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The Universal Declaration of Human Rights and the American Convention on Human Rights;

Comparing Origins, Manifestations and Aspirations

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ABSTRACT

The concept of human rights is a dynamic one that constantly generates new defining and regulatory instruments. The Universal Declaration of Human Rights along with the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, represent the principal foundation of the concept's development in the modern era. Their creations were initially provoked by the atrocities of the Second World War, but they have come to constitute the inspiration for numerous other human rights instruments, both international and regional. The American Convention on Human Rights is currently one of the main regional instruments in existence, exemplifying a particular direction of the evolution of human rights thinking. All these instruments are created with the sole common objective of protecting and promoting human rights. However, due to variation in social and political contexts, each instrument is unique. Despite the similarities that the instruments generated by the United Nations share with the American Convention today, the pathways to formulation and possible ratification have differed greatly. The Americas have a very distinct turbulent political history that has posed a noticeable obstacle for human rights development in the hemisphere consequently resulting in a specific regional perspective on so-called universal human rights. In this thesis I emphasize such differences by comparing the historical conditions surrounding each instrument's drafting and by analyzing specific articles of the documents. In addition to this I aim to identify the key factors that influence the content of the human rights instruments and to examine possible developments of the concept of human rights in the future.

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LIST OF ABBREVIATIONS

ACHR	American Convention on Human Rights
American Declaration	American Declaration of the Rights and Duties of Man
ECOSOC	Economic and Social Council of the UN
ESC	Economic, Social and Cultural [rights]
European Convention	European Convention for the Protection of Human Rights and Fundamental Freedoms
IACHR	Inter-American Commission on Human Rights
IAHRS	Inter-American Human Rights System
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICJ	International Court of Justice
NGO	Non-Governmental Organization
OAS	Organization of American States
OAS Charter	Charter of the Organization of American States
The Court	Inter-American Court of Human Rights
The League	League of Nations
The Protocol	Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Also known as the ‘Protocol of San Salvador’)
UDHR	Universal Declaration of Human Rights
UN	United Nations
UN Charter	Charter of the United Nations
United States	United States of America

1 INTRODUCTION

1.1 OBJECTIVES AND EXPECTED OUTCOME

The concept of human rights is a notion constantly exposed to the socio-political changes in our societies. The various manifestations of the contemporary perception of the concept are generally recognized as contained in the principal human rights instruments in existence. In this thesis I will examine the Universal Declaration of Human Rights (UDHR) along with the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) on the one hand, and the American Convention on Human Rights (ACHR) on the other. The main objective of this thesis will be to accentuate the distinctive characteristics of each set of texts and how those characteristics have emerged as consequences of their respective historical contexts despite their apparent similarities concerning their common purposes. Certain historical circumstances and theories have influenced the evolution of the concept of human rights and will therefore be studied as frameworks for the written texts as well as for the developing concept. Moreover I intend to highlight the variation in content that exists between the texts as I investigate what additional factors might have influenced the creative processes that aimed the documents in different directions. Ultimately I will strive to clarify for the reader the expectations imposed upon the documents and the reasons for those expectations.

I expect to find that the two sets of documents that I intend to examine have in fact, despite their apparent similarities and the self-evident chief objective they share, their own particular deficiencies and characteristics and that there additionally exists an inherent set of differences between them.

1.2 DELIMITATIONS

I chose to limit my area of investigation to examining the UDHR *and to a certain extent the following two covenants; the ICCPR and the ICESCR* as recognized by the United Nations

(UN), and compare these to the ACHR¹. I considered it necessary to limit my area of investigation to these key agreements to ensure an effective comparative analysis that would be as comprehensible and as valuable to the reader as possible. They were primarily chosen for their inherent importance in the field of international human rights. However, I will occasionally find it necessary to discuss additional human rights instruments for a deeper understanding of the subject at hand concerning certain aspects of my investigation.

When deciding upon what texts to examine, I primarily needed to establish that the chosen documents were principally comparable. I consider the documents mentioned above comparable in essence despite the fact that, unlike the other documents, the UDHR is not legally binding. Considering that the texts originate from the same key notion, namely that of *defining and protecting human rights*, I find it evident that they are comparable. Furthermore I have chosen to study the UDHR in combination with its following two covenants, thus facilitating a comparison to the ACHR in a judicial aspect. Notwithstanding the legal status of the UDHR, it must be regarded as an agreement of principle with reference to the content of the rights and the individuals to whom they are to be extended. From this perspective, it most certainly constitutes a first step towards legally binding regulations. In addition to this, the legal status of the UDHR is by many considered the foundation of an extensively elaborated common law concerning human rights.

In addition to differences in legal effects, the texts have (for the main part) different geographical application areas. The texts originated from the UN have a global scope of application whereas the ACHR has a regional sphere of application. This circumstance presents an interesting point of comparison and allows for the discussion of a possible regional perspective on their common basis of existence. Such an analysis must therefore be seen in light of the fact that the documents were all based on the same key notion and that their different application scopes do not affect that basic concept that in essence is the core of my thesis.

¹ Although there are minor discrepancies, the covenants are meant to reinforce and elaborate the UDHR, not to add additional rights or freedoms. Together they constitute a unified international bill of rights and one of the two bodies of human rights texts that I have chosen to examine.

1.3 DISPOSITION

The thesis will have three sections followed by an extensive analysis. It will begin with an introduction to give the reader an overall understanding of the concept of human rights and to enable the reader to fully appreciate the importance of the subject at hand as treated in the thesis.

In deciding upon the most appropriate way to compose the thesis, I chose to base its analysis in a historical context, thus giving it a natural starting point that has the advantage of chronologically guiding the reader through the evolution of the concept of human rights to the present day. This approach also enables me to examine the political and ideological powers leading to this point in time. The second section will concern the expectations on the documents. It will explore expectations at the time of the documents' conception as well as analyzing the fulfillment of such expectations or the lack thereof in the present time. The third section is centered on the uncertain road ahead concerning the evolution of human rights. Said section will explore the factors that should be taken into account when evaluating such a possible evolution. In finishing the thesis, I will attempt to present my concluding analysis in a manner that allows the reader to perceive the differences and the reasons thereof between the two sets of texts.

1.4 METHOD

Within the framework of historical contextualization as indicated above, I have chosen to conduct a *comparative analysis* of the main documents in question. My general frame of reference will consist of the conceptualization of human rights as manifested in the key instruments of my thesis. When considering the manner in which the instruments compared relate to each other, I intend to examine the way in which they complicate as well as complement each other. This decision was based on the observation that these documents essentially deal with the same basic concept (as mentioned above) yet demonstrate certain interesting differences. This circumstance would render a comparative analysis highly rewarding and appropriate for analyzing the texts. Furthermore, such a method would enable me to highlight the documents' importance and to carry out an evaluation of certain factors (if

said factors had a large or a small impact on the actual wording) that led to their creation whilst evaluating why those particular factors were given such influence.

1.5 MATERIALS

Considering the international character of this thesis, my primary references and the chief part of the material consulted will consist of international treaties and declarations within the area of investigation; primarily the ACHR, the UDHR and the subsequent covenants the ICCPR and the ICESCR. In addition to this I will refer to commentaries to said texts and legal regulations, as well as relevant doctrine in the form of literature and articles that may be of interest exclusively from within the field of investigation. The written material that will be examined consists of English, Spanish and Swedish documents as found in university libraries and databases of Handelshögskolan (School of Business, Economics and Law, University of Gothenburg, Sweden), Universidad Nacional de Mar del Plata (National University of Mar del Plata, Argentina) and Biblioteca Depositaria de las Naciones Unidas y Habitat (UN library of Mar del Plata, Argentina).

2 ORIGINS OF THE INSTRUMENTS

2.1 INTRODUCTION TO SUBJECT

Human rights are understood to be rights inherent in human nature and equal for all human beings thus being quintessentially universal in character. As they relate to the most essential needs and basic values or capabilities of human beings everywhere, they are additionally perceived as fundamental. Ultimately, human rights are in essence just that because of the simple fact of belonging to individuals as a consequence of their being human. It is fundamentally a concept primarily aimed at the human being, rather than the citizen. This concept of inalienable rights and fundamental freedoms is far from new. Its origins predate modern society's most renowned acknowledgement, the Universal Declaration of Human Rights, by centuries. Although its predecessors are indeed ancient², the concept roughly relating to modern usage is first encountered in the aftermath of the seventeenth and eighteenth centuries' revolutions. The intellectual forces behind the revolutions were to a great extent philosophers, many of whom are associated with theories of natural law. These theories posited rights as given to man by nature itself. Philosophers like Hobbes, Locke and Rousseau each elaborated distinct theories based on their endeavors to discover universally valid principles that would govern such natural rights and freedoms. As influential individuals each in his own context, their theories were employed in struggles against political absolutism and consequently proved important in the development of what would eventually become known as human rights. Despite the far reaching origins of said rights, it was not until after the Second World War that a truly deep and widely spread concern for the protection of human rights was seriously demonstrated. Accompanying this development was the new expression 'human rights' that replaced that of 'natural rights'.

As shown by history, the concept of human rights has proven to be a highly dynamic one. Be it the constant development of certain aspects of already existing rights, the birth of new ones,

² The evolution of human rights was initiated alongside the history of civilization although the process noticeably accelerated from the mid-nineteenth century and forward. A concept of natural law emerged in ancient Greece and Rome. By the end of the Middle Ages that concept mainly implied duties of men as opposed to rights. However, at this point in time it was finally associated with 'natural rights', a term that would subsequently be frequently used by the philosophers of the seventeenth and eighteenth centuries. Leaving behind the concepts of privileges and divine rights of royalty of the old regimen, these philosophers shaped our modern conception of natural law as something understood to imply natural rights to *all* men (although the term 'all men' generally excluded women, consequently still having a long way to go to before establishing the concept of truly universal rights).

or the progressive improvement of the protection mechanisms in the human rights field, the evolution of human rights is a decidedly productive one. In addition to this, the inherent importance of human rights and their association to democratic societies has awarded them global recognition. Democratic societies are perceived as possessing the social conditions ideal for embracing the concept whilst simultaneously forcing it to evolve because of their social and participatory dimensions. Furthermore, such societies emphasize the interdependency of all categories of human rights, proving that the full realization of one right undisputedly entails the necessary preconditions for the realization of others. Ultimately, this dynamic nature of the notion has evoked a perpetual debate concerning the content, priorities and scope of human rights in general.

The evolution of human rights has also signified a redefinition of the relationship between states and individuals and has added new elements to interstate relations. The international arena is no longer reserved for states alone; it has become a forum for globally recognized human rights, imposing necessary obligations on states to guarantee these rights in the face of their own infractions. The possibility for individuals to make claims of human rights violations is undoubtedly a step towards awarding them juridical personality under international law and a clear redefinition of the traditional perception of such law. Human rights instruments, such as those examined in this thesis, have come to challenge the persistent view that a sovereign state's treatment of its citizens is of sole concern to that state. International human rights treaties are no longer multilateral agreements conceived for the mutual benefit of the signing parties. Their objectives are rather the protection of individuals' fundamental rights, regardless of their nationality. Thus, the commitments stemming from such instruments are towards individual human beings, and not towards other states³. The doctrine of non-intervention is thus noticeably weakened in the human rights field and needless to say, the redefined relations that have evolved are complex and often difficult to govern.

Despite these new facets of international law, the realization and full effectiveness of human rights and fundamental freedoms is still essentially dependent on the will of states. The international human rights instruments examined in this thesis were created with a sole

³ See the advisory opinion of the Inter-American Court of Human Rights concerning the effect of reservations on the entry into force of the American Convention on Human Rights (Arts. 74 and 75). Advisory Opinion OC-2/82 of September 24, 1982. Series A No. 2, paragraph 29.

common purpose; to safeguard the rights and freedoms that are considered the most essential, significant and innate to human nature. Notwithstanding the commendable purposes of such instruments, in the end, it is up to the state parties to ensure the implementation of their international obligations. The effective protection of the human rights of individual beings under a state's jurisdiction is ultimately guaranteed by national legislation as an expression of political commitment on behalf of the state.

International instruments such as the Universal Declaration of Human Rights and the American Convention on Human Rights constitute impressive accomplishments in our endeavors to achieve a greater respect for all of humanity, but unfortunately there are still countless human beings that have never enjoyed the rights articulated in those documents. These circumstances highlight the importance of an improved application and understanding of the human rights instruments in existence and an increased promotion of human rights. The fulfillment of human rights allows not only individuals, but entire societies to flourish.

2.2 HISTORIC BACKGROUND

The following is a presentation of the historic backdrop for the creation of the key human rights instruments and the political and social conditions it provided as a dynamic context. In addition to this, such conditions have accordingly had an enormous influence on the actual formation and perception of the human rights protected in those instruments. As a testament to this historic development, human rights are often divided into three different 'generations' to facilitate the comprehension of their evolution over time.

The *first* generation pertains to civil and political rights and is associated with the age of the Enlightenment and the revolutions of that time. They were contemporary with the materialization of liberal constitutionalism, thus enshrining classic liberal values in advocating the non-intervention of states for the realization of such rights. Among other rights, this first generation accordingly includes the right to liberty, freedom of expression, opinion and religion, the right to privacy, the right to property, the right to political participation and the right to life. The *second* generation concerns economic, social and cultural rights (ESC) that flourished in the interwar period and were further elaborated from

the mid-twentieth century as a reaction to the unregulated development of capitalism at that time⁴. In part they constitute a further elaboration of some of the first generation's rights, but essentially represent so-called positive liberties. As a counterpart to the first generation, these rights allow for state intervention so as to ensure the full realization and equal distribution of rights and the additional creation of 'new' rights, liberties and opportunities for individuals. This second generation includes rights such as the right to work, the right to education and the right to an adequate standard of living. Finally there has emerged a *third* distinguishable generation of human rights that pertain to the concept of solidarity and to a great extent require international collaboration for their full realization. They are often referred to as collective rights and are, as recent additions to the human rights family, the result of new social values that are shared by a great majority of humankind. However, their human rights status is debated because of their chiefly aspirational characters. This generation therefore includes among others, the collective right to political, cultural and social self-determination, the right to social and economic development and the right to a healthy and sustainable environment.

This categorization of human rights is useful when emphasizing the impact different historic stages have had on the progress of human rights. It clearly shows how the content of human rights reflects constantly evolving perceptions of what essential values society deems necessary to protect.

As discussed above, the concept of human rights and fundamental freedoms is certainly nothing new; in fact, it is as demonstrated quite the contrary, a concept with ancient roots. The term 'human rights' is significantly younger than the concept itself and made its grand entrance on the international stage during deliberations following the Second World War with the subsequent consequence of the establishment of the United Nations in 1945. Following an extremely turbulent first half of the century this new era represented a new world order and a historic springboard for the creation of the key international instruments intended for the identification and protection of human rights.

⁴ Note the early manifestations of such rights in the Constitution of Mexico of 1917, and the Weimar Constitution (Constitution of the Weimar Republic) of 1919.

The First World War had left the European countries with a tremendous need for reconstruction that in part led to the foundation of the League of Nations (the League)⁵. As a predecessor to the UN, it strived towards a peaceful Europe. One of its focal points was the protection of minorities, consequently achieving the adoption of treaties on the subject although the application of said treaties was limited to a handful of countries. Another one of its objectives was to achieve homogeneity so as to eliminate potential causes for conflict. Unfortunately, as was to be learned, this was not the best approach for securing peace in Europe. To the contrary, such efforts indirectly sparked the instigation of the Second World War. The lack of an effective enforcement mechanism for the guaranteeing of the many international obligations that surfaced around the time of the end of the First World War, made a limping Europe even more chaotic.

In the period between the two world wars, the perception of the organization and the basic values of societies changed. What was known as a liberal state, transformed into a welfare state by reevaluating the basic premises for its existence. The concept of social *rights* emerged for the first time and the Great Depression that started in 1929 produced a radical change in perceptions of the relationship between the position of the state and society. As a result of the economic crisis this change of perspective came from the insight that the only way for an economy to function well is if the state intervenes. The ‘laissez-faire’ mentality of the past was replaced because of its inability to resolve the problems of the new society that led to an economic crisis and social inequality.⁶ The transformation into welfare states gave new meaning to liberal concepts thus redefining them in social terms. The concept of equality now referred to that of opportunities, the right to property experienced a certain amount of limitation and the concept of liberty no longer entailed non-intervention on part of the state but rather the adoption of active politics for the true enjoyment of human rights. The concept of legal certainty did not change, per se, but was rather complemented by that of life certainty; the obligation of the state to guarantee the basic conditions for a dignified life (physically, intellectually and culturally). Political participation was now perceived as a true ‘right’ of the individual and included a wider perspective implying a participation in socioeconomic terms

⁵ The founding treaty; the Covenant of the League of Nations, was signed at the Paris Peace Conference on April 28th, 1919. For the full text including Amendments adopted to December, 1924, available at http://avalon.law.yale.edu/20th_century/leagcov.asp [2010-06-23].

⁶ As an example in the case of the United States, this change was produced by the New Deal in 1933 that was a series of domestic programs designed to combat the effects of the great depression in the United States during the administration of Franklin D. Roosevelt, see <http://www.loc.gov/rr/program/bib/newdeal/index.html> (New Deal Programs: Selected Library of Congress Resources, Library of Congress) and at <http://newdeal.feri.org/> [2010-06-23].

as opposed to a mere function in political terms. This new welfare state necessarily required a democracy for its objectives to be fulfilled, thus posing as the ideal breeding ground for the evolution of human rights. As has been proven over and over again in history, there exists an interrelationship between the deprivation and violation of human rights and the existence of anti-democratic regimes. As stated in both the UDHR and the ACHR, democracies are considered a prerequisite for the realization of human rights.⁷ The changes, mentioned above, that were produced during the twentieth century, clearly influenced the perception of basic values and what constitutes human rights that was to be enshrined in the two documents.

A democracy (ideally) lets *all* voices be heard and have equal influence in the decisions taken, it is a structure that underpins the equality of human beings and at the same time criticizes the idea of certain individuals being ‘above’ the system and enjoying special privileges. Additionally, an important aspect of the most commonly used representative democracy, is the intent to eliminate personal interests from the seat of power and represent all citizens equally, despite the representative’s political beliefs. For this type of democracy to function properly, the freedoms of speech and suffrage are essential, thus enabling a way to govern that will in turn favor the protection of those same human rights.

The Second World War, the epitome of anguish, left the world in acute need of some sort of international initiative to take charge of the situation and to rebuild the concept of fundamental freedoms and inalienable rights for everyone on equal terms⁸. After defeating Nazi Germany the Allies realized that there was a critical need for the establishment of an international organization with the primary objective of promoting international security and peace. There was an extensive consensus regarding the importance of doing this whilst safeguarding human rights worldwide since this would help diminish the risk of experiencing the horrors of a world war yet again. In the aftermath of World War II the Allies even imposed human rights obligations on the Axis powers, preceding the actual establishment of the UN, in an attempt to underline the gravity of their actions and to reestablish a faith in the universality of human rights whilst trying to help the peoples that were most affected. At a

⁷ Article 29 of the UDHR (see note 31) and primarily the Preamble and article 29(c) of the ACHR (see note 65). References to the importance of democracy as a precondition for the realization of human rights can also be found in the Preamble of the American Declaration on the Rights and Duties of Man (see note 52). Furthermore the two UN covenants; the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, both refer to the democratic society as a given precondition in the member states.

