rights transforming what was once a radical concept – that states can be held responsible to the international system for how they treat their citizens – into something acceptable, some commentators are now looking at tangential issues. In the first comment, Deborah Rook poses a hitherto unthinkable question – should other great apes enjoy legal protection of their basic rights and freedoms? Animal law is an emergent discrete topic and the potential for rights runs alongside existing provisions on animal protection, most of which are proprietorial in origin. In the second comment, Leanne

Bell considers aspects of the Human Fertilisation and Embryology Act, enacted during the gestation period of this special edition. Scientific and medical advancements have resulted in a plethora of ethical and moral dilemmas concerning embryos, stem cells etc.. Many of these have a human rights dimension but most fall far outside the anticipated (in 1948) scope thereof. However, as Leanne Bell comments, the introduction of new legislation has also posed regulatory challenges in ensuring a fair and transparent decision-making process.

## Legal Education

The United Nations is active in advancing human rights education as an essential stage in the development of universal rights. Put simply, if you don't know what your rights are, you are unlikely to try to enforce them. When adopting the Universal Declaration, states also agreed to disseminate its contents widely (General Assembly Resolution 217D (III) 1948). This provision is oft overlooked but has been the focus of concerted international efforts, not least the proclaimed World Decade of Human Rights Education which was succeeded by the World Programme for Human Rights Education. In this special edition, the contribution on Legal Education takes an international approach to human rights education, tracing the evolution of human rights education in modern China. Elisabeth Bjornstol has been involved in human rights education capacity building in China since the reforms opened China to international cooperation. The progress made by the Nordic human rights agencies has been remarkable, as this article demonstrates. It also proves how quickly human rights education programmes can produce results. China, as almost every country in the world, still falls short of complying full with all human rights obligations. However, it is clearly making considerable progress.

## Information Technology

Given that most primary documents and a plethora of sources on international human rights are available online, it is with great delight that two comparatively new initiatives are presented in the section on Information Technology. For many students, grappling with the human rights obligations of countries around the world is confusing. Dr Jonas Grimheden has developed Human Rights Theme Maps which provide an easily accessible and highly visual representation of the legal status of human rights in the world today. This excellent tool is arguably underused and thus is introduced by its creator in the first contribution to this section. For those studying, teaching and otherwise working with human rights, having interactive maps which can be tailored to reflect country, regional or global human rights' commitments is highly useful.

Sadly, as the article by Anja Mihr (see Articles above) references, genocide and other international crimes continue to blight our global society. International Criminal Law has evolved in a short period of time from an element of Public International Law and International Human Rights to a distinct discipline with its focus on individual responsibility and national and/or international prosecutions. Christian Ranheim has been involved in the International Criminal Court Legal Tools Programme for several years, developing various tools which help practitioners and academics successfully engage with international criminal law. Compilations of materials, useful search tools and analyses render the wealth of disparate material accessible. With the focus

moving towards national prosecutions, rather than ad hoc (quasi) international bodies, the need for such a digest is only too apparent.

## Book Reviews

The final section of the journal is Book Reviews. Taking advantage of the option to review a range of textbooks on a particular area, this section has two experienced contributors: Alan Davenport and Amrita Mukherjee. Dr Mukherjee reviews a selection of textbooks used in International Human Rights modules, weighing up their merits and disadvantages. An increasing number of universities now offer full or half modules on this subject. As is apparent, many different approaches are taken by authors of the books, as indeed, diverse approaches are taken by those teaching the subject. New editions of some of the texts are expected this year – International Human Rights dates rapidly – but it is likely that the new editions will not be radically different. While not all law students study International Human Rights, in the UK, elements of national human rights law are core for law students due to the impact of the Human Rights Act 1998. In England, courses on Civil Liberties examine national law derived from and complementary to the Human Rights Act, focussing on the relationship between the State and the individual and the extent to which the State can exercise control over its nationals. Alan Davenport has taught Civil Liberties for almost two decades and here reviews the main textbooks thereon.

## Summary and acknowledgements

The subject matter of this volume departs considerably from other volumes of the Web Journal and I am grateful to the Chief Editor, Professor Bradney, for agreeing to this incursion of international law. I am also very grateful to the contributors for their hard work! International human rights apply to you and to me. Only by learning about human rights can pressure for change be brought to bear on states and can the rhetoric expressed in the UN sixty years ago transform into reality for everyone.