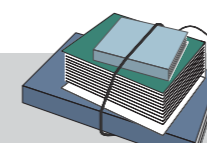
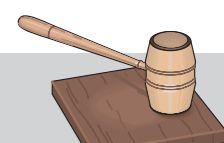


LAW *lexicon*

## LAW watch



# World Congress on Family Law and the Rights of Children and Youth

We publish the full text of resolutions of the 2001 World Congress on Family Law and the Rights of Children and Youth held in Bath, England, on 19-22 September 2001. The resolutions are especially important for the children in difficult circumstances against the backdrop of 11 September tragedy.

The World Congress on Family Law and the Rights of Children and Youth at the conclusion of its third meeting on 22 September 2001, passed the following resolutions by consensus:

## A. Current World Crisis

1. World Crisis  
Last week's calculated atrocity in the United States has left us all feeling vulnerable and insecure. Children sense our anxiety.

Sadly, events in New York have led to the postponement of the United Nations Special Session on the Rights of the Child. That imposes a special responsibility upon those of us who have been able to attend this Congress.

Our professional responsibilities to children have been the focus of our deliberations over the past few days. While we were reviewing the way in which the law affects young people, leaders of the world's communities have been taking crucial decisions about the future our children will inherit.

As a significant international gathering, we have the opportunity to make our feelings known to these decision-makers.

Violence and injustice have already left too many of the world's children maimed in body and mind. Young people look to adults for protection and guidance. The adult response to conflict not only shapes the immediate environment, but provides a model for future generations.

This Congress urges all leaders dealing with the crisis in which we are now engulfed to make children the focus of their deliberations, so that we and our children shall inhabit a safer world.

## B. Implementation of the United Nations Convention on the Rights of the Child

2. The United Nations Convention on the Rights of the Child  
This Congress urges all States Parties to the United Nations Convention on the Rights of the Child to take, as soon as practicable, all steps necessary according to their constitutional requirements to incorporate or otherwise give effect to, the provisions of that Convention as part of their domestic law.

3. The Right of Children with a Disability to be Heard

Having regard to the special responsibility to mentally or physically disabled children as recognised in Article 23 of the Convention on the Rights of the Child, this Congress acknowledges that such children have the right to an equal voice in the legal system, and calls on States to provide for a wider variety of specialist skills and techniques to allow the fullest contribution from those children. States should also recognise the role that non-governmental organisations can play to ensure that disabled children have equal access to the law and equal opportunities within the court system.

4. Children's Commissioners

Having regard to Article 17 of the United Nations Convention on the Rights of the Child, this Congress supports the appointment of children's commissioners who are independent of the executive government, one of whose tasks would be to monitor media standards in relation to children and to develop partnerships with media that protect children and promote their rights.

5. Media and the Rights of the Child

Recognising the enormous contribution mass media can make to the understanding of children's rights, this Congress calls on media owners, journalists and the advertising industry to consider the extent to which their own practices may be in breach of the principles of the United Nations Convention on the Rights of the Child. This Congress urges the promotion of existing guidelines and codes of conduct such as those of the International Federation of Journalists when dealing with, or reporting on, children.

6. Articles 37 and 40 of the UN Convention on the Rights of the Child

This Congress urges the Committee on the Rights of the Child to ensure compliance with a detailed framework for scrutinising and reporting on the compliance of States Parties to the United Nations Convention on the Rights of the Child in respect of the implementation of Articles 37 (prohibiting the

torture and the unlawful or arbitrary detention of children) and 40 (providing for the right of a child accused of a crime to be treated in a manner consistent with the child's sense of dignity and worth, taking into account the child's age and aiming at the child's re-integration into society) of that Convention.

7. Separated Children and the Rights of the Child  
The phenomenon of children being separated from their parents through war, civil strife, natural disasters and other causes, is increasing. All governments, inter-governmental agencies and international non-governmental organisations should work together to ensure that the rights of separated children, as established under Article 9 of the United Nations Convention on the Rights of the Child, are realised.