⁸ Note how the term ‘everyone’ was now, de facto, meant to include *everyone*, in comparison to the supposed universality of the predecessors to human rights. *Supra*, note 2.

time when the world was stunned by the atrocities of the war, the United Nations saw the light of day as an international initiative establishing a global community that would from that day forward become the embodiment of human rights and their protection and promotion everywhere.

In 1942 President Franklin D. Roosevelt of the United States of America (United States) and Prime Minister Winston Churchill of England met in the mid-Atlantic where they resolved to combat the atrocities of the Second World War. This meeting led to the creation of the Atlantic Charter⁹; a document reaffirming the four freedoms as advocated by Roosevelt and the values that would ideally characterize the post-World War II world¹⁰. This was the prelude to the creation of the UN and consequently the UDHR. In 1944 the so-called 'Big Three' (the United States, Great Britain and the Soviet Union) along with representatives from China met at Dumbarton Oaks, determined to win the war and to discuss the possibilities of creating an international organization (subsequently the UN) that would maintain world peace after the end of the Second World War¹¹. In February 1945 at Yalta in the Crimea the Big Three met yet again. This time around Prime Minister Winston Churchill, President Franklin D. Roosevelt and Premier Joseph Stalin reunited to make concrete arrangements for the peace and to settle the remaining questions regarding the structure of the UN¹².

2.3 THE CREATION OF THE UNITED NATIONS

The new international organization replaced the League of Nations and started out dealing with the issues caused by the devastation from the two World Wars. It was clearly no easy task, but the international consensus at the time had resulted in the founding Charter of the United Nations (UN Charter) enshrining fundamental notions of equality and dignity for all

⁹ The Atlantic Charter of the 14th of August, 1941. The full text is available at http://www.nato.int/cps/en/SID-2788FECD-8FACF71E/natolive/official_texts_16912.htm [2010-06-23].

¹⁰ The four freedoms were expressed by President Roosevelt in his 'Four Freedoms Speech' of January 6th, 1941; freedom of speech and expression, freedom of every person to worship God in his own way, freedom from want and freedom from fear.

¹¹ In discussions regarding the structure of the organization, the use of veto in the Security Council was an important point of convergence. As it eventually turned out, the Big Three ended up holding 3/5 of the permanent seats in the UN Security Council, consequently wielding a continuously great influence at the core of the UN to this day. Note the replacement of the Soviet Union for the Russian Federation and the remaining to permanent members of the council; China and France.

¹² For the text of the agreements reached at the Yalta Conference, see <http://avalon.law.yale.edu/wwii/yalta.asp> [2010-06-23].

the citizens of the world¹³. With such a foundation, it is fair to say that the UN had the international community's support and a basic ideological consensus for it to be able to manage such a task¹⁴. The preamble of the UN Charter voices the main objectives of the organization and makes a clear reference to the horrors of the two world wars, the one principal factor that led to the organization's creation¹⁵. In addition to its objectives of peace and security the Charter reaffirms the importance of human rights and worth of the human person, a significant reaffirmation since it is generally acknowledged that the protection of and respect for fundamental human rights is essential for reaching said objectives. This reference to human rights is subsequently followed by several provisions concerning the need for international recognition and protection of human rights and fundamental freedoms throughout the UN Charter¹⁶. Supposedly, the inclusion of article 68 was to a great extent the result of lobbying by a large amount of NGOs (Non-Governmental Organization) pressuring the political leaders involved in the drafting process¹⁷. This article signified the anchoring of the Commission on Human Rights¹⁸ in the UN Charter itself, something that entails a great respect from the member states and makes it one of the few UN bodies that draw their authority directly from the Charter¹⁹.

The founding of the UN brought with it a new era for international law. No longer exclusive to interstate relations, it now included the protection of individual rights and the conviction of individuals guilty of various crimes. In addition to this, the creation of the UN entailed a new

¹³ Charter of the United Nations, *signed* 26 June 1945, 59 Stat. 1031, T.S. No. 993, 3 Bevans 1153 (*entered into force* 24 Oct. 1945).

¹⁴ The atrocious circumstances of the Second World War consequently served as the foundation for the creation of the Charter of the United Nations, affirming the importance of the promotion of human rights, and subsequently resulting in the adoption of the UDHR; *La Declaración Universal de los Derechos Humanos; Comentario artículo por artículo*, Xavier Pons Rafols (Coord.), Asociación para las Naciones Unidas en España, Icaria Antrazyt, 1998.

¹⁵ "...Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people, Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law".

¹⁶ For examples, see articles 1, 13(1), 55, 62(2), 68, 76(c) of the UN Charter, *supra*, note 13.

¹⁷ UN Charter, *supra* note 13, article 68 that reads as follows: "The Economic and Social Council shall set up commissions in economic and social fields and for the promotion of human rights, and such other commissions as may be required for the performance of its functions."

¹⁸ The Commission on Human Rights was established by the Economic and Social Council in resolution 5(I) of 16 February 1946. The Commission has subsequently been replaced by the UN Human Rights Council, see G.A. Res. A/RES/60/251 (Mar. 15, 2006), establishing the Council.

¹⁹ Although the full scope of the rights mentioned throughout the UN Charter remained to be defined, the repeated references to them and the clear initiative to promote them by setting up a Commission on the subject indicated that member states could no longer validly claim that human rights as such were in essence a domestic in character.

interpretation of the traditional concept of state sovereignty. This new understanding of international law led to a global community that elevated rights and freedoms for *all* individuals. It would eventually generate international and regional systems in charge of supervising the implementation of international human rights instruments and of applying enforcement mechanisms to ensure that the signing parties comply with their obligations²⁰.

The UN now enjoys the privilege of giving all the conventions, declarations, resolutions, opinions and other information stemming from it an immediate level of acceptance because of the organization's authority. It has furthermore successfully applied this new perspective of international law. Leaving an old perception that focused on the separating and compartmentalizing of peoples and nations behind, it would instead favor one that sees to all the equal individuals in *one* world. With said perspective as its point of departure, the newly founded organization was bound towards a new beginning for the promotion and protection of human rights. This development, based on the concept of human rights stemming from the preamble of the UN Charter was undoubtedly an important advance. However, despite this promising initial step, there was still no way of identifying the human rights that the organization was striving to protect because of their lack of definition.

Along with the founding of the UN, a set of objectives for the organization became clear and among these, the creation of an international protection system for human rights. To that end a committee was established and given the task of drafting an international bill of rights. It was intended to be truly universal, thus applying to each and every human being in the world and to be modeled after the most well renowned bills of rights in history, such as the French Declaration of the Rights of Man and of the Citizen (1789) and the United States' Bill of Rights (1791)²¹. However, in comparison to its predecessors, the UDHR introduced social rights into the tabularization of rights, hence representing a contemporary view on human

²⁰ The UN established the International Court of Justice (ICJ), which succeeded the Permanent Court of International Justice, in 1945. In 1946 it commenced its activities and has since acted as a world court and an important part of the UN system. Concerning the Court's jurisdiction, it is concisely put by the official website of the court; "The Court has a dual jurisdiction: it decides, in accordance with international law, disputes of a legal nature that are submitted to it by States (jurisdiction in contentious cases); and it gives advisory opinions on legal questions at the request of the organs of the United Nations or specialized agencies authorized to make such a request (advisory jurisdiction)". The Statute of the International Court of Justice as annexed to the Charter of the United Nations, 3 Bevans 1179; 59 Stat. 1031; T.S. 993; 39 AJIL Supp. 215 (1945), it also available at <http://www.icj-cij.org/> [2010-06-23].

²¹ Concerning the connection between the Bill of Rights and international human rights in general, see Lillich, *The Constitution and International Human Rights*, *The American Journal of International Law*, Vol. 83, No. 4, *The United States Constitution in its Third Century: Foreign Affairs* (Oct., 1989), pp. 851-862, American Society of International Law, 1989.

rights and fundamental freedoms whilst paving the way for a new generation of human rights instruments.

The mere creation of the UDHR and of the two subsequent covenants from 1966; the ICCPR and the ICESCR, has proved an enormous accomplishment in itself. The UN is a global association of truly international scope with a worldwide level of acceptance that hasn't been equaled. This unique position affords the organization possibilities to achieve great progress in the human rights field and additionally confers on it the corresponding responsibility of constructing a potent enforcement system for treaties to come.

2.4 THE CREATION OF THE UNIVERSAL DECLARATION OF HUMAN RIGHTS

As mentioned above, the concept of inalienable rights and fundamental freedoms is nothing new; however, the social and political context of the mid-twentieth century was very distinct and left an exceptionally noticeable mark on the evolution of human rights. At a time when society was going through drastic changes, its perception of human rights was forced to change along with it. Having ended World War II, the Holocaust inevitably shed light on the rights issues and brought those concerns to the foreground in the dawn of the post-war era²². A growing consciousness of the blatant disregard that had been shown for basic human values was represented by a series of events in that era. Among these, two occurrences are especially interesting since they clearly propelled said evolution forward and consequently led to the creation of the UDHR.

The first one was the establishment of the International Military Tribunal that resulted in the *Nuremberg* trials²³. These trials followed promptly upon the end of the war as they were meant to try the most important captured leaders of Nazi Germany. Despite the fact that the trials suffered from much debated deficiencies, they were 'successful' in convicting the main offenders and ultimately ended up setting a precedent with the international format that was used for the trials. Furthermore the Nuremberg Principles of the trials established the

²² Concerning the importance of the Second World War as a catalyst for the UDHR's creation, in general see Morsink, *Universal Declaration of Human Rights: Origins, Drafting, and Intent*, University of Pennsylvania Press, Philadelphia, 1999, in particular, Chapter 2.

²³ The trials were held from the 20th of November of 1945, to the 1st of October of 1946 in the Town of Nuremberg, Germany.

definition of that which constitutes a war crime, considered viable to this day²⁴. The Nuremberg trials gave credibility to this 'new' concept of war crimes that has subsequently been confirmed by a Commission established by the General Assembly of the UN in 1947²⁵. The Tribunal later provided the inspiration for the creation of other Tribunals and must therefore be considered to have served as a catalyst in the consequent founding of the International Criminal Court (ICC)²⁶. Needless to say, the Nuremberg Tribunal manifested an important advancement in the recognition of basic human values and the consequent recognition of certain human rights and fundamental freedoms as something innate in human nature that needs and deserves protection²⁷.

The other circumstance that contributed to the creation of the UDHR did not merely constitute an indication of the recent progress on the human rights arena, but rather established a direct condition for its existence; namely the founding of the United Nations. The drafting of the UDHR was made possible by the vision that this new truly international organization had for the post-World War II era. However, the initiation of the drafting process was complicated since that very moment in time saw the beginning of the Cold War. This circumstance presented a number of difficulties during the drafting stages of the UDHR, resulting in forceful debates about government responsibility, individual freedoms and racial, gender and cultural differences (that eventually resulted in provisions prohibiting discrimination on these bases).

Considering the actual drafting of the UDHR, Eleanor Roosevelt²⁸ played an important part as the chairwoman of the Commission on Human Rights that was entrusted with the task of

²⁴ In 1945 the Allies set forth guidelines of international criminal law, the so-called Nuremberg Principles. See *Principles of International Law Recognized in the Charter of the Nürnberg Tribunal and in the Judgment of the Tribunal*, 5 UN GAOR Supp. (No. 12) at 11, U.N. Doc. A/1316 (1950); 1950 ILC Yb 374, vol. II; 44 AJIL 126, (1950). Glendon, *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights*, New York: Random House, 2001, page 9.

²⁵ UN General Assembly Resolution 177 (II) of the 21st of November of 1947, available at <http://www.un.org/documents/ga/res/2/ares2.htm> [2010-06-23].

²⁶ The ICC was founded in 2002 and has its permanent seat at the Hague, the Netherlands. It is an independent international organization that concerns itself with serious crimes of relevance to the international community. See *Rome Statute of the International Criminal Court*, U.N. Doc. 2187 U.N.T.S. 90, entered into force July 1, 2002.

²⁷ Gill, Sjoberg, Williams, *A Sociology of Human Rights*, Social Problems, Vol. 48, No. 1, 50th Anniversary Issue (Feb., 2001), pp. 11-47, University of California Press on behalf of the Society for the Study of Social Problems, page 13.

²⁸ Eleanor Roosevelt (1884-1962), widow of former US President Franklin D. Roosevelt (1882-1945), was a delegate of the UN General Assembly and a world-renowned advocate for human rights amongst other things.

drafting the document²⁹. She is worth mentioning here because of her strong conviction of the importance of the assignment that she was given, a conviction that led to her recognition as the driving force behind the text's successful drafting and adoption in 1948. It was not until World War II had ended that Mrs. Roosevelt along with the rest of the world, fully comprehended the actual extent of the Holocaust. To a certain degree, the millions of combatants and civilians in the war had already been accounted for, but the visits to Displaced Camps in Europe opened everyone's eyes. The Atomic bomb constituted yet another factor that had to be taken into account. Humankind was now capable of total self-destruction and in possession of an enormous destructive power that posed an impending threat, targeting individuals and nations worldwide. The fear of that possible outcome led to the conclusion that something had to be done. There existed a general consensus that an initiative to prevent war had to be taken, or else we'd all be doomed, an opinion shared by Mrs. Roosevelt herself:

*“Man's desire for peace lies behind this Declaration. The realization that the flagrant violation of human rights by Nazi and Fascist countries sowed the seeds of the last world war has supplied the impetus for the work which brings us to the moment of achievement here today.”*³⁰

On December 10th of 1948 the General Assembly of the UN adopted the UDHR as a legally non-binding document, as is the nature of declarations³¹. It was adopted with the intention of serving as an outline defining human rights and fundamental freedoms as they were to be interpreted throughout the world, an international set of recommended standards. For such universal intentions to be meaningful, the elaboration of the document had been carried out by a internationally acclaimed organization; the UN. This guaranteed the acquiring of a great number of signatory states and the formulation of the Declaration through debates involving participants from different cultures. This admirable reason for the diverse composition of the drafting commission forced the participants to overcome all imaginable differences concerning language, politics, culture and religion³². Consequently, the UDHR took a long

²⁹. The members of the specific drafting committee were Eleanor Roosevelt, Peng-chun Chang, Charles Habib Malik, William Hodgson, Hernán Santa Cruz, René Cassin, Alexander E. Bogomolov, Charles Dukes (Lord Dukeson and John Peter Humphrey, list is available at http://www.un.org/Depts/dhl/udhr/members_eros.shtml [2010-06-23].

³⁰ Eleanor Roosevelt in her speech “Adoption of the Declaration of Human Rights”, of the 9th of December, 1948 in Paris, available at <http://www.udhr.org/history/Biographies/bioer.htm> [2010-06-23].

³¹ Universal Declaration of Human Rights, *adopted* 10th of Dec. 1948, G.A. Res. 217A (III), U.N. GAOR, 3d Sess. (Resolutions, pt. 1), at 71, U.N. Doc. A/810 (1948).

³² Although representation in the UN Human Rights Commission, which drafted the Universal Declaration, was not global, it was not limited to the Western states and included a wide range of countries in elaborating and discussing its formation. The Commission would include five Great Powers (USA, UK, USSR,

time to elaborate and required the articulation of sufficiently wide provisions to embrace all cultures and world religions and to allow for distinct interpretations. The impressive achievement of such a consensus provided the much-needed recognition and respect of the international community.

The original intention was for three types of texts to be drafted. Primarily the Declaration itself, to be immediately followed by a subsequent covenant intended to bind the signatory states legally and to present a more elaborate and extensive version of the rights from the Declaration, and lastly, a text concerning the implementation mechanism. As it turned out, only the first text was to be adopted on the 10th of December in 1948, the rest would have to wait. The Declaration was to serve as a beacon, illuminating the pathway to human rights for member states to follow.

The formulation of the Preamble of the Declaration included mention of the recent experience of The Second World War and the permanent and undeniable scars it left, the horrendous memory of which served as the main incentive for the declaration's creation. Equality is a essential concept throughout the Declaration that not only aims to protect the tabulated rights and freedoms by claiming to give voice to a global understanding of their contents, but also by widening the perspective and aspiring towards world peace and friendly relations³³.

The mere approval of the UDHR, not to mention its ensuing success, was no uncomplicated task considering that it coincided with the commencement of the Cold War (as mentioned above). It was a time when ideological differences and hostilities were threatening to result in yet another cataclysm that might evoke an even larger war than ever before, especially when considering the use of atomic bombs at the end of the last war. Undeniably these political circumstances might have entailed a negative impact on the evolution of human rights by interrupting the concept's development; fortunately this did not turn out to be the case. Instead Europe rose to the occasion and achieved remarkable advances in such difficult times³³, setting an example of what proved to be an effective way of providing individual protection on an international level. In 1950 the newly formed Council of Europe drafted the European

China and France) and an additional thirteen other UN members that would rotate in intervals. The complete original composition of the Commission in 1946 thus consisted of delegates from Australia, Belgium, Byelorussian Soviet Socialist Republic (BSSR), Chile, China, Egypt, France, India, Iran, Lebanon, Panama, Philippine Republic, Ukraine, United Kingdom, United States of America, Union of Soviet Socialist Republics (USSR), Uruguay and Yugoslavia. Glendon, *supra*, note 24, page 32.

³³ For examples, see the UDHR, *supra*, note 31, the preamble and articles 1, 26 and 28.

Convention on Human Rights (European Convention)³⁴ that entered into force as soon as the 3rd of September in 1953. Complementing the European Convention, the Council also adopted a protection system including an enforcement mechanism that is still in use today³⁵. The example set by Europe encouraged the UN to further develop its human rights efforts and to intensify its promotion of the UDHR internationally³⁶. Ultimately, these efforts led to the establishment of the UDHR as the core of what would eventually become the quintessential international bill of rights that it is today.

Despite the fact that the UN's ensuing covenants on human rights were eventually adopted and ratified by a large number of states, there are still quite a few that have *not* ratified them. However, the majority of those states *have* signed the UDHR which renders the Declaration an applicable (it may even be the only one of consequence in such countries) and exceptionally important human rights instrument. Together with the UN Charter, the Universal Declaration is now considered to define the general human rights obligations of all the UN member states. The specific obligations were later elaborated in the two international covenants of 1966.

2.5 THE CREATION OF THE INTERNATIONAL COVENANTS

The covenants, as such, do not have the same legal status as the UDHR but they constitute documents of a legally binding nature for the states parties that have chosen to ratify or ascertain them. Taking into account that the two covenants were created post Declaration as solidification and a legal instrumentation for the effective protection of the rights included in it, they do not enjoy the same amount of authority as the UDHR. They provide the actual provisions that are the basis of a state party's liability, but lack the deeper influence of the UDHR.

The basic historic context that generated the covenants is the same as for the UDHR since they were meant to be adopted at the same time and arose out of the same initial political considerations and similar debates, even though the passage of time affected certain aspects of

³⁴ The Convention is formally known as the European Convention for the Protection of Human Rights and Fundamental Freedoms, 213 UNTS 221.

³⁵ The European human rights system is centered on the legally binding nature of the European Convention and the establishment of the European Court of Human Rights.

