

**AMERICAN BAR ASSOCIATION**  
**SECTION OF INTERNATIONAL LAW**  
**CENTER FOR HUMAN RIGHTS**  
**COMMISSION FOR WOMEN IN THE PROFESSION**  
**SECTION OF DISPUTE RESOLUTION**

**RECOMMENDATION**

RESOLVED, that the American Bar Association urges the U.S. and other countries to renew their commitment to the principles of the Universal Declaration of Human Rights, on the occasion of the 60<sup>th</sup> anniversary of the signing of the Universal Declaration of Human Rights (December 10, 1948 in Paris).

## **REPORT**

The American Bar Association Section of International Law (“SIL”) and Center for Human Rights (“CHR”) jointly submit this Report and Recommendation (“R&R”) in connection with the programming they are hosting in commemoration of the 60<sup>th</sup> anniversary of the Universal Declaration of Human Rights (“UDHR”). These programs are the subject of a separate request before the American Bar Association Board of Governors and are being developed by SIL, the CHR, the Paris Bar, and the Italian Bar.

As part of these programs, it has been suggested that lawyers associations from around the world sign a statement affirming the importance of, and a commitment to, the principles of the UDHR. This R&R is intended both to commemorate the 60<sup>th</sup> anniversary of the signing of the UDHR and to enable the President of the American Bar Association (“Association”) to sign such a statement.

### **UDHR Background**

Prior to World War II, it was felt that the protection of human rights were primarily a domestic concern. However, with the Nazis’ attempt to annihilate the Jews, Roma, homosexuals, mentally and physically handicapped, and political opponents, it became more apparent that the struggle to uphold human rights was a universal concern. During a speech before the U.S. Congress in 1941, President Franklin D. Roosevelt identified four basic freedoms: freedom of speech and expression, freedom of worship, freedom from want, and freedom from fear. Additionally, the Atlantic Charter, jointly declared by President Roosevelt and Prime Minister Winston Churchill, set forth common values as the basis for post-war world order by defending economic and social security and Roosevelt’s four freedoms.

Following the Second World War, the need to codify human rights was apparent to not only the “Big Four” war powers, but also smaller countries and nongovernmental organizations as they fought for a strong commitment to human rights in the United Nations Charter and an integral part of the international organization. In the 1945 “Conference on International Organization,” the 50 signatories to the United Nations Charter legally committed themselves to promote and encourage respect for the inalienable human rights that belong to every man, woman, and child. This gave human rights a new international legal status. Human rights are first mentioned in the Preamble to the United Nations Charter, as one of the four founding purposes of the United Nations: “to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small.”

The United Nations Charter also mandated that the United Nations Economic and Social Council setup a commission for the promotion and protection of human rights. The United Nations Commission on Human Rights spent its first three years drafting the UDHR. Eleanor Roosevelt of the United States was the Chair of the United Nations Commission on Human Rights and John Peters Humphrey of Canada was the initial drafter of the UDHR. The United Nations Commission on Human Rights membership was intended to broadly represent the global community with representatives from: Australia, Belgium, Byelorussian Soviet Socialist Republic, Chile, China, Egypt, France, India, Iran, Lebanon, Panama, Philippines Republic, United Kingdom, United States, Union of Soviet Socialist Republics, Uruguay, and Yugoslavia.

The UDHR represents the first global expression of rights to which all human beings are inherently entitled. It consists of 30 articles which have been elaborated in subsequent international treaties, regional human rights instruments, national constitutions and laws.

The Universal Declaration begins with a preamble consisting of seven paragraphs followed by a statement “proclaiming” the Declaration. Each of the seven paragraphs of the UDHR’s preamble sets out a reason for the UDHR’s adoption:

- The recognition of human dignity of all people is the foundation of justice and peace in the world;
- Disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind and that the freedom of speech and belief, and freedom from fear and want have been “proclaimed as the highest aspiration” of the people;
- So that people are not compelled to rebellion against tyranny, human rights should be protected by rule of law;
- Human rights are important to the development of friendly relations between nations;
- The peoples of the United Nations have in the U.N. Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom;
- All members of the United Nations have pledged themselves to achieve, in cooperation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms; and
- “A common understanding” of rights and freedoms is of “the greatest importance” for the full realization of the pledge referenced in the above paragraph.

The preamble is followed by the “proclamation” of the UDHR as a “common standard of achievement” for “all peoples and all nations”, so that “all individuals” and “all organs of society” should by teaching and education, promote respect for these rights and freedoms and by progressive measures, national and international, secure their universal and effective recognition and observance. The 30 articles of the UDHR set forth the specific human rights recognized therein, including, but not limited to, life, liberty, and security of person; a prohibition on slavery; a prohibition on torture; and equal treatment under the law.