## C. Protection of Juveniles from Harsh and Cruel Punishment, Violence and Abuse

8. Imposition of the Death Penalty on Juvenile Offenders  
This Congress calls upon all the politicians, lawyers and communities of



all nations to take the necessary steps to ensure that throughout the world the provisions of Article 6(5) of the International Covenant on Civil and Political Rights (1966) which proscribe the imposition of a sentence of death for crimes committed by persons while below the age of 18, are observed with full rigour.

9. Juvenile Justice  
This Congress calls upon all jurisdictions to abolish any substantive, procedural or administrative laws that curtail discretion by compelling competent authorities (including but not limited to juvenile justice decision-makers) to impose a mandatory disposition of detention or imprisonment upon children or young persons.

10. Corporal Punishment

This Congress supports the global initiative to end all corporal punishment of children. We call on our respective governments to declare their opposition to corporal punishment of children and to set a timetable for its elimination through public education and legal reform.

11. Prevention of Abuse and Other Forms of Violence to Children

This Congress supports the further development of integrated multi-sectoral (e.g. health, legal, mass media, education, communities and non-government organisations) approaches to prevention of abuse and other forms of violence to children as exemplified by the collaboration between the International Society for the Prevention of Child Abuse and Neglect (IPSCAN) and the World Health Organisation.

## D. The Hague Conference on Private International Law

12. The Hague Convention on Inter-country Adoption 1993  
There is a demonstrable need for a globally well-regulated system gov-

erning inter-country adoption. The 1993 Hague Convention on Protection of Children and Co-operation in Inter-country Adoption to which 42 States are already parties, provides an important framework for global regulation. Accordingly, this Congress urges that those States who have not yet done so, should give their urgent attention to ratifying, or acceding to, the 1993 Convention.

13. The Hague Convention on the Protection of Children 1996  
This Congress notes with pleasure that following the ratification of the 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children by Monaco, the Czech Republic and Slovakia, that Convention will enter into force on 1 January 2002. It further welcomes the intention of Ecuador to accede to the Convention as soon as it enters into force. It also welcomes the recent announcement by the Australian Government that it will ratify the Convention and urges all States and the European Union to take the necessary steps for ratification as soon as practicable.

## E. Child Labour

14. ILO Convention 182  
This Congress notes with pleasure the adoption by the International Labour Organisation of ILO Convention number 182 on the Elimination of the Worst Forms of Child Labour at its 87<sup>th</sup> Session in Geneva on 17 June 1999, and calls upon all States who have not yet done so, to ratify and effectively implement that Convention.

The Congress believes there is no reasonable impediment for any State that would prevent its ratification and implementation. Further, the Congress recommends that the national monitoring mechanisms also provide for alternative reporting from non-government organisations.

15. Education and Child Labour  
This Congress, accepting that education is an important tool in the elimination of child labour, calls upon States to provide in accordance with their obligations under the United Nations Convention on the Rights of the Child, universal, compulsory primary education for all children. It recognises that this will involve withdrawing some children from employment.

The Congress calls upon donor States and bodies to give high priority to aid to recipient States to assist them in their compliance with these obligations.

## F. Children and AIDS

16. Children living with HIV/AIDS  
This Congress expresses its support for all activities aimed at alleviating the problems confronting children with HIV/AIDS, and urges the family law structures of each State to establish links with their national authorities and the Red Cross and Red Crescent societies to that end.

## G. The Children's Rights Protection Network

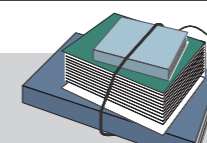
17. The Children's Rights Protection Network  
This Congress welcomes the support given by Her Excellency, Mrs Mary Robinson, High Commissioner for Human Rights and Patron of the Congress, to the proposal for the establishment of an International Children's Rights Protection Network with its emphasis on education, representation, training and advocacy. This Congress requests the World Congress Board to proceed with the establishment of the Network as a permanent, professionally managed organisation bringing together lawyers, lawyer organisations and associated professional groups in a cooperative effort.

The proposed Network will seek to liaise and work in collaboration and cooperation with existing organisations and networks, including media organisations.