³⁶ Additionally, the European model inspired the IAHRs that was yet to be fully developed at the time.

the articulation of some rights³⁷. In addition, one must bear in mind that the membership of the UN had expanded since its founding, thus allowing for an ever more diverse debate behind the drafting of the covenants than that leading up to the UDHR³⁸. In general the covenants are meant to expand the scope of the rights and freedoms originated from the UDHR.

As mentioned, the original intention of the drafters was to present the General Assembly with a draft of a covenant together with the text of the Declaration. However, the time frame did not allow for this to happen thus postponing the realization of a legally binding text corresponding to the UDHR. It took eighteen years before the General Assembly was yet again presented with an essential human rights instrument, this time legally binding and divided in two parts, including an enforcement mechanism. It was the 16th of December in 1966 when the General Assembly adopted the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights along with the Optional Protocol to the ICCPR³⁹. These two covenants along with the ensuing human rights treaties and treaty bodies that have been adopted, amplified the scope of states' existing human rights obligations and consolidated the international human rights regime. It took nearly another ten years for the covenants to finally enter into force (in 1976). This delay was an indication of the difficulties behind the formulation of the provisions of the covenants and of unwillingness on behalf of the states to commit to legal obligations. In a way, the declaration had been less difficult to articulate considering the forceful catalyst that had

³⁷ For example, article 19 of the UDHR, *supra*, note 31, the right to freedom of expression, is elaborated upon in article 19 of the ICCPR (see note 39). Concerning the ICESCR (see note 39), an interesting example is Article 25 of the UDHR that has been elaborated upon to such an extent that its correlative in the ICESCR is divided in three distributed in articles 10 (to some extent), 11 and 12. Interestingly enough, article 1 of both covenants, the right to self-determination, represents an aversion from the main scheme of the covenants tabulation of rights as mirroring those included in the UDHR.

³⁸ The decolonization process was under way, noticeably affecting the growing membership of the organization. For the growth in the UN membership, see <http://www.un.org/en/members/growth.shtml> [2010-06-23].

³⁹ International Covenant on Economic, Social and Cultural Rights, *adopted* 16 Dec. 1966, G.A. Res. 2200 (XXI), U.N. GAOR, 21st Sess., Supp. No. 16, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3 (*entered into force* 3 Jan. 1976), supplemented by ECOSOC Res. 17, 28 May, 1985 establishing a so-called "treaty body" that had been excluded in the original version of the covenant; International Covenant on Civil and Political Rights, *adopted* 16 Dec. 1966, G.A. Res. 2200 (XXI), U.N. GAOR, 21st Sess., Supp. No. 16, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171 (*entered into force* 23 Mar. 1976). Optional Protocol to the International Covenant on Civil and Political Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 59, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 302, *entered into force* March 23, 1976. In 1989 the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, G.A. res. 44/128, annex, 44 U.N. GAOR Supp. (No. 49) at 207, U.N. Doc. A/44/49 (1989), *entered into force* July 11, 1991. The current figures on accessions and ratifications of the covenants and other international human rights treaties are available at <http://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&lang=en> [2010-06-23].

generated its creation, the holocaust, and the ensuing general consensus that was behind it. The fact that the UDHR was designed as a ‘mere’ declaration had undoubtedly helped the drafting process considering that the commitment status of the states involved was supposedly lower. Now however, the drafting concerned legally binding provisions, a sensitive subject for states since it would entail serious repercussions if the obligations were not fulfilled. Yet another constraint on the concept of national sovereignty and more control exercised from the exterior.

As to why there are two covenants as opposed to one, voices were raised in favor of the two-part alternative saying that it simply was not appropriate to attempt an incorporation of all the dimensions of the UDHR in a single document, since the intention was to achieve much more elaborate versions of the rights presented in the UDHR. Hence, the text was divided in two. Each of the covenants has been ratified by a distinct and separate group of states parties although the cores of both groups coincide. This circumstance is in most part due to complex political considerations occasionally leading to the ratification of the one covenant but not the other⁴⁰. The fact that neither covenant has been ratified by all UN members only enhances the importance of the UDHR⁴¹.

Indeed, eighteen years had passed since the adoption of the UDHR and the society and its political context had changed a great deal. However, the UN had managed to keep its eye on the target, focusing on the drafting of a text meant to mirror the values of the Declaration and elaborate the enshrined rights and freedoms therein. Fortunately, said rights in the UDHR had been articulated in such a manner that they could be considered universal and inherent in human nature by a majority of the international community, not only eighteen years later, but still to this day.

2.5.1 International Covenant on Civil and Political Rights

In general the ICCPR contains the more ‘traditional’ rights and freedoms known as the first generation of human rights and has received a somewhat smooth acceptance. Traditionally

⁴⁰ An example of this occurrence is the case of the United States. It signed the ICCPR on the 5th of Oct. 1977 but ratified it as late as the 8th of June, 1992. However, the signing of the ICESCR also took place on the 5th of Oct. 1977 but has to this day *not* been ratified. See section 2, 2.8 *The Creation of the American Convention on Human Rights*, and note 67 where I further examine the influential actions of the United States regarding its accession to human rights treaties. In general one should note that out of the 192 UN member states only 165 have ratified the ICCPR and a mere 160 the ICESCR. For the current status of UN human rights treaties, figures available at <http://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&lang=en> [2010-06-23].

⁴¹ See section 2, 2.4 *The Creation of the Universal Declaration of Human Rights*.

these rights are considered to not require quite as much assistance from the states as other human rights since they adhere to the non-intervention principle and therefore prove appealing to many governments. The covenant conveys clear obligations upon the states parties and the ratification of it entails an immediate realization of all the rights and freedoms recognized in it. In this aspect it may be conceived as a more efficient instrument than its companion (the ICESCR) albeit no more important.

The evident reference in the UDHR's Preamble to the recent horrors of the Second World War is a clear inspiration to article 20 of the ICCPR that serves as an additional reminder of the atrocious events leading up to the creation of these texts. The article's essence connects the two instruments and reinforces the sense of a unified international Bill of Rights.

Regarding its implementation the ICCPR primarily presents a report system. It is complemented by a system of inter-state and individual complaints supervised by a Human Rights Committee envisaged in the covenant itself⁴².

2.5.2 International Covenant on Economic, Social and Cultural Rights

The ICESCR has unfortunately not received as smooth an acceptance as its twin. It has occasionally suffered from a lack of acknowledgement due to the misinterpretation of the term 'second generation rights' that represent the great majority of the rights gathered in this covenant. However, they are *not* to be understood as secondary rights since the term is a mere categorization in terms of their origin in time⁴³. This covenant has furthermore had to struggle with states' unwillingness to acknowledge certain rights protected by it as undisputable since they require a certain amount of social and economic assistance on behalf of the state. On numerous occasions this state behavior has evoked the exterior observation of the state in question holding the ideal of non-intervention and individuality a bit too high, or submitting excuses that often refer to a lack of resources. Granting full recognition of the rights of the ICESCR is to a great extent dependent upon the goodwill and the resources of the state in question, perhaps even more so than the corresponding recognition of the ICCPR. The rights in the latter covenant are not as dependent on a favorable economic climate and the

⁴² See Part IV of the ICCPR and the Optional Protocol to the ICCPR, *supra* note 39, principally article 1 of the latter: "A State Party to the Covenant that becomes a Party to the present Protocol recognizes the competence of the Committee *to receive and consider communications from individuals* subject to its jurisdiction who claim to be victims of a violation by that State Party of any of the rights set forth in the Covenant. No communication shall be received by the Committee if it concerns a State Party to the Covenant which is not a Party to the present Protocol." (my italics).

⁴³ See section 2, 2.2 *Historic Background*.

proportional inversions of the state. However, this circumstance does not affect the equal importance of the two sets of rights, merely the ease with which they may be realized. Moreover there are numerous civil and political rights that require state funds for their full realization⁴⁴.

The implementation system envisaged for the ICESCR is, like its companion, based on state action in the form of handing in reports to the supervisory organ; the Committee on Economic, Social and Cultural Rights of the Economic and Social Council of the UN (ECOSOC)⁴⁵. The report system entails the opportunity for other UN organs and agencies or even exterior organizations and entities to offer assistance in realizing the ESC rights consequently nurturing international collaboration and taking a step forward towards the aim of globally friendly relations.

2.6 THE CREATION OF THE REGIONAL INTER-AMERICAN HUMAN RIGHTS SYSTEM

Irrespective of the international entity at hand, the possibilities to rectify a country's failure to comply with international law by imposing punitive measures upon it are limited by the mere fact of being an *international* entity. Its jurisdiction and influence in certain regions is far from what it ought to be to ensure efficacy. When considering this aspect of the enforcement of international law, it becomes clear that the introduction of regional human rights instruments on the world stage have been an improvement, supplementing the human rights efforts by the UN. One should bear in mind that regional entities and courts have much better possibilities of swiftly carrying out investigations of whether or not a violation has taken place, and furthermore have more efficient means to ensure that the victims receive help as soon as possible.

⁴⁴ An illustrating example is the right to vote in modern society; elections require extensive administrative machinery and no such system finances itself.

⁴⁵ See Part IV of the ICESCR, *supra* note 39, as supplemented by ECOSOC Resolution 1985/17 of 28 May 1985. Regarding individual complaints, the General Assembly unanimously adopted Optional Protocol (GA resolution A/RES/63/117) on the 10th of Dec. 2008, open for signing on the 24th of Sept. 2009. The future ratification of this protocol will undoubtedly improve the protection of the rights included in the covenant and signify a rapprochement of the two covenants.

Certain factors have proven to favor regional organizations, such as the political and cultural homogeneity of a region. These conditions often present a favorable climate for political consensus and for a considerable amount of leverage on neighboring states. This enables states to exercise a lot of influence during the implementation stage of treaties and also when requesting the use of enforcement measures. However, this regional influence may work in a country's favor but it also runs the risk of presenting the country with a disadvantage considering the fact that regional ties tend to be close and the impact of a state's actions on neighboring ones can be great. When evaluating a regional human rights system one must be aware of the unwillingness often demonstrated by states to employ an inter-state complaint system for fear of deteriorating relations with neighboring countries. On a global scale the states tend to be more willing to take action against each other, albeit with the support of the international community. Nonetheless, the innate understanding of a region's specific circumstances and identity that a constituent state may possess, allows it a clearer vision of the most suitable reforms and measures for the region. Ultimately the geographical proximity and the limited linguistic variations of a certain region facilitate a more efficient promotion and protection of human rights under the guidance of a regional organization. Consequently the regional systems, such as the Inter-American Human Rights System (IAHRS), that operate within the sphere of human rights complement the work of the UN on the international arena as opposed to counteracting the efficiency of the UN actions. This ensures a greater protection for individuals by allowing for additional structures to secure their rights. These systems provide protection mechanisms suited for their respective regions, customized to function effectively under the characteristic circumstances that the region in question presents.

2.7 THE CREATION OF THE ORGANIZATION OF AMERICAN STATES

As one of three key regional systems that are active in the human rights area, the American one is not the oldest, the most effective one, nor the most progressive one. However, it does possess great potential and has achieved remarkable progress considering the political context of the region. It stems from the Organization of American States (OAS), indisputably the main player on the human rights field in the Americas.

The two examined systems for the protection of human rights in this thesis, the IAHRs and the UN system, may share similar expectations and goals but, as will be shown, the conditions under which they developed and operate are quite distinct. When considering the specific human rights evolution in Latin America one should keep in mind the strong influence and pro-intervention policies that have been applied by the United States in the past. It is worth mentioning the clout continuously exercised by the United States as one of the Big Three behind the founding of the UN, and additionally playing an active part in Latin American politics⁴⁶. It is not surprising that the United States would come to have a particular impact on the evolution of human rights in the international human rights system, based on the International Bill of Rights, as well as the Inter-American system, generating the ACHR. While the United States never acted alone and was always accompanied by the many other member states when drafting the human rights instruments at hand, it has nevertheless wielded exceptional authority in drafting debates.

From October 1889 to April 1890 the First International Conference of American States was held in Washington D.C. on the invitation of the government of the United States. Attempts had previously been made to co-ordinate the American states, but it was not until the United States took the initiative that an Inter-American conference was finally realized. This Conference established the International Union of American Republics that in 1910 turned into the Pan-American Union, eventually evolving into today's General Secretariat of the present OAS⁴⁷.

Despite political differences between the United States and numerous Latin American countries, when the moment of the founding of an American regional organization finally approached several regional agreements relating to human rights had actually been passed⁴⁸.

⁴⁶ Although there have been significant deviations from this trend. An interesting example is that of the so-called Good Neighbor Policy that was initiated by President Franklin D. Roosevelt in 1933 since it signaled a significant policy change regarding unilateral interventions in Latin America on behalf of the United States. This new direction of the diplomacy exercised in the region by the United States allowed for the ratification of the Convention on the Rights and Duties of States (Convention on Rights and Duties of States, Seventh International Conference of American States, *signed* 26 Dec. 1933, 49 Stat. 3097, T.S. No. 881, in *The International Conferences of American States* 121-23 (1st Supp. 1940) that reaffirmed the non-intervention principle and seemingly diminished the US influence for a period of time. Consequently, this convention symbolizes the willingness to even out the playing field in the Americas and an advance for human rights, taking an initial step towards the right of self-determination. The importance of the principle of non-intervention for the region was yet again reaffirmed in article 1 of the subsequently adopted OAS Charter (see note 47) in 1948.

⁴⁷ Consequently making the OAS the oldest regional organization in existence.

⁴⁸ The majority of these agreements concerned civil and political rights. See among others; the Convention Establishing the Status of Naturalized Citizens who Again Take up Their Residence in the country of Their

As impressive an achievement as this was considering the social and political context of the region, it was not until the Second World War was over that sincere concern for the protection of human rights became the focus of regional as well as worldwide attention.

Thus, in 1948 a regional association was established at the Inter-American Conference. This was the founding of the Organization of American States⁴⁹. The organization was not created with the primary objective of promoting and protecting human rights, even though this was among its various goals as was the advancement of peace and security in the region. The organization was meant to function as a Pan-American political forum that would present the possibility of a multilateral dialog for the member states and would present a forum for the decision-making processes specifically concerning the Americas. Despite this initial broad spectrum of objectives, the organization got a surprisingly early start on its work for human rights. The Preamble of the Charter of the Organization of American States (OAS Charter) refers to the importance of protecting basic rights and additionally establishes democratic institutions as the only possible means to achieve the international objectives stated in the Charter⁵⁰. The fact that the importance of democracy was recognized in the document is an early indication of the importance that has been given this political structure as a prerequisite for the evolution and protection of human rights.⁵¹ At the aforementioned founding Conference, the American Treaty on Pacific Settlement was adopted as was the Economic Agreement of Bogotá, an agreement that never entered into force. Last but certainly not least, the conference adopted the world's first major international document on human rights; the American Declaration on the Rights and Duties of Man (American Declaration)⁵². The American Declaration predated the UDHR by several months, thus launching a new wave of human rights texts, granted with the most influential ones yet to come. In comparison to the

Origin (1906), the Convention on the Status of Aliens (1928), the Convention on Asylum (1928), the Convention on the Rights and Duties of States (1933), the Convention on Political Asylum (1933), Additional Protocol Relative to Non-Intervention (1936), resolution on the Duties and Rights of Women with Respect to Problems of Peace (1936), two significant resolutions concerning Freedom of Association and Freedom of Expression for Workers and Defense of Human Rights (1938) and Resolution XCV from 1954 in which the American States resolved to apply, develop and perfect human rights principles.

⁴⁹ The Inter-American Conference of 1948 is also known as the Ninth International Conference of American States held in Bogotá. At the Conference the Member States signed the founding treaty of the OAS; Charter of the Organization of American States, *adopted* 30 Apr. 1948, 2 U.S.T. 2394, 119 U.N.T.S. 3 (*entered into force* 13 Dec. 1951). In general, see www.oas.org [2010-06-23].

⁵⁰ In addition to this, the Preamble of the OAS Charter reaffirms the principles and purposes of the UN, recognizing its importance and authority on the subject-matter by acknowledging the value of fulfilling the member states' further obligations under the UN Charter.

⁵¹ See section 2, 2.2 *Historic Background*.

⁵² American Declaration of the Rights and Duties of Man, O.A.S. Res. XXX, *adopted* by the Ninth International Conference of American States (1948), *reprinted in* Basic Documents Pertaining to Human Rights in the Inter-American System, OAS doc. OEA/Ser.L.V/II.82 doc.6 rev.1 at 17 (1992).

UDHR, the American Declaration imposes a wide range of duties onto the individuals as members of modern society (as the name of the Declaration implies) as a way of achieving a counterbalance to the equivalent rights they enjoy. It is a regional instrument with no established enforcement mechanism, a deficiency it has in common with the UDHR. On the other hand, it also shares with the UDHR the entire range of human rights in its tabularization⁵³. When considering its international influence, reputation and authority it is no match for the UDHR. However, some twenty years after its adoption an elaboration on the basis set forward by the American Declaration marked the creation of what was to become the main human rights instrument of the region, the American Convention on Human Rights. The latter established the Inter-American Court of Human Rights (the Court) that has indicated that the American Declaration still does have some importance when monitoring the actions of OAS member states that have not yet ratified the ACHR⁵⁴.

2.8 THE CREATION OF THE AMERICAN CONVENTION ON HUMAN RIGHTS

In 1959 the OAS adopted a resolution that signified an additional step forward in the evolution of the protection of human rights in the region⁵⁵. The resolution affirmed a positive development in the hemisphere and encouraged further elaboration on human rights instruments for the Americas, namely that of a possible Convention. It also established the Inter-American Commission on Human Rights (IACHR) as a steppingstone to facilitate the adoption of a specific Convention solely concerning the region⁵⁶. However, the next

⁵³ Unfortunately, the subsequent substitution of the American Declaration for the American Convention on Human Rights as the main human rights instrument of the region, led to an initial deterioration in the protection given the economic, social and cultural rights. See section 2, 2.8 *The Creation of the American Convention on Human Rights*.

⁵⁴ *Advisory Opinion OC-10/89, Interpretation of the American Declaration of the Rights and Duties of Man Within the Framework of Article 64 of the American Convention on Human Rights*, Inter-Am. Ct. H.R. (ser. A) No. 10 (1989), at paragraph 37, shows that in the Court's opinion, the American Declaration has acquired a normative character. This could be seen as a reflection of the perspective of the Inter-American Commission on Human Rights regarding the Declaration. After its founding, the Commission developed a practice around the Declaration that rested upon the assumption of the legally binding nature of the instrument. Res. 23/81, Case 2141 (US) 6 Mar. 1981, in IACHR Annual Report 1980-1, 25, 2 *HRLJ* 110. Furthermore, numerous states have proved their opinion of the acquired normative character of the UDHR and the American Convention by adopting constitutional references to them. Additionally, the Regulations of the Commission literally emphasize the American Declaration's continuous importance in article 51; "The Commission shall receive and examine any petition that contains a denunciation of alleged violations of the human rights set forth in the American Declaration of the Rights and Duties of Man, concerning the member states of the Organization that are not parties to the American Convention on Human Rights."

⁵⁵ Res. OAS doc. OEA/Ser.C/II.5,p.10.