The UDHR was adopted by the U.N. General Assembly on December 10, 1948 without dissent—48 in favor, 8 abstentions (all Soviet bloc states, South Africa and Saudi Arabia) and 2 absent. In recognizing the atrocities of World War II, the UDHR pledged the member states “to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms” (UDHR Preamble).

Some international lawyers believe that the UDHR forms part of customary international law and is a powerful tool in applying diplomatic and moral pressure to governments that violate any of its articles. The 1968 U.N. International Conference on Human Rights advised that the UDHR “constitutes an obligation for the members of the international community” to all persons. The UDHR has served as the foundation for two binding UN human rights covenants, the *International*

*Covenant on Economic, Social and Cultural Rights* and the *International Covenant on Civil and Political Rights*. Each covenant was adopted in 1966 and went into force in 1976.

### **Prior Association Policy**

It is not clear whether the Association has specific policy approving or otherwise embracing the UDHR. A search process begun in the summer of 2008 has not revealed any such policy. Even if such policy were adopted in 1948 (or shortly thereafter), it likely would no longer be active given the policy archiving process that the Association started in 1997.

However, the principles espoused in the UDHR have been embraced and supported by the Association, and this R&R is not on a wholly new topic. As indicated above, the UDHR has two primary descendants: the *International Covenant on Economic, Social and Cultural Rights* and the *International Covenant on Civil and Political Rights*. In policies adopted in February 1979, the Association supported the ratification of each Covenant, subject to several understandings, declarations and reservations (including a reservation stating that neither Covenant should be regarded as interfering with the right of free speech recognized by the U.S. Constitution).

In addition, other Association policies have made positive reference to the UDHR:

- At the Midyear Meeting in 1978 the Association adopted the Law Student Division's recommendation on the Helsinki Agreement, that stated (bold added for emphasis):

RESOLVED, That as citizens of the United States of America who enjoy freedom of speech, freedom of religion, freedom of the press, and freedom of assembly, the members of the American Bar Association affirm their support of those who have challenged their governments to comply with the human rights provisions of the Helsinki Agreement of 1975 and who have been monitoring and reporting the condition of human rights in their countries.

RESOLVED, That the members of the American Bar Association call upon participants of the 1977 Belgrade Conference and all citizens of the 35 countries that signed the Helsinki Agreement to ensure faithful compliance with the human rights provisions of the Helsinki Agreement as well as the United Nations **Universal Declaration of Human Rights**.

- At the Midyear Meeting in 1982, the Association adopted SIL's recommendation on freedom of speech that provided (emphasis added):

BE IT RESOLVED, That, in examining the role of international organizations with respect to communications issues, the American Bar Association:

1. Believes, as provided in Article 19 of the **Universal Declaration of Human Rights**, that "everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers;"
2. Strongly recommends that the United States:

a) Steadfastly support principles of free speech and free press in international fora and support measures that would promote the individual's legitimate right to seek, receive and impart information and be informed about the world by reporters and journalists independent of government control; and

b) Oppose measures in international organizations which promote the licensing of journalists, restriction of news sources and censorship.

- At the 1991 Midyear Meeting, the Association adopted a recommendation from SIL, the Section of Individual Rights and Responsibilities, and the Standing Committee on World Order Under Law on human rights in Hong Kong that stated (emphasis added):

BE IT RESOLVED, That the American Bar Association encourages the adoption of a Bill of Rights for Hong Kong which fully guarantee those civil and political rights, after July 1, 1997, which are currently enjoyed by the residents of Hong Kong, as anticipated by the newly enacted Basic Law of the Hong Kong Special Administrative Region.

BE IT FURTHER RESOLVED, That the American Bar Association calls upon the governments of the United Kingdom and the People's Republic of China to give effect in local law, enforceable after July 1, 1997, of provisions of the International Covenant on Civil and Political Rights which now apply to Hong Kong because of their ratification by the United Kingdom, in furtherance of Article 39 of the Basic Law of the Hong Kong Special Administrative Region.

BE IT FURTHER RESOLVED, That the American Bar Association calls upon the Government of the People's Republic of China to allow free movement of persons to and from Hong Kong after July 1, 1997, which is guaranteed under the Charter of the United Nations as interpreted by the **Universal Declaration of Human Rights**.

BE IT FURTHER RESOLVED, That the American Bar Association urges the United States Government to use its influence in encouraging the continuance and growth of democratic institutions in Hong Kong.

This R&R should not be read as not endorsing or not embracing any other human rights instrument or agreement that has been approved by prior Association policy. This R&R is intended as an affirmation of the principal document influencing such human rights instruments and Association

policies. Therefore, in consideration of the 60<sup>th</sup> anniversary of the UDHR, SIL and the CHR recommend that the Association urge the U.S. and other countries to reaffirm their commitment to human rights and the principles contained in the UDHR.

Respectfully Submitted,

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Section of International Law

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ABA Center on Human Rights