The Congress requests the World Congress Board to publish regular updates of the progress of the establishment of the Network.

By an arrangement with Law Watch, a center for studies on human rights law <lawwatch2001@yahoo.com>

## REVIEWING *the views*



# Universal Declaration of Human Rights - Some observations

DR. CHITTA RANJAN DAS

THE Universal Declaration of Human Rights (UDHR) was adopted by Resolution 217(III) of the General Assembly. It was not intended to impose legal obligation on States, rather to establish goals for states to work towards. Thus the operative part of the Resolution reads, "Now therefore, the GA proclaim this UDHR as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of the society, keeping this declaration constantly in mind, shall strive by teaching and education to promote respect for this rights and freedoms and progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of the Member States themselves and among the peoples of territories under their jurisdiction."

Mrs. Roosevelt stated in the GA that the declaration was first and foremost a declaration of the basic principles to serve as a common standard for all nations. It might well become the Magna Carta of all mankind. She considered that its proclamation by the General Assembly would be of importance comparable to the 1789 proclamation of the Declaration of the Rights of Man; the proclamation of the rights of man in the Declaration of Independence of the United States of America, and similar declarations made in other countries. A leading commentator has observed that 'there seems to be an agreement that the Declaration is a statement of general principles spelling out in considerable detail the meaning of the phrase 'human rights and fundamental freedoms' in the Charter of the UN. As the declaration was adopted unanimously, without a dissenting vote, it can be considered as an authoritative interpretation of the Charter of the highest order. While the

Declaration is not directly binding on UN Members, it strengthens their obligations under the Charter by making them precise.'

The Universal Declaration on Human Rights was not a perfect document but it represented a greater measure of agreement on human dignity and its protection than had ever been reached among the nations before. It takes its place along with the American Declaration of Independence and the French Declaration of the Rights of Man as one of the seminal documents of human liberty.

The long and grueling United Nations debates, which preceded the document, ironed out many of the practical and ideological differences, that stood in the way of such a Declaration. Not all nations had traditions, which spoke in terms of individuals as bearers of rights. Not all nations were so liberal in their ideology as to agree lightly to fetters being placed upon their authority in the name of human freedom and dignity. Still after much debate, agreement was reached, consolidating beyond possibility of recall minimum content of human freedom, which was to serve as the foundation for further development.

The provisions of the Declaration covered such rights as the right to work, the right to social security, the right to education, the right to nationality and the right to asylum from persecution. These represented a considerable extension of the rights, which till then had found a place in the great documents of human freedom. The Universal Declaration of Human Rights has a great deal to say about the prevention of discrimination but it does not mention minorities. The refusal of the GA to include rules designed to protect them was one of the first concrete signs that the United Nations would not in the role of the League of Nations as the international protector of minorities.

It is to be remembered, that chronologically the Universal Declaration was meant to be first only of three stages by which the world would achieve an international bill of rights as a part of general international law. These stages were to be:

1. A declaratory instrument defining human rights - *achieved in the Universal Declaration.*

2. A series of covenants binding stages to respect these rights - *achieved in part by two Covenants on economic, social and cultural rights, and on civil and political rights.*

3. Machinery for the implementation of the covenants - *partially achieved.*

The Universal Declaration is thus not a goal in itself but the first stage in a long and arduous process and it is in this context that it must be seen. It does not indeed claim to be anything more than an aspiration that this rights be achieved at national level and was by no means a statement of international law regarding the rights of world citizens.

In the world outside the UN the influence of the UDHR has been no less profound. It has inspired more than forty States Constitutions, together with the regional human rights treaties of Europe, Africa and the Americas, and examples of legislation quoting or reproducing provisions of the Declaration can be found in all continents. Thus the impact of the Universal Declaration has probably exceeded its authors most sanguine expectations, while its constant and wide spread recognition means that many of its principles can be regarded as part of customary law.