⁵⁶ The IACHR was initially not considered a Charter organ because of its nature as an 'autonomous entity' of the OAS. This circumstance deprived it of the constitutional status that would have entailed much needed respect from the member states. This deficiency was rectified by the so-called Protocol of Buenos Aires as of the 12th of

significant step forward would not come until another ten years had passed and yet another ten would have to pass before the IACHR would finally share the responsibility of functioning as a supervising organ of human rights of the OAS. The OAS thus presents a regional system that has not evolved as fast as its counterparts in Europe and Africa, despite an early start on human rights work.

Notwithstanding the efforts of the OAS during the second half of the twentieth century, the protection of human rights in the region had reached its limit. It was a continent of struggling democracies where numerous American states relied on extensive denial of fundamental freedoms. At the time, the perspective on Latin American politics applied by the United States was no longer characterized by improved relations. The Good Neighbor Policy was replaced and what had previously been a growing amount of regional treaties concerning human rights suffered a gradual decrease. The relations rapidly deteriorated in the 1950's following the commencement of the Cold War which in turn brought a new policy and a series of interventions on behalf of the United States in the region. Latin America found itself in a terribly turbulent era, which wouldn't result in the predominance of democracies until decades later. The IACHR would prove to play a vital part in identifying and condemning the systematic and grave violations against human rights at a time when the authoritarian regimes dominated the region. Along with the evolution of the IAHRs, the realization of the human rights and fundamental freedoms that were to be protected by the adoption of the ACHR must be considered in the distinct political context of the Americas. There can be no doubt that the context constitutes a very influential factor in the success or failure of the IAHRs's efforts. The IAHRs had yet to puncture the density of the authoritarian regimes and thereby accomplish a much more favorable climate for the safeguarding of human rights.⁵⁷ In the meantime, the blatant refusal to recognize human rights in the region, made the OAS realize that the best way of securing the observance of moral obligations (such as those set out in the

March, 1970; OAS Charter, *as amended* (O.A.S. Treaty Series No. 1-A), Articles 51, 112(1), now Articles 53, 106(1); available at <http://www.oas.org/main/english/> [2010-06-23].

⁵⁷ This would eventually prove to be achieved not only by definite actions, but to a great degree by the mere will to act on behalf of the system. The unprecedented wave of new democracies in a single region that would subsequently occur was bound to facilitate the emergence of a climate that could provide a more efficient protection whilst generating a remarkable improvement of the human rights situation. Dulitzky, *Una Mirada al Sistema Interamericano de Derechos Humanos*, *América Latina Hoy*, no. 20, 1998, page 9. The UDHR, *supra* note 31, and the ACHR, see note 65, each take for granted the preexistence of a democratic society for the full realization of human rights. See the UDHR, article 29 and the ACHR, primarily the Preamble and article 29 (c).

American Declaration) was to translate them into binding legal obligations⁵⁸. The first draft of an American convention on the subject surfaced in 1959 and was intended to be adopted at the following Inter-American Conference in 1961⁵⁹. However, the Bay of Pigs invasion in Cuba was a disaster of such magnitude that it led to the cancellation of said Conference and the inevitable postponement of the approval of the drafted Convention. Preceding the actual adoption of the ACHR there was also some debate as to the degree of recognition to be given the economic, social and cultural rights initially included⁶⁰. The IACHR ultimately recommended certain changes to the draft⁶¹; namely the effective elimination of almost any reference to the majority of the economic, social and cultural rights⁶². This eventually led to the definite deletion of those rights in the subsequent draft. However, the approval of the Convention was further delayed because of the adoption of the ICCPR and the ICESCR by the UN General Assembly; the potential conflict between the international human rights instruments posed a huge question mark. Would a regional system of regulation of human rights be able to coexist with the global system established by the UN? To answer this question would entail a comparative study⁶³ and a report⁶⁴ on the standpoints of the OAS members in 1967. As it turned out, the great majority of the American states were in favor of the coexistence and coordination of the two systems, thus allowing the ACHR to circumvent yet another difficulty. A final draft was made and the American Convention on Human Rights⁶⁵, also known as the Pact of San José, Costa Rica, was, as mentioned above, adopted in 1969.

⁵⁸ Goldman, *History and Action: The Inter-American Human Rights System and the Role of the Inter-American Commission on Human Rights*, Human Rights Quarterly, 31 (pp. 856-887), The Johns Hopkins University Press, (2009), page 863.

⁵⁹ The task of drafting the first version of the ACHR was given to the Inter-American Council of Jurists in 1959; Res. VIII, 5th Meeting of Consultation of Ministers of Foreign Affairs, Final Act, OEA/Ser.C/II.5, (1959) 10-11.

⁶⁰ OEA/Ser.I/II.4, doc. 119, (1959) 62. See articles 20-33. In fact, *this* draft ended up including an entire Chapter of economic, social and cultural rights.

⁶¹ doc. OEA/Ser.L/II.19/doc.48 Rev. 1 (1968). With the exception of certain labor union rights, see chapter II, article 16 (1) of the ACHR (see note 62), there is no specific mention of the remainder of the economic, social and cultural rights as they are merely referred to in a general provision in chapter III of the original Convention; namely article 26.

⁶² Harris, Livingstone, *The Inter-American System of Human Rights*, Oxford University Press, 1998 (reprinted 2004), see Craven, Chapter 9, page 297.

⁶³ *Comparative Study of the United Nations Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights and of the Draft Inter-American Convention on Human Rights*, Inter-Am. C.H.R., O.A.S. Doc. OEA/Ser.L/II.19, doc. 26 (1968).

⁶⁴ Permanent Council, *Report on a Consultation with the Member States Regarding the Draft Convention on Human Rights*, submitted by the Committee on Juridical and Political Affairs, Inter-Am. C.H.R., O.A.S. Doc. OEA/Ser.G/IV Rev. 3, 4 (1967).

⁶⁵ American Convention on Human Rights, signed on the 22nd of Nov. 1969, O.A.S.T.S. No. 36, 1144 U.N.T.S. 123, O.A.S. Doc. OEA/Ser.L/V/II.23, doc. 21, rev. 6 (1979) (*entered into force* on the 18th of July 1978).

The ACHR is first and foremost a human rights instrument that legally binds the states parties to their obligations of protecting, promoting and further developing the rights and freedoms articulated in the Convention. Early on it establishes a commitment clause that requires the state parties to adopt necessary legislative or other measures to ensure full implementation of the rights and freedoms in the Convention⁶⁶. In addition, as a means of ensuring the protection, it establishes two permanent organs with the task of monitoring the states parties and their compliance with the Convention; the Inter-American Commission on Human Rights (as mentioned above) and the Inter-American Court of Human Rights⁶⁷. Their main instrument is undeniably the ACHR itself.

The implementation system established is in essence based on a report system but allows for extended protection conditioned upon the recognition of the competence of the IACHR and the Court by states parties⁶⁸. In protecting and promoting human rights the IACHR receives annual reports from the states parties and may, among other things, request reports and information from states, prepare independent studies and reports, provide advice and take action when suitable. Additionally, individual complaints and denunciations are considered by the IACHR and lead to the establishment of whether or not there exists a violation of a right protected by the Convention in the alleged perpetrating country⁶⁹. If the alleged violation is established, the IACHR decides what kind of measures it finds appropriate, for instance it may forward the case to the Court. The Court may only handle a case when no friendly settlement has been achieved either by the mediation of the IACHR or independently by the states concerned and all the procedures concerning the Commission have been completed⁷⁰. If it does handle a case and finds that there has been a violation of a right or freedom protected by the Convention, it rules on the appropriate consequences of said violation and possible

⁶⁶ ACHR, *supra* note 65, article 2.

⁶⁷ The Court may *only* supervise the American states that have ratified the ACHR, *supra* note 65, at article 62. This entails a very harsh line drawn between the, mainly, Latin American countries, and the United States and Canada, the latter group (also including a group of Caribbean island states) lacking ratification of the Convention. The additional inclusion of the IACHR in the Convention makes it both an OAS Charter organ *and* a Convention organ. This dual function of the IACHR allows it to investigate extensive human rights violations, when such investigations do not fall within its jurisdiction as a Convention organ, it may do so in its role of a Charter organ without having to take into consideration whether or not the state in question is a party to the ACHR. The current ratification status of the ACHR is available at <http://www.cidh.oas.org/Basicos/English/Basic4.Amer.Conv.Ratif.htm> [2010-06-23].

⁶⁸ ACHR, *supra* note 65, article 45 and 62.

⁶⁹ See Chapter VII, Section 3 of the ACHR, *supra* note 65, for the competence of the IACHR, and Section 4 for its procedures.

⁷⁰ See Chapter VIII, Section 2 of the ACHR, *supra* note 65, for the jurisdiction and functions of the Court, and Section 3 for its procedures.

measures for its full remedy.⁷¹ An interesting aspect of the Court is its ability to provide the OAS member states and the organs listed in Chapter X of the OAS Charter with advisory opinions at their own request⁷².

Despite the differences between their respective enforcement mechanisms, the most striking dissimilarity to the International Bill of Human Rights is undoubtedly the fact that the original version of the ACHR only covers civil and political rights and summarily dismisses economic, social and cultural rights by mere reference in a single provision⁷³. In so doing, the drafters effectively eliminated the latter set of rights from the Pan-American agenda for almost twenty years. It wasn't until 1988 that the General Assembly of the OAS adopted the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (the Protocol).⁷⁴

Mirroring its slow elaboration, the ACHR didn't enter into force until the 18th of July, 1978, nearly ten years after its adoption, not to mention the tardiness of the later added Protocol that entered into force as late as the 16th of November, 1999. Today it is a respected human rights instrument that testifies to a high level of ambition on the part of the drafters, but undoubtedly still has a long way to go before its highly set goals can be fully realized in the region⁷⁵. The current status of ratification indicates a somewhat successful accession rate in consideration of the number of OAS member states⁷⁶.

⁷¹ See Article 63 (1) of the ACHR, *supra* note 65: "If the Court finds that there has been a violation of a right or freedom protected by this Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party."

⁷² Article 64 of the ACHR, *supra* note 65.

⁷³ Article 26 of the ACHR, *supra* note 65.

⁷⁴ Also known as the "Protocol of San Salvador". Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, *adopted* on the 17th of Nov. 1988, O.A.S.T.S. No. 69, *entered into force* on the 16th of Nov. 1999, *reprinted in* Basic Documents Pertaining to Human Rights in the Inter-American System, OAS Doc. OEA/Ser.L.V/II.82 doc.6 rev.1 at 67 (1992).

⁷⁵ ACHR, *supra*, note 65 and Additional Protocol, *ibid*.

⁷⁶ Current ratification, *supra* note 67.

3 EXPECTATIONS

In this section I will explore the expectations imposed upon the human rights instruments at hand. When reflecting on whether or not the expectations on the documents have been realistic, fulfilled and in fact necessary, even in this third section I have found it fundamental to consider the political, social and organizational contexts in which they emerged.

Initially I would like to consider the example set by the *League of Nations*. Since the League was a predecessor to both the UN and the OAS, the organizations behind the two human rights systems examined, it must be deemed relevant to take the expectations on said organization into account. This circumstance hints at the probable expectations that would, ultimately, affect the UDHR and the ACHR, being considered human rights efforts stemming from organizations that held human rights evolution and world peace as principal goals. Considering that it was an effort to secure peace following the atrocities of the First World War, its creation was accompanied by high expectations for a safer world. It was undoubtedly a very ambitious journey on which the member states had embarked, but also a hopeful one. However, despite good intentions the League ended up failing its expectations. Perhaps they had been set too high from the start since one of the most powerful advocates of the idea of an inter-governmental organization of the likes had in fact come from President Woodrow Wilson of the United States, a country that subsequently refused to join it. The lack of support from the superpower undermined the League's prestige and diminished its possibilities to take action against possible aggressors. In addition to this, two other powerful nations, Germany and Russia were excluded from it, whilst the First World War had left two powerful members, France and Great Britain, with scarce financial and military resources. Without the obligatory provision of troops, a severe deficiency in its authority was demonstrated to potential aggressors. It was doomed to be an organization without the ability to carry out its threats, realizing that its attempts to enforce economic sanctions were futile with no real way of supporting decisions with military actions or sufficient resources.

With an admirable vision and high expectations, the League of Nations did manage to raise awareness on several important social issues, taking an initial step towards future regional and international organizations that would stand a better chance of fulfilling high expectations, and even higher goals. Ultimately, the League failed its primary purpose of preventing war,

proving to be powerless in the face of the Second World War, confirming that the expectations laid upon it had been unrealistic and to a great extent, unfortunately unfulfilled⁷⁷.

Narrowing down the focus of this section to the possible initial expectations on human rights efforts in the form of the UDHR and the ACHR (as opposed to early actions of the League), it becomes clear that they both represent human rights systems that have experienced remarkable evolutions. Therefore some initial expectations might very well have been fulfilled, whilst others remain unachieved goals.

3.1 EXPECTATIONS ON THE UNIVERSAL DECLARATION OF HUMAN RIGHTS

When drafting the UDHR it can be assumed that the framers harbored a genuine intention of giving voice to several so-called ‘universal values’, an immensely difficult task considering the diversity of our multicultural world⁷⁸. Notwithstanding their remarkable efforts, the circumstances suggest that the drafters never expected their human rights instrument to become such a successful means of cultural transformation as it has; not merely a reflection of what is in many societies considered universal values, but an instrument with such influence that said values might actually come to reflect the creation, formulation and implementation of the document itself. When presenting the UN General Assembly with the UDHR in December of 1948, among others, Charles Habib Malik of the drafting committee spoke of the expectations on the declaration. He recalled the fact that the “declaration had been inspired by opposition to the barbarous doctrines of nazism and fascism...” and he also acknowledged the great influence of President Roosevelt’s assertion of the four freedoms⁷⁹. In addition to this Mr. Malik mentioned the human rights references in the UN Charter as inspiration to the document. But most importantly, he voiced the collective expectations of the drafting committee when proclaiming that the “...declaration was destined to mark an important stage in the history of mankind.” Constituting the first time in history that globally recognized human rights had been articulated in detail, he went on to proclaim that the UDHR

⁷⁷ In general see the information found in the library of the United Nations Office at Geneva, available at [http://www.unog.ch/80256EE60057D930/\(httpPages\)/8C989922E1DBC95980256EF8005048CA?OpenDocument](http://www.unog.ch/80256EE60057D930/(httpPages)/8C989922E1DBC95980256EF8005048CA?OpenDocument) [2010-06-23].

⁷⁸ I take for granted that there exists a common foundation, albeit on a very basic level, of human values worldwide which is why I employ the term ‘universal values’.

⁷⁹ Meeting record A/PV.180, 180th Plenary Meeting, held on Thursday, 9 December 1948 : 09/12/1948, available at http://www.un.org/Depts/dhl/udhr/meetings_1948_3rd_ga_plenary.shtml [2010-06-23], pages 857-860.

did not merely express the extent of the governments' human rights commitments, but additionally allowed citizens to recognize if the cited human rights and fundamental freedoms had been violated by its government because of its inability to honor its commitments. In this manner he expected the Declaration to serve as an instrument for criticism of such societies and that it would possess the authority to transform present legal practice⁸⁰. At the same Plenary Meeting, the intended universal nature and judicial significance of the UDHR were recognized as aspects emphasizing its importance. The impressive achievement of fifty-eight nations overcoming ideological differences to reach an accord spoke to the high expectations set on its universality. Last but not least, the plenary meeting reaffirmed the member states' expectation of the UDHR's adoption as an affirmation of the conception of a democratic society as the only acceptable form of government.

3.1.1 Fulfillment of Expectations

Regarding the expectations on the UDHR that it would improve the protection of rights and freedoms, a specific circumstance comes to mind; the *Cold War*. The war affected the functionality of the UNs Security Council and in doing so effectively paralyzed what was possibly the strongest enforcement mechanism of the UN⁸¹. Only on scarce occasions during the Cold War was the Security Council able to agree on taking enforcement measures against a state, regardless of whether they entailed economic sanctions or military actions⁸². The only possible remaining action was the adoption of resolutions in the General Assembly, which, because of their non-binding nature, often lacked the sufficient respect needed to oblige a nation to cease its large-scale violations of human rights. An additional dimension to the tremendous obstacle presented by the Cold War was that it posed a distraction from the human rights efforts by the organization, reminding the member states that harsh reality could easily puncture the high hopes held for the UNs efficiency.

Those high hopes along with any optimism regarding a new epoch of protected human rights and an *international* organization possessing enough authority to ensure peace, security and respect for human rights appeared bleak and unrealistic in this era. History once again demonstrated the need for an efficient organization that would bring consensus and

⁸⁰ *Ibid*, pages 857-860.

⁸¹ See Chapter VII of the UN Charter, *supra* note 13, for the Security Council's possibilities to take measures against a state.

⁸² Sadly enough such egregious violations, more often than not, posed threats to the peace within the meaning of article 39 of the UN Charter, *supra* note 13, thus allowing the Security Council to act.

cooperation to the table as opposed to nuclear threats. While the expectations on the organization truly seemed exaggerated at the time, by the end of the war, the UN was able to effectively improve mobilization of one of its biggest assets for the protection of human rights; the Security Council⁸³.

The Cold War was in conclusion an occurrence that impeded the efficient protection of the rights included in the UDHR and heavily affected high held expectations of an improved realization of human rights. Despite the tensions of the period, the UN managed to adopt the two international covenants among other human rights documents during the Cold War itself. Considering that it was primarily the enforcement mechanism that was affected by the hostile climate, the human rights committee continued its efforts towards the adoption of legally binding human rights provisions⁸⁴. After the war the UN recovered to a large extent and consequently went on to further advance its human rights endeavors, developing a system that could possibly ensure the realization of the rights and freedoms of the UDHR.

Among other expectations, that of accessibility has been proven somewhat realistic and impressively fulfilled considering the expected scope of the document. It is to date the most translated document in the world, a testament to its efforts of promoting human rights worldwide⁸⁵. However, despite such efforts the number of individuals actually aware of its existence is far from as impressive as the UN efforts have been. Although highly accessible globally, the capability of the UDHR still suffers from the fact that it is far from known by all that it affects. In addition, the universality of the rights contained in the Declaration has been widely debated, which has affected the manner in which various cultures perceive and experience the document's accessibility. In the incessant endeavor to fully achieve universal applicability, the UDHR has constantly had to confront the criticism of cultural relativists. Many scholars are critical of the perceived conceptualization of human rights in today's society as something highly influenced by a Western perspective. When studying the existing international human rights instruments they consider the rights and freedoms formulated therein as an attempt to impose Western culture upon the international community as a

⁸³ Buergenthal, *The Evolving International Human Rights System*, *The American Journal of International Law*, Vol. 100, No. 4 (Oct., 2006, pp. 783-807), American Society of International Law, 2006, pages 790-791.

⁸⁴ The Human Rights Committee is now replaced by the Human Rights Council, *supra* note 18.

