Chapter 3  
Fundamentals of the Universal Declaration’s Human Rights Protection

Legally binding principles

The Universal Declaration of Human Rights (UDHR) recognizes the rights of the child before as well as after birth and, since it was adopted by a resolution of the General Assembly, the principles contained therein are considered now to be legally binding on States both as customary international law and as fundamental principles of humanity as originally formulated. In 1980, in regard to the Tehran hostages case, for example, the International Court of Justice clearly affirmed that “the fundamental principles enunciated in the...Declaration” are legally binding in international law.

The Universal Declaration is a specification of the human rights recognized in the Charter of the United Nations. The Universal Declaration originally and ultimately derives its authority from the legal standing of this international Charter.

In 1950, Cambridge University’s Professor Hersch Lauterpacht, perhaps the most eminent international law consultant to the Nuremberg judges and to the birth of the United Nations and its foundation instruments, commented on the Charter’s human rights provisions. He stressed that the members of the United Nations are under a legal obligation to act in accordance with the purposes of the Charter. It is their legal duty to respect and observe fundamental human rights and freedoms. These provisions, he asserted, are no mere embellishment of an historic document; they were not the result of an afterthought or an accident of drafting. They were adopted, with deliberation and after prolonged discussions before and during the San Francisco Conference (1945), as part of the philosophy of the new international system and as a most compelling lesson of the experience of the inadequacies and dangers of the old.

This abiding obligation for UN member states to encourage and respect human rights is affirmed in Article 1(3) of the UN Charter, which identifies among the purposes of the UN the specific purpose “to achieve international cooperation...in pro-

motoring and encouraging respect for human rights and fundamental freedoms for all.” These rights are elaborated in the Universal Declaration of Human Rights.

**UDHR recognition of child before birth still pertained in 1959**

As an adjunct document to the Universal Declaration, the 1959 Declaration on the Rights of the Child is of immense importance. Its *gravitas* lies in its character as an intellectually binding primary source. It furnishes historical proof that on the critical question of whether or not the Universal Declaration is to be understood to apply to all children without discrimination before as well as after birth, the UN General Assembly, on November 20th, 1959, gave a resounding “Yes!”

In the years since that consensus in the 1959 Declaration there has been no unanimous or even near-unanimous reneging on that position. On this question, that vital “Yes!” still stands.

To date, this historical affirmation retains its integrity. The 1959 Declaration retains its full force as re affirming and providing proof that, eleven years earlier in the Universal Declaration, an international consensus was reached recognizing the need for human rights protection for the child before birth. It also testifies to the fact that this recognition still pertained in 1959. Indeed, it is the only real and substantial UN consensus on the rights of the child before birth that we possess either contemporary with or since the International Bill of Rights, those first three great human rights instruments establishing modern international human rights law.

This is the only formal consensus definition that we have ever had of how, with regard to the child before birth, the United Nations is to understand and implement not only the Universal Declaration of Human Rights (1948) but also the International Covenant on Civil and Political Rights (1966) and the International Covenant on Economic, Social and Cultural Rights (1966) that followed only seven years after the clear reaffirmation in the 1959 Declaration.

This formal consensus definition stands unassailably in the middle of the first two decades of discussion, negotiation, and formulation of the initial great human rights instruments of the modern world. Inclusion of the child before as well as after birth for human rights protection was the single consensual understanding at the time (1959) and the closest understanding that we have contemporaneous with the International Bill of Rights that emerged between 1948 and 1966.

This consensus definition has never been formally revoked since, despite tremendous efforts (both fair and foul) from pro-abortion lobbies on the recent circuit of UN mega-conferences. An exceptionally devious ploy by some pro-abortion delegates to remove recognition of the child before birth from the definition of the child in the Convention on the Rights of the Child (1990) was unsuccessful.

Thus, recognition by the Universal Declaration that the child before as well as after birth has a human rights entitlement to special safeguards and care, including legal

4 Only one delegation voted against it.