## Critical appraisal

The Universal Declaration during its 51 years of operation has become a tool in the hands of certain countries (predominantly some developed countries) who have recently begun to use it for their own purpose. There is therefore re-thinking among jurists of some of the conceptual basis and assumptions

upon which it rests:

(1) It was proclaimed immediately after the emergence from colonial rule of many of the signatory countries. Consequently they had no sufficient time for formulation of the declaration as well as reflection of their own values, and traditions, but were dominated by western concepts. As a result their legal system and lawyers, due to the western oriented concepts, would now cover a generation of experience like to reconsider some of the provisions of the Declaration in the light of this experience.

(2) After the promulgation of the Declaration many countries achieved their independence and their values and traditions are not incorporated in the Declaration.

(3) The Declaration is mainly concerned with the rights of the people but does not clearly defined what is called rights. The concept of rights evolved in the matrix of a European civilization forged amidst conflicts between church and state and ruler and ruled. Some nations did not give rights this degree of emphasis. Indeed the concept of rights as opposed to duty was unknown to some legal systems, such as Japan. Their traditional legal thinking evolved entirely in terms of duty. In China and the Islamic world, the orientation of legal thinking was towards duties instead of rights.

(4) The Declaration recognized civil, political, economic, social and cultural rights. In the democratic nations of Europe and North America civil and political rights and freedoms are well established and are given importance. Some of these nations place much less value on economic rights such as making sure that all of their people have a place to live, enough to eat and good health care. It should be kept in mind that "a society in which there is wide-spread economic insecurity can turn freedom into a barren and lifeless rights for millions of people." However, on the other hand Socialist countries place a much higher priority on such economic and social rights as the right to have enough food, full employment and adequate housing and health care. But they do not place such a high priority on political and civil rights. Though they have jobs, food and a place to reside many are not able to express their opinions freely travel, where they wish, vote freely or practice the religion of their choice.

(5) The Universal Declaration is couched in terms of individual rights, a concept that evolved in the peculiar historical conditions of Europe. Many ancient societies are organized around the group rather than the individual. The Declaration does not properly consider group rights; even the right of self-determination of the people is not incorporated.

(6) Property rights (as incorporated in the Declaration) of the individual are well accepted. Many nations however, reject the right of property as they argue that it leads to economic dominance by certain classes or groups within society.

(7) Lack of sufficient enforcement mechanisms is leading to a sense of futility in regard to some aspects of the Declaration. It may be pointed out that the insufficiency of enforcement mechanism is due also in part to the failure of many countries to sign the various covenants providing some machinery for the enforcement or supervision of human rights.

(8) The conflict is between the contract and property rights inherent in the concept of individualism underlying the Declaration and the concept of self-determination, which entitles a people to determine for themselves their political and economic destiny.

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## ANNOUNCEMENT

### Join the Campaign for National Human Rights Institutions (CNHRI)

The Law Desk has teamed up with 'Law Watch,

A Centre for Studies on Human Rights Law', to launch a Campaign for National Human Rights Institutions (CNHRI). The proposed network (CNHRI) will act initially as a pressure group to establish an independent National Human Rights Commission and a credible Office of Ombudsman in Bangladesh.

The Law Desk is interested to receive your opinions, suggestions and writings on national human rights institutions. Selected entries will be published in **LAW AND OUR RIGHTS** <[www.dailystarnews.com/law](http://www.dailystarnews.com/law)>

National human rights institutions are being set up in many parts of the world. While the powers of these institutions in the different countries vary, there seems to be a 'core concept' emerging. In many countries, such national institutions have not matched the high expectations they generated when they were first set up.

On the other hand, in some other countries, where the expectations were not so great, national institutions have yielded some positive results. The succeeding governments of Bangladesh did not keep the promises of 'establishing a number of national human rights institutions' they had made to the people. The network will strive to advocate for their early establishment in accordance with international standards. If you have any query regarding the network or the issue, please do

not hesitate to contact us at Law Desk, <[lawdesk20@hotmail.com](mailto:lawdesk20@hotmail.com)> or Law Watch <[lawwatch2001@yahoo.com](mailto:lawwatch2001@yahoo.com)>