⁸⁵ It is the most translated document in the world according to the Guinness Book of Records. Available at <http://www.guinnessworldrecords.com/> [2010-06-23].

whole⁸⁶. By emphasizing the fact that all human beings have distinct origins and have been exposed to different sets of values depending on their particular cultures, critics challenge the universal nature of the rights. The constantly changing social contexts greatly affect and underline our varying perceptions of basic human values, as is stressed later on in this thesis. This criticism is not only understandable, but furthermore beneficial for the concept's realistic development. Bearing world history and the current international power structures in mind, the tabularization of a truly objectively universal set of values seems difficult. However, the framers' original intention was for some sort of common core values to be defined in the UDHR, an intention founded on the assumption that such values actually exist. This primary objective must to a certain extent be considered fulfilled and at the very least respected by critics and advocates alike despite the fact that some may consider the UDHR to go beyond such core values. As mentioned, this struggle concerning the universality of the concept continues although the majority of the international community acknowledges the relevance of the Declaration and recognizes the multicultural efforts behind its creation⁸⁷.

The expectations placed upon the UDHR furthermore included that of a great authority on the subject-matter of human rights. Eleanor Roosevelt herself even posed the possibility of its becoming the Magna Carta of all mankind⁸⁸. Indeed, the expectations were set high on the Declaration, but partly due to the powerful sources behind it and its dynamic creation, Roosevelt was not being particularly unrealistic. Still, based on the considerations above, it is doubtful if even the creators could have anticipated the impact the UDHR would have globally. As it turned out, regarding the Declaration as the source of inspiration that it was envisioned to be, one immediately becomes aware of its undeniable success. This was an expectation that was markedly surpassed. Not only has the Declaration inspired the creation and the human rights efforts of numerous NGOs, commissions, world-renowned experts and governments, but it has resulted in an impressive amount of additional legislation, both globally oriented as well as regionally based treaties and domestic constitutions and laws, all in a relatively short period of time⁸⁹. In addition, this circumstance draws attention to the legal

⁸⁶ Kabasakal Arat, *Forging A Global Culture of Human Rights: Origins and Prospects of the International Bill of Rights*, Human Rights Quarterly, Vol. 28 (2006, pp. 416-437), The Johns Hopkins University Press, 2006, page 418.

⁸⁷ See section 2, 2.4 *The Creation of the Universal Declaration of Human Rights*.

⁸⁸ Meeting record A/PV.180, *supra* note 79, page 862.

⁸⁹ In addition to this it has even become customary for judges all over the world to use the UDHR as an interpretive tool or even a category of customary law in their work. However, despite the constitutional guarantees in many States, as mentioned above, there still exists an extensive abuse of such constitutionalized rights.

status of the UDHR. Despite its official non-binding legal nature, the Declaration has proven influential to such a degree that the possibility of its acquired status as common law is constantly debated among scholars and practitioners worldwide.

3.2 EXPECTATIONS ON THE AMERICAN CONVENTION ON HUMAN RIGHTS

The development of the IAHRs and the expectations on the ACHR and said system must be considered in the distinct political context of the Americas. Despite already having lived a turbulent first half of the century, the drafters of the Convention could not possibly have foreseen the unstable future ahead of them. The ACHR represented a great accomplishment by the OAS and the commencement of a new level of commitment on behalf of the American states to human rights issues. The difficulties behind it are evident, having been adopted in the midst of extreme political disorder, but the expectations upon it are equally unmistakable, a document marking a new era of political commitment. It was expected to achieve what the sporadic regional treaties concerning human rights so far had not achieved; a normative basis for the proper realization and protection of human rights in the region.

In comparison to the drafters of the UDHR, the IACHR did not have to face the challenge of formulating universally applicable provisions although the process undeniably involved the participation of numerous countries. This is, as mentioned before, one of the benefits of a regional convention; a common ideological base where similar cultures and a shared history facilitate the articulation of fundamental values shared in the region⁹⁰.

3.2.1 Fulfillment of Expectations

As mentioned earlier on, the regional systems are generally considered to enjoy greater accessibility than international systems⁹¹. The IAHRs does have advantages regarding individuals' access to the organization, the organization's closeness to the individuals concerned, and the accessibility that individuals benefit from pertaining to the ACHR. Accessibility facilitates the promotion of documents like the ACHR and helps the IACHR in its efforts. These circumstances apply to the IAHRs and undoubtedly raise the expectations on the ACHR. As a general point of reference, the ACHR does in fact have a more straight-

⁹⁰ See section 2, 2.6 *The Creation of the Regional Inter-American Human Rights System*.

⁹¹ See section 2, 2.6 *The Creation of the Regional Inter-American Human Rights System*.

forward approach to the individuals concerned by it, as any regional system allowing for a simpler accessibility. However, the system as a whole is far from living up to its full potential thus drastically reducing the actual accessibility of the document. The Convention applies to numerous Latin American countries that are unfortunately still struggling with the establishment of efficient and suitable channels to the ACHR. The developing countries in the region regrettably maintain small chances of increasing accessibility because of their weak promotion structures. Consequently, the expected accessibility of the ACHR has in reality been somewhat of a disappointment.

It has proved difficult for the states parties to live up to the expectations of an effective realization of the rights in the Convention and the establishment of a potent protection for those rights. Moreover the region presents an additional challenge (as opposed to those for instance faced by the European system), namely that of confronting past abuses and distributing remedy for recent human rights violations⁹². International protection of the individual may very well be understood as the truly viable possibility to remedy said violations, accordingly constituting a clear expectation on any human rights document. This dimension of the human rights protection seems all the more imperative in a region plagued by political instability and human rights violations. The relatively frequent occurrence of disappearances, death squads, gangs, guerillas, corruption and poverty set it apart from other regional systems. The IAHRs also suffers from a lack of consensus with regard to the functions and principal objectives of the different organs⁹³. But even a consensus among the American states regarding the basic objectives and functions of the IAHRs would not secure an efficacious system. Thus it is not considered particularly efficient having failed the expectation of an enforcement mechanism capable of securing adequate protection for human rights in the region and an effective remedy for the many recent human rights violations due to political turmoil⁹⁴. It is a region that has a history of corrupted authorities and the consequent struggle for a political will to fulfill international commitments. This has led to poor compliance with recommendations issued by the IACHR and with sentences from the Inter-American Court of Human Rights. In addition to this, the enforcement mechanism suffers from the absence of such powers as the United States and Canada, signifying less muscle and a diminished authority than would otherwise have been the case.

⁹² With the term 'recent' I'm referring to the second half of the twentieth century.

⁹³ Dulitzky, *Una Mirada al Sistema Interamericano de Derechos Humanos*, supra note 57, page 3 and forward.

⁹⁴ Dutrénit Bielous, Varela Petitó, *Dilemas Políticos y Éticos en torno a las Violaciones a los Derechos Humanos en el Cono Sur*, América Latina Hoy, no. 40, 2005, pages 100-102.

The ACHR was expected to generate further legislation and to subsequently modify national legislation and local practices in its endeavor to improve human rights conditions in the region. This expectation has presented a vast challenge for the signing parties to the Convention, more so than was expected. Instead, the ACHR has gravitated more towards the role of an important source of inspiration, not only encouraging the establishment of numerous NGOs but also attracting the efforts of many international ones in the region. Besides the NGOs, the area's distinct political and social characteristics have caught the attention of international human rights experts. All in all, these developments have resulted in the positive evolution of the expected function of the Convention as a significant source of inspiration in the states parties to it.

When viewed against the background of Latin American society, the realistic possibility of a full realization of the rights recognized in the ACHR becomes considerably bleaker than one would hope. Nevertheless, the establishment of the IAHR and the adoption of the Convention are great achievements in their own right. The structure of the system is not weak in itself, but the unwillingness demonstrated by the governments combined with the lack of resources it suffers, present an obstacle for effective realization of the Convention and for the establishment of a truly potent human rights protection. The IAHR still has a long way to go before these expectations can be completely fulfilled but the progress made so far allows for positive development in the future of the region.

3.3 CONCLUSIONS

As demonstrated, the expectations on both human rights instruments have varied in degree and fulfillment. The effectiveness of the two human rights instruments at the core of each system has proven to differ depending on the highlighted aspect of the system and the accompanying expectation concerning it. Some expectations have been greatly surpassed whilst others are facing a struggle for a bare minimum of fulfillment.

Based on the observations above, among others, the following questions still remain to be answered; were the expectations on certain dimensions of the human rights instruments reflected upon in this thesis set high *enough*? Did the signatory states really know what they

were getting themselves into when adopting the UDHR? Were the state parties to the ACHR aware of the impact on individual lives that their commitment would have? One cannot emphasize enough the long road ahead of us, the challenge of improving the lives of all the millions that suffer violations to their human rights each and every day. However, were it not for our efforts up until now, the world would most likely find itself in a strikingly different situation.

Despite not being a legally binding human rights instrument, the UDHR has by far exceeded the initial expectations of its drafters. Today it has attained such authority that it is globally recognized as the consensus of the worldwide idea of what constitutes basic human rights and fundamental freedoms. Notwithstanding the difficult challenges facing the Latin American region, the states parties to the ACHR have managed to make important advances and armed the region with a human rights system possessing great potential. Despite their many deficiencies, the two protection systems, armed with their main human rights instruments, are immensely important. The ACHR and the UDHR have both been exposed, and are continuously so, to numerous expectations. Regardless of having been failed or fulfilled, the mere existence of all these expectations expresses the hopes that we hold for the possibility of a better world; a safer environment and improved recognition of equal human value globally. The ACHR and the UDHR are two important steps along the way, marking a path that will hopefully be followed by an increasing amount of governments. The documents inspire actions on international as well as on national levels, generating more treaties and inspiring governments to integrate their values in national constitutions. In the following section I will examine directions for future development indicated by the human rights evolution thus far, specifying pathways that in my opinion could prove positive for the advancement of the concept and its application.

4 FUTURE DEVELOPMENT

4.1 PRINCIPAL CHALLENGES

As shown previously, the concept of human rights is a dynamic one. It has experienced a drastic acceleration in its evolution in the past seventy years and continues to gain more respect by the hour. True, it is a chaotic world we live in where human rights are constantly violated, but as long as the concept is successfully promoted, its positive development can continue. The question posed today is how to proceed. In what direction should the protection of the human rights as recognized in the documents evolve? What elements should be kept in mind when evaluating possible directions? What directions are being indicated in the international community?

When considered as a unity, the International Bill of Rights along with a number of key human rights instruments adopted globally and regionally, such as other texts emanated from the UN and the ACHR, constitute a very solid base for the evolution and international protection and promotion of human rights. However, they form nothing more than just that – a base to build on. Constant changes in social conditions present a steady flow of new needs and new awareness of what rights are lacking protection. It is therefore important to keep developing human rights, to adapt them to the challenges of today's societies, whilst increasing awareness for the guarantee of human rights for *everyone*.

Regarding today's Latin America the countries of the region share several problematic conditions in their societies, resulting in specific challenges faced by the region when attempting to safeguard human rights. Although the IAHR has achieved some commendable advancement, certain problems in the region have proved alarmingly persistent to this day, hindering the realization of the system's full potential. These problems all connote factors of modern societies that are not easily changed and will in all likelihood remain so for quite some time. Among these factors held in common in the region are extensive corruption, judicial powers and police forces alike marked by inefficiency and deficiencies, police brutality, high crime rates, violence, pervasive discrimination against large segments of the populations and ultimately the disproportional distribution of wealth leading to great

widespread poverty.⁹⁵ Such factors have the potential of paralyzing a society, especially when struggling to protect and promote human rights. As a result, the affected societies run the risk of not being capable of helping and intervening when needed for the development and safeguarding of human rights. Unfortunately this often means the targeting of many economic, social, cultural and collective rights and thus stripping such rights of their practical value. Under these circumstances, occurrences such as political and police corruption evoke unwillingness among the authorities to step in and take an active role in the development. For the IAHR to ensure an increased respect for the ACHR, it is essential that the IACHR maintain its line of work and focus on the processing of individual claims and on the continued elaboration of reports concerning human rights' status in the region. Additionally the international dissemination of such reports would force countries to change their practices in the light of negative publicity. The expansion of fora for human rights dialogues also present important tools when dealing with the challenges facing the Americas. Finally, the further democratization of the countries and their public authorities will allow for a more open and accessible system.

4.2 INTENSIFIED COLLABORATION AND MUTUAL INSPIRATION

In discerning possible directions for the future evolution of human rights protection, it is extremely valuable to take notice of the human rights systems in use today. By identifying those parts of some protection systems considered highly efficient, one may use them as inspiration for other systems. This would also boost cooperation between international and regional organizations and in that manner achieve a more effective overall protection. For instance, the individual aspect is very important in the IAHR as a whole, something that should be embraced by other systems⁹⁶. In comparison, the UN has yet to achieve an efficient way of dealing with individual human rights violations. When states parties ratify the ACHR

⁹⁵ Concerning human rights challenges faced by Latin America, in general see Ayala Lasso, José, *La Declaración de los Derechos Humanos de las Naciones Unidas y su importancia para América Latina*, Contribuciones, nr. 4/1998, Konrad Adenauer Stiftung, 1998, pages 15-27 and *Human Rights Watch, World Report 2010 (events of 2009)*, printed in the United States of America, 2010, Americas; pages 191- 257. The report additionally mentions poor prison conditions, restricted media freedom and the restrictions imposed on the due process guarantees of the judicial systems as problems emblematic of the region. Additionally see, Barrachina, Rial, *Los Ministerios de Defensa en América Latina y las Consecuencias de la Multidimensionalidad de las Amenazas*, América Latina Hoy, no. 42, pages 131-159, 2006.

⁹⁶ As an example, the UN recently adopted the Optional Protocol to the ICESCR, *supra* note 39, introducing the possibility of individual claims under the Covenant; G.A. Res. A/RES/63/117 adopted by the General Assembly on the 10th of Dec. 2008. Available at [Optional Protocol \(GA resolution A/RES/63/117\) \[2010-06-23\]](#). Compare to such possibilities under the ICCPR, see section 2, 2.5.1 *International Covenant on Civil and Political Rights*.

they are automatically considered to have accepted the jurisdiction of the IACHR. This allows the Commission to hear cases brought to it by individuals against the states parties⁹⁷. Additionally, the same provision allowing for individual petitions also allows for NGOs to lodge petitions, thus recognizing the importance and competence of NGOs in the human rights field⁹⁸.

An innovative element in the IAHRs is the possibility of online submission of complaints to the IACHR. This feature underlines the IAHRs's focus on the individual's right to take action, facilitating the process. Granted it is a feature that calls for a meticulous screening process, but would undoubtedly add a welcome dimension to the human rights work of other organizations, allowing for a rapprochement of the organization and affected individuals.

Another interesting aspect of the regional systems is the dimension added by the inclusion of human rights courts. These courts have had very positive effects on the protection of the rights and their presence indicates an encouraging line of effort for the evolution of human rights protection. However, despite the demonstrated positive effects that such a court may have (as proved by the regional systems), taking the IAHRs as an example, the non-ratification of the ACHR by several OAS members entails the subsequent denial of access to the Inter-American Court of Human Rights. From a human rights standpoint, this circumstance generates a great disadvantage for the individuals residing in countries that have not ratified the Convention. They are thus effectively denied the possibility of filing claims against their respective states under the ACHR. In the case of the IAHRs this signifies a differentiated treatment of the citizens of OAS member states, and a protection that suffers from deficiencies due to the court's inability to function at its full potential. The avoidance of such deficiencies indicates one path for future improvement of protection systems.

An appealing facet of the Inter-American system is that the Court is granted the authority to give advisory opinions⁹⁹. On the request of an OAS member state, the Court is permitted to express its authoritative view on the compatibility of a domestic law with international

⁹⁷ ACHR, *supra* note 65, article 44.

⁹⁸ Article 44 was moreover proved especially useful for the region when forced disappearances constituted a common occurrence, enabling NGOs awarded legal personality to file claims of violation when the individuals in question were unable to.

⁹⁹ This prerogative is granted the Court in article 64 of the ACHR, *supra* note 65.

instruments concerning human rights in the American states¹⁰⁰. It is moreover authorized to guide member states in their interpretation of the ACHR and other international human rights instruments. This possibility for the member states to receive advisory opinions is a highly useful preventive tool¹⁰¹. It gives the states a supplementary means of adhering to their international obligations.

Since its creation the UN has adopted numerous resolutions, declarations and conventions in the human rights field. Together with concerned provisions of the UN Charter, these instruments constitute the normative foundation of the contemporary international human rights movement. Needless to say it is a base that has encouraged the development of regional human rights systems. But perhaps the time has come for the UN to be inspired by the regional organizations, the NGOs and the international experts that were once motivated by the UN. By applying certain innovative aspects of other protective systems and by nourishing a deeper cooperation with them, not only would the local perspective on UN actions be improved, but more importantly the protection provided by the UN would be enhanced. Although still the constant international authority on the subject, the UN would benefit from a deepened cooperation with these actors in the field. By acknowledging that these ‘objective’ actors, in addition to member states and larger international organizations, deserve to be given greater importance when considering written observations and opinions, the UN would strengthen its international credibility and expand its imperative global perspective. In fact, all human rights systems would benefit from such valuable sources of information.

One should bear in mind that alongside the evolution of different human rights systems, NGOs have increased rapidly in numbers, complementing the systems by contributing with criticism, promotion and overseeing the effective protection of the rights themselves¹⁰². This specific group of human rights activists represents a great source of knowledge and expertise that should be fully appreciated. Despite the fact that they still often have to work hard at lobbying political entities on human rights issues, NGOs play an increasingly important part in enhancing the international systems in a way that diminishes the possibilities for states to convert their international obligations into hollow words. NGOs have become a force to

¹⁰⁰ This right to petition the Court is granted member states of the OAS regardless of whether or not they have ratified the ACHR. It is additionally granted all OAS organs.

¹⁰¹ Concerning the UN system, the ICJ, is similarly authorized to give advisory opinions. However, the right to petition the ICJ is only granted bodies of the UN and is ultimately not exclusive for human rights issues. See Chapter II and IV of the ICJ Statute, *supra* note 20.

¹⁰² ACHR, *supra* note 65, article 44.

reckon with, pressuring states to improve their human rights efforts whilst striving to eliminate the state practice of promising the international community one thing, and doing another¹⁰³. In addition to this, it is worth mentioning the positive ongoing development of national constitutions recognizing human rights and international instruments. This development facilitates the impact of the instruments and the constantly growing field of jurisprudence surrounding them in domestic judicial systems. Strong encouragement of such national efforts would undoubtedly elevate the efficiency of the instruments and the ultimate protection of human rights.

The treaty bodies and other supervision organs utilized today guarantee the strengthening of the existing human rights systems while overseeing the implementation of the human rights instruments. Despite limited powers, these entities compel states to publicly justify their human rights policies thus pressuring them to improve and consequently adjust their targeted policies. In addition, this indirectly affects non-parties to the human rights instruments by drawing attention to their particular policies due to the increased internationalization of human rights issues in general. Supervising bodies must be allowed to continue and advance their work so that they may gain the international recognition needed for more efficient supervision, especially in the countries where such supervision is most needed.

4.3 GLOBAL ISSUES

Representing particularly alarming current developments globally is the increase in terrorism and the war on terrorism, circumstances that have both had unsettling effects on the protection of individual and collective rights. Countries face numerous challenges relating to these issues, and the recent intensification of terrorist activity has evoked the infringement of individual rights in the struggle to safeguard the masses. Concerning the aid that states receive in coping with such issues, it is advisable to expand the guidance provided by international organizations to states parties of human rights treaties on how to elaborate the best possible anti-terrorism measures and other preventive actions relating to that field¹⁰⁴. This guidance is

¹⁰³ Regarding NGOs in general, see Charnovitz, *Non- governmental Organizations and International Law*, 100 A.J.I.L. 348, American Journal of International Law (April 2006), The American Society of International Law, 2006.

¹⁰⁴ For instance, such guidance was given by the IACHR in 2002 in the form of a comprehensive report that was distributed and well received worldwide, especially by other important international and regional organizations

imperative to the signatory countries since it helps them balance their domestic anti-terrorism legislation with their international legal obligations without jeopardizing their compliance with the latter. One must never forget that despite difficult circumstances and the temptation of suspending and restricting human rights, countries never cease to be legally bound by their human rights obligations. Only when specifically authorized by the instruments at hand may such commitments be restricted or suspended.

Another set of issues that has recently enjoyed increased worldwide attention concerns the environment. As the reactions of the earth to the exploitation of modern society have increased at an alarming pace, more and more people and organizations are advocating the strengthening of environmental rights. This area of fundamental rights is somewhat controversial since its human rights status is highly debated. In some circles the mere existence of such a concept as environmental rights is questioned. As a group of rights associated with the third generation of human rights, it is barely mentioned in the existing key instruments¹⁰⁵. This is an area that deserves further elaboration and should be considered of great value for the actual realization of many other human rights. An integration of environmental values in current principal human rights instruments would mean a significant advancement for this group of rights and a modernization of said instruments¹⁰⁶. For an enhanced protection and further promotion of the concept of human rights, the effective exclusion of third generation rights is clearly detrimental¹⁰⁷. Despite its nature as a non-binding instrument, the adoption of the Declaration on the Right to Development signified an initial step towards codifying another category of third generation rights, namely the right to

also dedicated to the protection of human rights. *Report on Terrorism and Human Rights*, Inter-Am. C.H.R., O.A.S. Doc. OEA/Ser.L/V/II.116, doc. 5 rev. 1 corr. (2002).

¹⁰⁵ See section 2, 2.2 *Historic Background*, concerning the different generations. Although not expressly named in the UDHR, its advocates often consider it part of the right to an adequate standard of living, article 25 (1) in the UDHR, *supra* note 31, followed up by article 12 of the ICESCR, *supra* note 39. The ACHR gives no reference to it, however, its Additional Protocol, *supra* note 74, declares an improved environment as a specific goal in article 11 (2). A contributing factor to its inclusion is the late adoption of the Protocol, rendering the early adoption of the UDHR a possible obstacle for such an inclusion.

¹⁰⁶ See the principals laid down in the 1972 Stockholm Declaration adopted at the UN Conference on the Human Environment; "Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations." (Principal 1). Since then the UN and the regional systems have made efforts aimed at improving the environment, but as regards the status as human rights, little progress has been made.

¹⁰⁷ However, there is the exception of the right to self-determination as recognized in Chapter I, article 1 (2) of the UN Charter, *supra* note 13, as well as in both the ICCPR and the ICESCR, *supra* note 39; articles 1 respectively. In addition to this, article 28 of the UDHR, *supra* note 31, may be understood as including a dimension of third generation rights.

economic development¹⁰⁸. Both developmental and environmental rights have gained momentum in recent years, but neither has reached indisputable human rights status. As mentioned before it must be considered important to further elaborate these rights and to fully acknowledge the interdependency they share with social, economic, cultural, civil and political human rights for the full enjoyment of all human rights.

In the struggle to achieve an effective realization of human rights instruments, numerous other challenges faced by the protection systems and the instruments themselves come to mind. State sovereignty and the state tendency to employ a selective approach to the instruments, either by claiming exceptions to these, or by selective ratification of these, constitute important challenges¹⁰⁹. An example of the selective approach is the use of a cultural claim. In an attempt to justify their selective approach to what are commonly recognized as universal human rights, a state might claim that particular aspects of a specific culture are incompatible with certain human rights. These tendencies undeniably cripple the human rights systems. In essence, international human rights treaties attempt to constrain state sovereignty to guarantee an efficient protection of human rights. This is done by restricting the conduct of states toward their own citizens and by imposing obligations of protection of individual rights¹¹⁰. Ultimately, a negative reaction to these international commitments on behalf of a state presents an additional obstacle for the realization of the human rights concerned¹¹¹.

4.4 CONCLUSIONS

¹⁰⁸ See Declaration on the Right to Development, A/RES/41/128, *adopted* by the General Assembly at the 97th plenary meeting on the 4th of Dec. 1986.

¹⁰⁹ The selective approach chosen by certain states may entail the prioritization of certain rights and the effective separation of others.

¹¹⁰ If not fulfilled, these international human rights treaties are just like most, however, the restrictions are generally stricter than in other types of treaties.

¹¹¹ An additional remark worth making concerns the ratification of the two international covenants. By dividing the text in two covenants, states have been known to take advantage of the misinterpretation of an internal hierarchy between the human rights. In those cases, the categorization into ‘generations’¹¹¹ would instead be interpreted as a hierarchy where 1st generation rights and freedoms (found mainly in the ICCPR) are more important because of their origin and realization possibilities, than the 2nd and the 3rd generations. This misinterpretation has consequently been used by certain States to intent a justification of their selective ratification. This would be done by signing the two covenants but only honoring the one commitment in an intent to save face, fully aware of the consequences such a commitment would entail considering internal issues on the subject-matter. States have therefore been known to ignore the inherent *universal* nature of the protected rights and freedoms.

Considering the discussion above, it can be presumed that a fundamental change in attitude towards the principal human rights instruments would be advantageous, allowing them to adjust more smoothly to this day and age. The general perception of these instruments as highly symbolic, excessively static at times, and as overly optimistic descriptions of an existence far removed from the reality experienced by millions of people, is highly questionable. Instead, we would benefit from an approach that allows for the members of a particular society and culture to express themselves through specific interpretation of the human rights provisions at hand. Such a perspective emphasizes the documents' intended universality while simultaneously embracing the particularity of each culture. The supposed universality of the provisions pertains to their global applicability as opposed to their equal impact and interpretation in the many different societies around the globe.

We need to achieve an appreciation of human rights instruments as more than mere legal documents. Rather, they should be perceived as means of cultural transformation, enabling their application in the most efficient manner in each specific context. To make the most of the instruments' full potential, state parties must not only commit to respect the rights but also to promote and protect them. This may very well entail the necessary elimination of potential obstacles found in local social or cultural norms, a task not always welcomed by governments.

Be it the further elaboration and improved effectiveness or the many possible new directions of the IAHRs and the UN system, an improved collaboration would favor the realization of all human rights. Perhaps an advisable plan of action would be to satisfy the need of additional regional systems by complementing the three existing ones. Based on the reasoning above, it can be concluded that this approach would benefit human rights evolution by ensuring more multifaceted protection. Collective human rights efforts would reach more individuals and in addition would generate a mutually beneficial cooperation between the various systems that would raise further awareness of human rights violations globally.

5 ANALYSIS

5.1 GENERAL OBSERVATIONS

When reflecting upon the differences between the UDHR and the ACHR one may start by recognizing their principal failings as key instruments of two human rights systems. Concerning the UDHR, the most evident flaw is perhaps its legal status. This aspect has been highly debated in regards to the Declaration's authority and its legal impact. The repercussions of this flaw have not been nearly as severe as feared; in fact, it has become a highly authoritative document. Its force lies in its characteristic as a source of inspiration, enjoying direct reference in numerous national constitutions and a plethora of international human rights treaties. However, this strength leads us to another aspect of the principal failing of the UDHR, namely, the lack of an enforcement mechanism. Regardless of the clout it enjoys the UN has no way of ensuring respect for the Declaration by those affected by it, that is to say *all* UN members. Now, the two covenants constitute an attempt to remedy this deficiency, but the enforcement mechanisms envisaged for them are also flawed and by many regarded as weak. Additionally, the UN system lacks the more individual perspective characterizing the IAHRs.

The IAHRs in turn is considered a more innovative system than the UN's, but is not nearly as efficient. This is considered a principal failing of the former. The Inter-American system suffers from a lack of internal basic consensus regarding the function and main assignments of its organs. This flaw presents a great obstacle for the system to fulfill its potential, leading to understaffing and under-budgeting resulting in stagnation in the progress curve of the system. The ACHR itself has a quite distinct principal failing compared to its counterpart, namely the exclusion of economic, social and cultural rights. This major flaw was subsequently remedied by the Protocol of San Salvador, but constitutes such a grave misstep on behalf of the drafters that it resulted in the much delayed protection of these rights in the region. As a result of the inherent nature and the legal consequences of a Convention, the ACHR is more detailed in its articulation of the rights but also in its restrictions. By a more consequent use of phrases like "Everyone has the right...", the UDHR sets a positive tone throughout the document and enables the unaffected inclusion of positive liberties. As a

document conferring rights, the more elaborated duties and limitations and the phrasing of the Convention give a sterner impression in general when compared to the UDHR.

The preambles of international instruments are in general considered very significant for the interpretation and understanding of the documents. Regarding the preamble of the UDHR it is clear that historic circumstances instigated the drafting process, offering an explanation to the general consensus behind it and a compelling motivation to its respect. The ACHR, on the other hand, lacks such a historic aspect of its creation in its preamble, something that would serve as a constant reminder of a horrific past that must be avoided at all costs. Nevertheless, just like the other existing regional human rights instruments, the ACHR acknowledges the UDHR and its inherent importance in its preamble. Furthermore, the reference to democratic institutions as a foundation for the protection of the Convention's rights is a testament to the turbulent history of the continent and the willingness to move forward towards a new era for the region¹¹².

5.2 TEXTUAL DIFFERENCES

In this part of the analysis I will refer to a few selected articles, or aspects of them, in the instruments that express clear distinctions from the other documents¹¹³. I will consider the textual differences and the possible reasons for these variations in documents that all share a common objective, namely the protection of human rights and fundamental freedoms.

The provisions contained in the ACHR are to a great extent very similar to those of the subsequent ICCPR adopted by the UN, suggesting that the regional perspective might not have had such a big influence as one might think on the articulation of the rights and freedoms included. However, there are articles that differ slightly from the UDHR that might indicate the application of specifically regional perspectives on the Convention, especially in contrast to the Declaration. The provisions of the ACHR will offer the point of departure for the analysis since it is the most recent instrument, the one that clearly differs from its predecessors. Furthermore there will be occasional references to the ICCPR since it complements the UDHR, is prior to the ACHR and since the Convention principally covers

¹¹² See section 2, 2.2 *Historic Background*, concerning the importance of democratic institutions.

¹¹³ This, however, does not mean that there are no other differences in the articulated rights in the documents. It is a mere limitation based on the relevance of the provisions for the objectives of my thesis.

the rights therein. In addition to this, my consideration of the ACHR allows me to emphasize the regional influence on the formulation of rights that are generally perceived as universal when comparing it to the global perspective of the UDHR¹¹⁴.

Because of its symbolic nature, article 26 of the ACHR will be examined initially¹¹⁵. The article represents the single most important difference in content between the two key instruments, namely the absence of ESC rights in the ACHR. Firstly, the manner in which the framers chose to articulate the provision in question is interesting. The rights are referred to as more of a general objective of the OAS that is to be guaranteed by its members rather than actual distinguishable rights of human beings. One might add that this articulation of the provision is somewhat ambiguous when taking the chapter title of the article into consideration¹¹⁶. At the time of drafting, there existed a widely spread perception of social rights as more dependent on governmental finance than other rights¹¹⁷. It was therefore argued that the immediate realization of such rights should not be ‘forced’ upon the signing states as it would be too burdensome on the governments. For the same reasons, said rights were claimed not to serve fundamental interests, an evident misunderstanding which unfortunately influenced the human rights perspectives at the time. Obviously there are variations in the practical realization and protection of social rights as opposed to other categories such as civil and political rights. Unfortunately, an essential aspect of the ESC rights has added to the misconception of their lower status as human rights, contributing to their effective elimination. This characteristic is namely the great difficulty encountered when attempting to claim social rights in a national court because of their more general perspective of what society needs to offer for the basic fulfillment of human needs. Sometimes they even present a general addressee of the rights as opposed to the individual as such. This is why it is normally

¹¹⁴ The OAS has complemented the ACHR and its protocols with additional human rights instruments that to the main part mirror the additional conventions and protocols adopted by the UN. However, it is interesting to note that aside from the regional perspective demonstrated in the provisions below, another example of its manifestation is the Inter-American Convention on the Forced Disappearance of Persons, adopted by the OAS in 1994. This Convention is very closely linked to the specific past of the region thus constituting a clear expression of the regional perspective on human rights. It does have a counterpart adopted by the UN in 2006, but the time difference between the adoptions alone speaks to the experienced urgency of such an instrument specifically in Latin America. Concerning specific problems of forced disappearances in Latin America in general, see Gutiérrez Contreras, Villegas Díaz, *Derechos Humanos y Desaparecidos en Dictaduras Militares*, América Latina Hoy, no. 20, pages 19-40, 1998.

¹¹⁵ ACHR, *supra* note 65, Chapter III – Economic, Social and Cultural Rights, Article 26, Progressive Development.

¹¹⁶ The title ‘Chapter III – Economic, Social and Cultural Rights’ heads the sole article 26 referring to the ESC rights.

¹¹⁷ Social rights are generally considered to represent the largest group of rights within the family of ESC rights. In certain aspects social rights may be understood as overlapping the other two groups of rights.

not possible to claim these rights directly in a court. For instance, it would be difficult to claim that one's right to an adequate standard of living had been violated as such.

There is no question that the IACHR's recommendation to reject the inclusion of ESC rights in the Convention did in fact lead to their exclusion¹¹⁸. The motives behind said recommendation are still debated since the IACHR's reasoning was not only predictable but also self-justificatory. The question is if the motives were strong enough to motivate an effective exclusion of an entire group of human rights already globally recognized¹¹⁹. In rationalizing its recommendation, the Commission held that only those rights to which the members of the OAS were actually willing to extend effective protection should be included in the ACHR¹²⁰. It also referred to the fact that both the UN and the Council of Europe had chosen to deal with the ESC rights in particular documents separate from the civil and political rights, accompanying them with distinct implementation procedures¹²¹.

However, considering the time when the ACHR was being drafted, it is surprising that the OAS could accept a human rights convention that did *not* include such rights. Not only had the ICESCR been approved three years earlier, but the American Declaration had in fact articulated a great number of said rights. Perhaps the American states did not consider themselves ready to commit to a legally binding regional convention that in their opinion would demand a much greater amount of resources if the entire tabulation of rights protected

¹¹⁸ See section 2, 2.8 *The Creation of the American Convention on Human Rights*.

¹¹⁹ In 1965 the IACHR was endowed with enlarged powers, see Resolution XXII; OAS doc. OEA/Ser. C/I.13/Final Act (1965) 32-34. In addition to this, the resolution encouraged the IACHR to pay special attention to certain civil and political rights when carrying out their duties. I find it highly probable that this encouragement to primarily focus on such rights contributed to the misconception that civil and political rights should receive higher priority than ESC rights. Considering this was shortly before the final drafting of the ACHR, the recommendation that was made by the IACHR to basically exclude all ESC rights, was surely influenced by said resolution. The resolution was considered a frame for the priorities of the human rights work of the OAS. However, one should think that the IACHR would promote the inclusion of said rights in the ACHR despite such a resolution because of the autonomous nature of the organ (OAS Charter, *supra* note 49, Chapter XV and ACHR, *supra* note 65, Chapter VI, article 33 (a), and Chapter VII). The rights referred to were found in articles I, II, III, IV, XVIII, XXV and XXVI of the American Declaration of the Rights and Duties of Man.

¹²⁰ Concerning influence exercised by the United States during the drafting of the ACHR, it is no wonder that the philosophies of Locke and his peers allowed for a greater focus on more liberal rights emanating from traditional natural rights thoughts. Additionally, when reflecting upon the actions of the United States and factors that might have influenced their hesitance to give due recognition to the ESC rights yet another dimension must be kept in mind. Apart from the philosophical traditions, the strong rooting of civil and political rights in the United States stemming from the independence war and various civil and political movements in the past century, need to be taken into account. In fact, said movements have even been considered groundbreaking regarding many aspects of the subject matter.

¹²¹ The Council of Europe originally adopted the separate Social Charter in 1961 (ETS No. 035) and has subsequently replaced it with the Social Charter of 1996 (ETS No. 163), thus complementing the European Convention. Concerning the two International Covenants generated by the UN, see section 2, 2.5.

by the American Declaration, the UDHR and the ICESCR were to be included. The obligation in the article to realize the ESC rights is furthermore *not* dependent upon the material resources that are available to the state in question. This implies a freedom for the states parties to realize the rights in their own time, allowing them to deny the use of all their available resources at hand as long as some progress is made. Indicating a perhaps too wide discretion for states parties, this circumstance would consequently allow them to apply progressive realization even if resources are available.

When reflecting upon the UDHR's treatment of the ESC rights it is evident that its mere disposition allocates all included rights and freedoms on the same level of importance, avoiding any type of differentiation¹²². The UDHR treats these perceived social standards as proper rights, albeit to be realized progressively. An additional remark worth making relates to the two subsequent international covenants that were also adopted before the ACHR. Adding to the misconception of an internal hierarchy of human rights was the bifurcation of the text. This caused the categorization of human rights into 'generations' to be misunderstood as a hierarchy where first generation rights and freedoms (as found mainly in the ICCPR) were and are considered the most important¹²³. Because of the first generation's origins and realization possibilities it would thus excel the second and third generations. This misconception has allowed certain countries to attempt justification of their selective ratification¹²⁴. In an effort to save face because of internal issues on the subject-matters, a state might sign both covenants but only honor the one commitment, fully aware of the possible repercussions that would follow such ratification. States have therefore been known to ignore the perceived inherent universal nature of the protected rights and freedoms. Granted, at the time of the creation of the ICESCR a majority of the world's countries were not in any position to realize the rights of the covenant fully or even largely. This circumstance generated the progressive realization process that allowed such states that lacked the human, economic, and ultimately institutional resources to ratify the covenant. Had the ICESCR in fact called for an immediate realization of the rights, non-compliance due to inability would have been a certainty for a large amount of states parties.

¹²² At a first glance the disposition of the ACHR, *supra* note 65, might appear to do the same, but as mentioned before, its chapter title, 'Chapter III – Economic, Social and Cultural Rights', concerning the ESC rights in the Convention is in my opinion misleading. The title refers to them as 'rights' but denies them a suitable treatment as such due to the articulation of the provision.

¹²³ See section 2, 2.2 *Historic Background*, for my reference to the aforementioned categorization.

¹²⁴ See section 4, 4.3 *Global Issues*, concerning selective ratification.

Ultimately what needs to be remembered is that there exists a strong interdependency between the two sets of human rights. *All* human rights are interrelated and closely depend on each other for their full realization¹²⁵. Not only ESC rights require positive action on behalf of a government for their full enjoyment, but civil and political rights do as well. Such circumstances were not fully recognized during the drafting of the ACHR. In conclusion, article 26 marks a principal difference between the original ACHR and the UDHR. It is the joint expression of numerous factors that ultimately resulted in an unfortunately vague provision. This provision effectively denied the protection of ESC rights during a long period of time for a great number of individuals in the Americas.

Among other articles of interest worth mentioning, article 4 of the ACHR that concerns the right to life¹²⁶ is clearly one of them. This is an interesting provision, especially when considering the implications of the articulation of its first paragraph. Article 4(1) states that the right to life “...shall be protected by law and, in general, from the moment of conception.” This formulation clearly ensures the possibility of prohibiting abortion in the states parties. It plainly expresses that an interrupted pregnancy, generally known as an abortion, is an attempt on the human right to life. During the drafting of the ACHR, several delegates from Latin America’s intensely catholic countries insisted on such a wording of the provision. The article thus articulates a general stand against abortion, something quite different from the mere statement of a right to “...life, liberty and security of person” in the UDHR¹²⁷.

Article 6 of the ACHR refers to the freedom from slavery, a common provision among human rights instruments¹²⁸. What is interesting about this article is thus not its general content, but rather its first paragraph since this specifically mentions the prohibition of traffic in women. A corresponding explicit mention of traffic in women does not exist in the UDHR or in the more elaborated ICCPR¹²⁹. Nevertheless, the UN made an early statement in 1949 condemning such practices by adopting a convention on the subject and has since adopted several more¹³⁰.

¹²⁵ Regarding the interdependency of human rights in general, see Pillay, *Are Human Rights Universal*, UN Chronicle, Volume XLV, nr. 2/3, 2008, pages 4-8.

¹²⁶ ACHR, *supra* note 65, Chapter II – Civil and Political Rights, Article 4, Right to Life.

¹²⁷ UDHR *supra* note 31, article 3. Regarding the article’s counterpart in the ICCPR, *supra* note 39, article 6(1), the covenant leaves out any possible hint towards *when* the actual right to life starts, thus avoiding the presumption of abortion being the anomaly. Despite the overall similarity between the ICCPR’s and the ACHR’s provisions, apart from the above mentioned, the ICCPR’s provision additionally addresses the issue of genocide.

¹²⁸ ACHR, *supra* note 65, Chapter II – Civil and Political Rights, article 6, Freedom from Slavery.

¹²⁹ UDHR, *supra* note 31, article 4 and ICCPR, *supra* note 39, article 8.

¹³⁰ Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, *approved by* General Assembly resolution 317 (IV) of the 2nd of Dec. 1949, *entry into force* on the 25th of July,

Furthermore, the general provision concerning slavery in the UDHR (together with that of the ICCPR) is considered, in spite of its simple articulation, a key factor in the habilitation of the subsequent establishment of the important permanent Working Group on Contemporary Forms of Slavery¹³¹. However, despite the significant efforts of the UN, in this context the explicit provision in the ACHR is unique and presents a positive feature in relation to the other instruments in question.

A provision of special significance for Latin America is article 13 of the ACHR concerning freedom of thought and expression¹³². This is undoubtedly one of the most recognized human rights in the entire world; however, the article's third paragraph presents a unique trait in comparison to the UDHR and the ICCPR, namely that of censorship of the media¹³³. The article refers to censorship and government abuses by impeding or controlling communication or circulation of opinions in the media. Despite the fact that the concept pinpoints a worldwide problem, based on the observations made earlier on, it can be concluded that the provision of the ACHR is of special interest in the context of the Americas. The region is known for having suffered widespread serious interference with the media. Direct censorship, persecution and even murder of journalists still occur with an alarming frequency despite a noticeable decline during the past few years. However, recently more subtle ways of controlling the media have emerged as a growing trend; so-called soft censorship, a concept equally dangerous for the right in focus.

1951, in accordance with article 24. Amongst the numerous conventions on the subject that has followed another two are worth mentioning here; the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, 226 UNTS 3, and the Convention on the Elimination of All Forms of Discrimination against Women, GA res. 34/180, 34 UN GAOR Supp. (No. 46) at 193, UN Doc. A/34/46; 1249 UNTS 13; 19 ILM 33 (1980). Incidentally, in article 6 the latter expressly condemns all forms of traffic in women and exploitation of prostitution of women. In addition to these conventions the UN has carried out several studies on the subject of contemporary forms of slavery, especially see those of Awad, E/CN.4/Sub.2/322 and Whitaker, E/CN.4/Sub.2/1982/20/Rev.1. In general see the UN report *Abolishing Slavery and its Contemporary Forms*, HR/PUB/02/4, Office of the United Nations High Commissioner for Human Rights, Weissbrodt and Anti-Slavery International, United Nations, 2002.

¹³¹ Established in 1975 of the former Sub-Commission on the Protection and Protection of Human Rights, the Working Group on Contemporary Forms of Slavery was replaced in 2007 by a Special Rapporteur on contemporary forms of slavery, including its causes and its consequences; Human Rights Council Resolution 6/14 (A/HRC/RES/6/14). See Pons Rafols (Coord.), *La Declaración Universal de los Derechos Humanos; Comentario artículo por artículo*, Asociación para las Naciones Unidas en España, Icaria Antrazyt, 1998, see Escobar Hernández, Comentario artículo 4, pages 140-145.

¹³² ACHR, *supra* note 65, Chapter II – Civil and Political Rights, article 13, Freedom of Thought and Expression.

¹³³ UDHR, *supra* note 31, article 19, recognizes the right to freedom of opinion and expression but does not explicitly mention censorship nor explicitly condemn the abuse of government or private controls over media as opposed to article 13(3) of the ACHR. Though more elaborate than the provision in the UDHR, the corresponding article 19 of the ICCPR, *supra* note 39, also lacks the specific reference as contained in the ACHR.

In 2008 a report concerning this alarming trend confirmed the growing threat to the right to freedom of opinion and expression¹³⁴. Among other things it revealed that government officials persistently manipulate the distribution of advertising. Such abuses produce negative effects for the many media outlets that are financially dependent upon public sector advertising. Such manipulation is a way for the governments to exercise control over content and at times even publish government-produced stories. It also showed that American governments exploit advertising to ensure favorable news coverage, thus discouraging critical communications concerning the government. Another consequence of this practice is the denial of access to public information, a common occurrence in Latin America, often worsened by deficient legal frameworks and inadequate policies for the provision of access. Consequently, concerned individuals suffer great difficulties in holding their governments accountable in the pursuit of a dignified realization of the right to freedom of expression. These circumstances were also confirmed by the 2010 World Report on human rights¹³⁵. Said report confirms the findings of the former report issued in 2008, claiming that the occurrence of death threats, acts of violence by the police, harassment, attacks, intimidation and even the murder of journalists are still terribly current problems in the region. In particular, the investigation of drug trafficking or the criticism of state governments has proven especially dangerous for journalists in the region¹³⁶. In summing up the discussion above, it must be considered as highly probable that this distinct regional context contributed to the inclusion of the explicit mention of governmental abuse of the media in the provision of the ACHR.

Another unique provision in the ACHR is article 22(7)¹³⁷. The article in general pertains to the freedom of movement and residence, while paragraph seven explicitly includes the right to seek asylum¹³⁸. Of the human rights instruments being examined in this thesis, this is the

¹³⁴ *The Price of Silence: The Growing Threat of Soft Censorship in Latin America*, produced by the Asociación por los Derechos Civiles and the Open Society Justice Initiative, Open Society Institute, New York, August 2008.

¹³⁵ *Human Rights Watch, World Report 2010*, *supra* note 95, pages 191- 257.

¹³⁶ Two cases that stand out in the World Report from 2010, *supra* note 95, is that of Cuba where, according to the report, the freedom of expression is virtually non-existent, and that of Venezuela. The government of Chavez has been found to discriminate against government critic media, generate an increase in the possible infractions of vague laws concerning the media and the amount of ‘disrespect’ (of law) offences punishable by criminal law. These actions have created very strong incentives for government critical journalists to undertake self-censorship thus efficiently limiting free speech in general in Venezuela.

¹³⁷ ACHR, *supra* note 65, Chapter II – Civil and Political Rights, article 22, Freedom of Movement and Residence.

¹³⁸ ACHR, *supra* note 65, article 22(7), states that “Every person has the right to seek and be granted asylum in a foreign territory”.

only legally binding one that has included such a right. The UDHR contains the same right but, as mentioned before, it is not legally binding and the ICCPR has, surprisingly enough, excluded this right.¹³⁹ The right has strong roots in the Americas, having first been addressed in 1928 at the Sixth International Conference of American States¹⁴⁰. Unfortunately, this right is widely ignored by governments despite its importance in today's society where refugees constitute a vast amount of exposed individuals.

The examination of the articles above is meant to highlight the regional perspective and to emphasize the most prominent differences of interest between the ACHR and the UDHR, at times complemented by the ICCPR¹⁴¹.

5.3 INFLUENTIAL FACTORS CONCERNING DRAFTING AND REALIZATION

When considering the possible influential factors in the drafting processes of human rights instruments one must remember that behind the individuals of the drafting committees are governments and entire societies. The composition of such committees and commissions is essential in acknowledging the diverse international politics and cultures in the background¹⁴².

It is furthermore evident that the political and ideological facet of a society constitutes a factor of great magnitude when it comes to influencing the way in which the concept of human

¹³⁹ UDHR, *supra* note 31, article 14, is the corresponding provision.

¹⁴⁰ The Conference was held in Havana in 1928 and approved the Convention on the Right of Asylum and the Convention on the Status of Aliens. The OAS subsequently adopted the Convention on Political Asylum in 1933 and both the Convention on Territorial Asylum and the Convention on Diplomatic Asylum in 1954.

¹⁴¹ A few additional provisions are worth mentioning since they clearly lack counterparts in the other documents. ACHR, *supra* note 65, article 10; right to compensation in the case of an individual having been "sentenced by a final judgment through a miscarriage of justice", does *not* have an equivalence in the UDHR, however, the ICCPR does contain it and elaborate it further, see articles 14(6) and 9(5). Article 14 of the ACHR, right of reply, does not appear explicitly in the UDHR. However, it can be understood as implicit in the right to protection of the law against one's honor or reputation in article 12 of the UDHR. Finally it is worth highlighting the first articles of both international covenants containing the right to self-determination. The articles are identical, thus underlining the importance of the right. Curiously enough this right does not stem from the UDHR (although the UDHR, *supra* note 31, gives the right to nationality in article 15, a right with ties to that of self-determination) nor have an explicit counterpart in the ACHR (right to nationality, article 20). A controversial right considering the state of the world post World War Two that presents an increasing amount of internal conflicts between peoples as opposed to countries. Furthermore the right has been much debated for the mere definition of the term 'people' and the requisites that are to be fulfilled for the Right to be exercised.

¹⁴² This has been shown by the efforts of the UN and the regional organizations, providing highly diverse compositions of representatives from different member states when elaborating human rights instruments.

rights it perceived and articulated¹⁴³. For instance, the persistent influence of legal philosophers through several centuries on their societies carries through to this day and age and is reflected in the human rights texts of the twentieth century. The fact that countries such as the United States played key parts in the documents' drafting processes and at the same time had great political influence worldwide, allowed for the musings of philosophers like John Locke to shine through in the main documents at hand¹⁴⁴. Whatever one's opinion of their theories, the fact remains that the philosophers in question were all European, with ideas firmly rooted in distinct periods in time. Additionally, one should bear in mind that the countries in leading quarters in the drafting processes of both the UDHR and the ACHR were few and at times shared a basic common political and ideological past.

5.3.1 General Manifestations in the Instruments

The UDHR can be understood as the result of compromise in this respect. As mentioned above, the strongest voices during the drafting contributed with the individualism of the West and the collectivist perspective of the Soviet bloc. The document also reflects the decolonization process that was under way.

Compromise that the Declaration was, the Commission on Human Rights made a clever choice by focusing their attention on the development of a declaration rather than a treaty. Although not a legally binding treaty or a mere recommendation, a declaration is a proclamation of special importance that merits high value both politically and morally. This was an intelligent way of enlisting countries to the new vision of the UN; an international community striving towards a world in which human rights are protected and respected. A strong sense of state sovereignty would in all probability have resulted in unwillingness to commit to any sort of legally binding treaty. International commitments would in essence have interfered with the power the states parties exercised over their own citizens in their own territories. Nowadays states are fully aware of the consequences of opposing a UN decision, something that was easier in the past but that is now complicated by intricate interrelations

¹⁴³ See section 2, 2.2 *Historic Background*, that clearly speaks to the fact that political, economic and social changes effected the way of perceiving human rights and ultimately influenced which ones were to be included in the UDHR and the ACHR.

¹⁴⁴ In addition to John Locke (1632-1704), other examples of influential legal philosophers that have elaborated theories concerning natural law or similar theories influencing the evolution of human rights, are Hobbes, Rawls, Nozick and Rousseau. As a manifestation of such theories, the Preamble to the American Declaration of the Rights and Duties of Man, *supra* note 52, reflects natural law theory by affirming that the fundamental rights of man "are not derived from the fact that he is a national of a certain state, but are based upon attributes of his human personality".

and in fact not recommendable (although possible in theory)¹⁴⁵. However, considering the fact that the objective of the UN would most likely be very difficult to realize *without* legally binding commitments by the member states, the choice to focus on the creation of a declaration signified a strategy that would entail a smoother drafting process, more state signatures and ultimately a greater international acceptance¹⁴⁶. Additionally, by making this first human rights instrument on behalf of the UN a declaration, the Commission merely affirmed an already existing concept; human rights that are universal and common to all. This perspective also enhances the sense of these rights being self-evident.

Now, when reflecting upon the drafting of the ACHR and the early agenda of the IACHR, the influence exercised by the United States must be mentioned¹⁴⁷. With the reality of the Cold War and the clout wielded by the United States within OAS organs at the time, the activities of the IACHR were undoubtedly colored by US policies. The Cold War led to the replacement of the Good Neighbor Policy, adopted by the United States, with an enhanced desire to control the region to curb the expansion of communism¹⁴⁸. The result was repeated US intervention in domestic affairs of Latin American countries despite the non-intervention principle. In conclusion, the influence of the United States during the second half of the twentieth century was very strong in the Latin American states as well as the OAS¹⁴⁹.

Since the entry into force of the ACHR, the Americas have enjoyed a dual system of protection for human rights throughout the hemisphere. An interplay exists between the ACHR on the one hand, and the American Declaration together with the OAS Charter on the other. The former presenting the states parties with their legal obligations and the latter filling in the gaps, presenting human rights obligations to those states *not* parties to the ACHR. Another way of understanding the dual system of protection is as an interaction that benefits the region on a larger scale, namely that between the IAHRS and the global system provided by the UN. As mentioned earlier on, there are both benefits and disadvantages with regional systems; however, based on the considerations above, it can be assumed that the benefits outweigh the difficulties since they generate superior protection in which the two systems

¹⁴⁵ Although sadly enough, there are still several states that frequently ignore UN decisions despite the possible consequences of such a decision, ultimately undermining the system and its other member states.

¹⁴⁶ Additionally, see section 2, 2.5 *The Creation of the International Covenants*.

¹⁴⁷ Additionally concerning the influence of the United States in the region, see section 2, 2.7 *The Creation of the Organization of American States* and section 2, 2.8 *The Creation of the American Convention on Human Rights*.

¹⁴⁸ See note 46 specifically concerning Roosevelt's Good Neighbor Policy.

¹⁴⁹ *History and Action: The Inter-American Human Rights System and the Role of the Inter-American Commission on Human Rights*, *supra* note 58, page 869.

complement each other¹⁵⁰. Granted, international law still presents a great deal of difficulties, among others those relating to jurisdiction, but the mere coexistence of several systems globally suggests a commendable effort and progress in the field of human rights.

There are certain factors in the social and political context of a society that have the capacity of rendering the rights affirmed in human rights instruments useless in practice. Poverty, violence, corruption, inefficient and unstable governmental and judicial structures, crime and inequality are some of the most tangible factors. Problems like these are in no way specific to Latin America although as mentioned, some of these are extremely acute in the region¹⁵¹. Additionally, on a completely different level, there are numerous other occurrences that affect the realization of rights contained in human rights documents. Climate change, world politics, the state of the economy and the lobbying activities of international organizations all contribute unforeseeable circumstances and add to the instability in our lives. Such circumstances make it all the more imperative to offer effective guarantees of said rights and to continue the development of the concept of human rights, adjusting it to our day and age. These problems are inevitably reflected in the actions of the governments and therefore affect the fulfillment and the articulation of multilateral human rights instruments. Eliminating these factors would entail a better protection of human rights, and vice versa; a better protection of human rights would mean the diminution of said factors in societies. Considering the global dimensions of these problems, counteracting them is no easy task¹⁵².

Despite the many deficiencies and the lack of efficiency in the protective systems, the fact remains that international law nowadays contains a great number of human rights instruments. Moreover, a considerable amount of these have been widely ratified by countries around the globe. They are systems constructed to protect and promote human rights, and while they might be flawed, they have achieved impressive progress worldwide. Their importance is clear when reflecting upon what the world would be and what humankind would have

¹⁵⁰ See section 2, 2.6 *The Creation of the Regional Inter-American Human Rights System*.

¹⁵¹ Additionally Latin America has struggled with non-democratic governments hindering the effective protection of human rights. See section 2, 2.2 *Historic Background* and section 2, 2.8 *The Creation of the American Convention on Human Rights*. These passages speak of the difficulties that certain countries or regions have experienced when trying to protect human rights because of the complete lack of democracies or the existence of deficient ones. In general regarding the specific problems faced by Latin America, see section 4, 4.1 *Principal Challenges*.

¹⁵² Additionally these factors affect the understanding of the concept of human rights, the plausible expectations on international human rights instruments and the fulfillment of such expectations. In general, see sections 3 and 4; *Expectations and Future Development*.

suffered had they not existed. The international normative human rights order is often perceived as something barely affecting purely domestic activities and individual interactions in countries today. Nonetheless, the current social context for both social and political action domestically is in fact frequently influenced by these international treaties.

5.3.2 Decisive Factors

5.3.2.1 Education

The creation of a so-called human rights culture, by establishing a favorable climate for human rights, would add an important dimension to the concept. Specific measures taken and instruments produced would no longer comprise the only aspects of human rights efforts by governments and societies. Such a human rights culture would highlight the importance of an effective promotion thus advancing familiarity with said rights. Education is a necessary prerequisite for the establishment of such an arena for the discussion of human rights. The denial of education leads to ignorance concerning one's rights. Without awareness of human rights, their protection and evolution will stagnate and the rate of human rights violations will never be reduced. Such knowledge will stimulate the development of the rights and ultimately generate a better climate for the surveillance of the extent to which human rights are being respected, and to whom they are in fact being extended.

An efficient promotion of human rights is self-fulfilling. Such an effect would result from increased awareness of everyone's entitlement to the enjoyment their rights. Specific pathways to fuller consciousness would involve direct application of such human rights as the freedom of association or the right to education¹⁵³. Individuals' mere awareness of the existence of their human rights affects the values of their societies and the attitudes of their governments. For example, the positive effects achieved in Latin America, much thanks to the efforts of the OAS, spread from the public arena into the domestic one. This development in turn encouraged new legislation and new initiatives promoting education in the affected societies. Education has consequently proven key when promoting human rights worldwide¹⁵⁴.

¹⁵³ Freedom of association generates the formation of organizations that promote human rights.

¹⁵⁴ The last paragraph of the Preamble of the UDHR, *supra* note 31, reaffirms the importance of education: **“Now, Therefore THE GENERAL ASSEMBLY proclaims THIS UNIVERSAL DECLARATION OF HUMAN RIGHTS** as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and

One should furthermore keep in mind that for the most part, the individuals that suffer the most violations of their human rights are poor and lack opportunities for education. They have no clout, neither political nor economic, in their societies. Lamentably, in many parts of the world, these victims are then silenced with violence, threats or by discrediting the truthfulness of their testimony. For that reason the protection systems need to work towards giving credibility to these silenced people so that the international community becomes aware of the violations and can take the necessary measures against the perpetrators¹⁵⁵.

5.3.2.2 Acknowledging the Past

When taking into account the reasoning above, it is imperative to stress the importance of the historical circumstances surrounding the creation of human rights instruments for the full realization and progress of human rights. Bearing in mind said circumstances clearly demonstrates that regional and international instruments are drafted in a certain way because of their historical context. It is no coincidence that they are created at a specific moment in time, and articulated in a particular way. Every country has a different perspective on history and a different past comprising their distinct point of view. The instruments are therefore the product of a great variety of ideological and historical perspectives of the socio-political circumstances that result in their drafting.

Varying social conditions introduce new needs and consciousness regarding actual violations of human rights, circumstances that become clear when applying historical and contextual analyses to human rights documents. Such analyses also show how negotiations, conflicts and political structures behind their drafting result in specific articulations of the rights. Of course the individuals involved in drafting human rights instruments are additionally influenced, to a varying degree, by different schools of thought and their governments' politics.

In this manner, a human rights instrument, such as the UDHR or the ACHR, could be considered a purely descriptive text. It presents a description of the present; the circumstances, the values and the existing social structures in a specific moment in time. However, despite its contemporary character it is, as mentioned above, a result of our history

international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.”.

¹⁵⁵ Unfortunately even those associated with the individuals like family, friends, legal assistance and human rights organizations, are at risk.

and, at best, a testament to our ability to learn from our past mistakes and experiences and to contribute to the evolution of human rights. From this perspective, such an instrument constitutes a demonstration of our good intentions for the future and an effective protection of said rights.

5.3.2.3 Political Commitment

Ratification of human rights treaties is obviously essential and non-ratification remains one of the principle problems for the full effectiveness of international human rights instruments. Apart from the inspirational and educational values of the instruments the legal obligation is, perhaps unfortunately, necessary for an improvement of the human rights protection¹⁵⁶. The non-ratification of such instruments primarily negatively affects the protection granted the human beings in the countries concerned¹⁵⁷. In addition to this, it is a choice that reflects poorly upon the politics carried out by the country in question and the country might find its credibility being challenged and its international influence reduced. Every day, states are becoming increasingly aware of the political cost of tolerating or realizing actions that entail the violation of human rights or of disregarding their human rights obligations. The risk of suffering political isolation and the imposition of economic sanctions are becoming more and more powerful incentives to desist such actions. The human rights regimes' performances are dependent upon the commitment of states and have as a result not been able to improve people's human rights conditions as much as one would hope¹⁵⁸. The systems require a greater spirit of compromise from member states to ensure daily vigilance of the human rights situation in each country.

Ultimately the political willingness of the governments to fulfill their international obligations and to commit to more international instruments as the evolution of human rights proceeds is what will make or break the systems. The world is quite simply in need of stronger political commitment to the subject-matter. The protection of human rights cannot simply rely upon the mere protection of international and regional systems when governments have the last

¹⁵⁶ It is furthermore noteworthy that a country as influential and politically and economically powerful as the United States has not ratified the ICESCR or the ACHR. In my opinion, a country in its position should be leading by example. Especially when considering that it wielded so much clout in the drafting processes of both the UDHR and the ACHR.

¹⁵⁷ As an example concerning the ACHR, such human beings suffer the disadvantage of being denied access to the Inter-American Court of Human Rights. Their chances of raising claims against their respective states are thereby effectively eliminated.

¹⁵⁸ Evans, *Introduction: Power, Hegemony and the Universalization of Human Rights*, in *Human Rights Fifty Years On: A Reappraisal 1*, Manchester University Press, 1998.

word concerning domestic legislation and, as a consequence, the reality lived by individuals¹⁵⁹. Thus, it is vital that member states fully commit to being the collective and ultimate guarantors of the systems' integrity for the IAHRs and the UN system to be truly efficient.

5.4 FINAL CONCLUSIONS

Considering how these documents came into being, their creations induced by the horrors of the Second World War, it is no wonder that one clings to the idea of their success. No doubt, they have triumphed considering the circumstances surrounding them, but the modern society is constantly changing and today we find ourselves in a society presenting different challenges from those at the time of their creations. Today the world is experiencing a growing trend of threats arising from within the state borders, a development enhanced by acts of terrorism. The war on terrorism has led to an unsettling discovery regarding the genuine frailty in the protection of human rights since it occasionally lets individual human rights be set aside for the supposed protection of the majority. The possible individual suspension of human rights constitutes a dangerous attempt to defend the political structure and the socio-economic values of a state. It inevitably leads to the question; to what extent are we willing to justify governments' ignorance of individually violated human rights? In this thesis I have tried to reveal the difficulties societies suffer in their quest of protecting human rights. The sole international human rights instruments can only do so much. The strength of the democratic state is grounded in its role as the distributor and protector of equal rights to all, rights that are guaranteed and acknowledged by each and every individual. By rejecting the recognition of someone's rights, governments lose their legitimacy and the moral strength they possess to expect a certain behavior of other states, non-governmental entities and individual human beings. Indeed, it is a difficult balance that modern society demands of our political leaders, weighing the importance of preventive measures against that of individual protection, but ultimately the guarantee of human rights for each human being must, in my opinion, always be the priority. The concept of state sovereignty, although diminished by modern day supranational power structures, is still a factor that poses an enormous obstacle for the international collaboration concerning especially exposed groups such as refugees and illegal

¹⁵⁹ Unfortunately, reality is often far from the aspirational conditions of an international human rights instrument. This is why it is so important to keep developing the concept of human rights and promoting their realization.

immigrants. Ultimately, for the improvement of the global human rights situation, the governments' willingness to fully comply with all their human rights commitments is vital and additionally indicates the challenge they face of modifying their national legislation. The universal nature of the rights and freedoms included in the two texts are commonly referred to as universal for a reason; they are meant to apply to every human being, everywhere. No exceptions.

6 LIST OF REFERENCES

6.1 LITERATURE AND PUBLICATIONS

Craven, Matthew, *The International Covenant on Economic, Social and Cultural Rights: A Perspective on its Development*, Oxford University Press, 1995 (reprinted 2002).

Evans, Tony, *Introduction: Power, Hegemony and the Universalization of Human Rights*, in *Human Rights Fifty Years On: A Reappraisal 1*, Manchester University Press, 1998.

Harris, David John, Livingstone, Stephen, *The Inter-American System of Human Rights*, Oxford University Press, 1998, reprinted 2004 (Craven Matthew, Chapter 9; The Protection of Economic, Social and Cultural Rights under the Inter-American System of Human Rights).

Glendon, Mary Ann, *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights*, New York: Random House, 2001.

Morsink, Johannes, *Universal Declaration of Human Rights: Origins, Drafting and Intent*, University of Pennsylvania Press, Philadelphia, 1999.

Pons Rafols, Xavier, *La Declaración Universal de los Derechos Humanos; Comentario artículo por artículo*, Asociación para las Naciones Unidas en España, Icaria Antrazyt, 1998.

Fact Sheet No.2, (Rev.1), *The International Bill of Human Rights*, produced by the Office of the High Commissioner for Human Rights of the UN.

‘Four Freedoms Speech’ of January 6th, 1941 by President Franklin D. Roosevelt

6.2 ARTICLES AND PAPERS

Ayala Lasso, José, *La Declaración de los Derechos Humanos de las Naciones Unidas y su importancia para América Latina*, *Contribuciones*, no. 4/1998, pages 15-27, Konrad Adenauer Stiftung, 1998.

Barrachina, Carlos, Rial, Juan, *Los Ministerios de Defensa en América Latina y las Consecuencias de la Multidimensionalidad de las Amenazas*, *América Latina Hoy*, no. 42, pages 131-159, 2006.

Buergenthal, Thomas, *The Evolving International Human Rights System*, *The American Journal of International Law*, Vol. 100, No. 4 (Oct., 2006), pages 783-807, American Society of International Law, 2006.

Buergenthal, Thomas, *The Revised OAS Charter and the Protection of Human Rights*, The American Journal of International Law, Vol. 69, No. 4 (Oct., 1975), pages 828-836, American Society of International Law, 1975.

Charnovitz, Steve, *Non- governmental Organizations and International Law*, 100 A.J.I.L. 348, American Journal of International Law (April 2006), The American Society of International Law, 2006.

Dulitzky, Ariel E., *Una Mirada al Sistema Interamericano de Derechos Humanos*, América Latina Hoy, No. 20, pages 9-18, 1998.

Dutrénit Bielous Silvia, Varela Petito Gonzalo, *Dilemas Políticos y Éticos en torno a las Violaciones a los Derechos Humanos en el Cono Sur*, América Latina Hoy, no. 40, pages 95-120, 2005.

Gill, Elizabeth A., Sjoberg, Gideon, Williams, Norma, *A Sociology of Human Rights*, Social Problems, Vol. 48, No. 1, 50th Anniversary Issue (Feb., 2001), pages 11-47, University of California Press on behalf of the Society for the Study of Social Problems, 2001.

Goldman, Robert K., *History and Action: The Inter-American Human Rights System and the Role of the Inter-American Commission on Human Rights*, Human Rights Quarterly, 31, pages 856-887, The Johns Hopkins University Press, 2009.

Gutiérrez Contreras, Juan Carlos, Villegas Díaz, Myrna Roxana, *Derechos Humanos y Desaparecidos en Dictaduras Militares*, América Latina Hoy, no. 20, pages 19-40, 1998.

Kabasakal Arat, Zehra F., *Forging A Global Culture of Human Rights: Origins and Prospects of the International Bill of Rights*, Human Rights Quarterly, Vol. 28 (2006), pages 416-437, The Johns Hopkins University Press, 2006.

Lillich, Richard B., *The Constitution and International Human Rights*, The American Journal of International Law, Vol. 83, No. 4, The United States Constitution in its Third Century: Foreign Affairs (Oct., 1989), pp. 851-862, American Society of International Law, 1989.

Peddicord, Jane, *The American Convention on Human Rights: Potential Defects and Remedies*, Texas International Law Journal, vol. 19, no. 1, 1984.

Pillay, Navanethem, *Are Human Rights Universal*, UN Chronicle: *United Nations in a united world*, Volume XLV, nr. 2/3, 2008.

6.3 INTERNATIONAL INSTRUMENTS

6.3.1 Conventions and Statutes

International Covenant on Civil and Political Rights, *adopted* 16 Dec. 1966, G.A. Res. 2200 (XXI), U.N. GAOR, 21st Sess., Supp. No. 16, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171 (*entered into force* 23 Mar. 1976).

Optional Protocol to the International Covenant on Civil and Political Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 59, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 302, *entered into force* March 23, 1976.

Second Optional Protocol to the International Covenant on Civil and Political Rights, G.A. res. 44/128, annex, 44 U.N. GAOR Supp. (No. 49) at 207, U.N. Doc. A/44/49 (1989), *entered into force* July 11, 1991.

International Covenant on Economic, Social and Cultural Rights, *adopted* 16 Dec. 1966, G.A. Res. 2200 (XXI), U.N. GAOR, 21st Sess., Supp. No. 16, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3 (*entered into force* 3 Jan. 1976).

Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, G.A. res. A/RES/63/117 of the 10th of Dec. 2008 (yet to be ratified).

Charter of the Organization of American States, *adopted* 30 Apr. 1948, 2 U.S.T. 2394, 119 U.N.T.S. 3 (*entered into force* 13 Dec. 1951).

American Convention on Human Rights, *signed* on the 22nd of Nov. 1969, O.A.S.T.S. No. 36, 1144 U.N.T.S. 123, O.A.S. Doc. OEA/Ser.L.V/II.23, doc. 21, rev. 6 (1979) (*entered into force* on the 18th of July 1978).

Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, *adopted* on the 17th of Nov. 1988, O.A.S.T.S. No. 69, *entered into force* on the 16th of Nov. 1999, *reprinted in* Basic Documents Pertaining to Human Rights in the Inter-American System, OAS Doc. OEA/Ser.L.V/II.82 doc.6 rev.1 at 67 (1992).

Regulations of the Inter-American Commission on Human Rights, *reprinted in* Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L.V/II.82 doc.6 rev.1 at 103 (1992).

Statute of the International Court of Justice, 3 Bevans 1179; 59 Stat. 1031; T.S. 993; 39 AJIL Supp. 215 (1945), as annexed to the Charter of the United Nations.

ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT

UN Doc. A/CONF. 183/9; 37 ILM 1002 (1998); 2187 UNTS 90, *entered into force* July 1, 2002.

Principles of International Law Recognized in the Charter of the Nürnberg Tribunal and in the Judgment of the Tribunal, 5 UN GAOR Supp. (No. 12) at 11, U.N. Doc. A/1316 (1950); 1950 ILC Yb 374, vol. II; 44 AJIL 126 (1950).

Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, *approved* by General Assembly resolution 317 (IV) of Dec. 25, 1949, 96 U.N.T.S. 271, *entered into force* July 25, 1951.

Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, 226 U.N.T.S. 3, *entered into force* April 30, 1957.

Convention on the Elimination of All Forms of Discrimination against Women, G.A. res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46; 1249 UNTS 13; 19 ILM 33 (1980), *entered into force* Sept. 3, 1981.

Charter of the United Nations, *signed* 26 June 1945, 59 Stat. 1031, T.S. No. 993, 3 Bevans 1153 (*entered into force* 24 Oct. 1945).

Convention for the Protection of Human Rights and Fundamental Freedoms, ETS 5; 213 UNTS 221, *adopted* on the 4th of Nov. 1950, *Entered into force* on the 3rd of Sept. 1953, *as amended* by Protocol No. 11 with Protocol Nos. 1, 4, 6, 7, 12 and 13.

European Social Charter, 529 U.N.T.S. 89; ETS 35, *adopted* Oct. 18, 1961, *entered into force* Feb. 26, 1965.

6.3.2 Declarations

American Declaration on the Rights and Duties of Man, O.A.S. Res. XXX, *adopted* 2 May 1948, *reprinted* in Basic Documents Pertaining to Human Rights in the Inter-American System, O.A.S. Doc. OEA/Ser.L.V//II.82, doc.6 rev.1, at 17 (1992).

Universal Declaration of Human Rights, *adopted* 10th of Dec. 1948, G.A. Res. 217A (III), U.N. GAOR, 3d Sess. (Resolutions, pt. 1), at 71, U.N. Doc. A/810 (1948).

Declaration on the Right to Development, A/RES/41/128, *adopted* by the General Assembly at the 97th plenary meeting on the 4th of Dec. 1986.

Declaration of the United Nations Conference on the Human Environment, Stockholm from 5 to 16 June 1972.

6.3.3 Resolutions

G.A. Res. A/RES/60/251 (Mar. 15, 2006), establishes the UN Human Rights Council that replaced the Commission on Human Rights in 2006.

Res. OAS doc. OEA/Ser.C/II.5 (1959), resolution that among other things establishes the IACHR.

ECOSOC Res. 1985/17 of 28 May 1985, supplementing the ICESCR, (establishing the Committee on Economic, Social and Cultural Rights) to carry out the monitoring functions assigned to the United Nations Economic and Social Council in Part IV of the Covenant.

Res. XXII; OAS doc. OEA/Ser. C/I.13/Final Act (1965) 32-34.

6.4 REPORTS, STUDIES AND OTHER PUBLICATIONS

Human Rights Watch, World Report 2010 (event of 2009), printed in the United States of America, 2010.

Awad, Mohamed, Report of the Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, *Question of slavery and the slave trade in all their practices and manifestations, including the slavery-like practices of apartheid and colonialism*, United Nations document E/CN.4/Sub.2/322 (1971).

Whitaker, Benjamin, *Slavery: report updating the Report on Slavery submitted to the Sub-Commission in 1966*, United Nations document E/CN.4/Sub.2/1982/20/Rev.1, United Nations sales publication No. E.84.XIV.1 (1984).

Abolishing Slavery and its Contemporary Forms, HR/PUB/02/4, Office of the United Nations High Commissioner for Human Rights, David Weissbrodt and Anti-Slavery International, United Nations, 2002.

Report on Terrorism and Human Rights, Inter-Am. C.H.R., O.A.S. Doc. OEA/Ser.L/V/II.116, doc. 5 rev. 1 corr. (2002).

Permanent Council, *Report on a Consultation with the Member States Regarding the Draft Convention on Human Rights*, submitted by the Committee on Juridical and Political Affairs, Inter-Am. C.H.R., O.A.S. Doc. OEA/Ser.G/IV Rev. 3, 4 (1967).

Comparative Study of the United Nations Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights and of the Draft Inter-American Convention on Human

Rights, Inter-Am. C.H.R., O.A.S. Doc. OEA/Ser.L/II.19, doc. 26 (1968). Inter-American Yearbook on Human Rights (1968), 169-213.

The Price of Silence: The Growing Threat of Soft Censorship in Latin America, produced by the Argentine Association for Civil Rights (Asociación por los Derechos Civiles) and the New York-based Open Society Justice Initiative, Open Society Institute, New York, August 2008.

Meeting record A/PV.180, 180th Plenary Meeting, held on Thursday, 9 December 1948 : 09/12/1948, can be found in the Dag Hammarskjöld Library.

Advisory Opinion OC-2/82, *The Effect of Reservations on the Entry Into Force of the American Convention on Human Rights*, Inter-Am. Ct. H.R. (ser. A) No. 2 (1982).

Advisory Opinion OC-10/89, *Interpretation of the American Declaration of the Rights and Duties of Man Within the Framework of Article 64 of the American Convention on Human Rights*, Inter-Am. Ct. H.R. (ser. A) No. 10 (1989).

6.5 WEBSITES

<http://www.guinnessworldrecords.com/> (Official website of Guinness World Records).

www.oas.org (Official website of the Organization of American States)

<http://www.corteidh.or.cr/index.cfm> (Official website of the Inter-American Court of Human Rights)

<http://www.un.org/Depts/dhl/udhr/> (A Joint Digitization Project of the UN Dag Hammarskjöld Library and the Library of the UN Office at Geneva, it provides access to United Nations documentation related to the drafting of the Universal Declaration of Human Rights)

<http://www.unog.ch/> (Official website of the UNOG; the United Nations Office at Geneva)

<http://www.rooseveltinstitute.org/> (Official website of the Roosevelt Institute)

<http://newdeal.feri.org/> (Official website of the New Deal Network, a research and teaching resource created by the Roosevelt Institute)

www.un.org (Official website of the United Nations)

www.ohchr.org (Official website of the United Nations High Commissioner for Human Rights)

<http://www.ohchr.org/en/udhr/pages/introduction.aspx> (Official UN Universal Declaration of Human Rights home page)

www.hrw.org (Official website of Human Rights Watch)

<http://www.icj-cij.org/> (Official website of the International Court of Justice)