

Survival As A Right

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This article surveys the human rights provisions of UN law, with particular reference to the possible application of such provisions to the enforcement of a 'right to survival'. Could the Universal Declaration on Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights be invoked to argue that people have a right to life and the means to sustain it? The article argues that, despite some shortcomings, these covenants can be important instruments in defending the most basic rights of people in poor countries.

Every year, several million people die from hunger and hunger-related diseases. It is seldom, however, that world hunger is viewed in terms of rights, or, to be more precise, the denial of rights. Yet the fact remains that every human being who dies from hunger or malnutrition has been denied the most basic of human rights, one that is guaranteed in every major human rights instrument in the world – the right to life. This remains true so long as the world is capable of producing the food and other commodities necessary to sustain the lives that are being lost. And all the indications are that the world is so capable.

The purpose of this paper is to examine those provisions of the major United Nations (UN) human rights instruments dealing with the right to survival and to evaluate their capacity to contribute to a reduction in the unnecessary human destruction caused by hunger and disease. First, by way of background information, a brief description will be given of the development of UN human rights law.¹

Development of UN System

The United Nations was founded at the end of the Second World War in 1945 with the aim of establishing international peace and security. Its founders saw respect for fundamental human rights as central to the attainment of this objective. The UN's Charter (its basic constitutional document) proclaims the need to 'reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small. . .'. Under Art. 56 of the Charter, all member states 'pledge themselves to take joint and separate action in cooperation with the Organisation [the UN] for the achievement of the purposes set forth in Article 55'. It is worth quoting Article 55 in its entirety:

With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote:

- (a) higher standards of living, full employment, and conditions of economic and social progress and development;
- (b) solutions of international economic, social, health, and related problems; and international, cultural and educational cooperation; and
- (c) universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

It is clear from the text of this important article that the observance of human rights is seen as central to the creation of a peaceful and harmonious international community and that economic and social rights are accorded a high level of priority within the catalogue of rights to be observed.

Beyond this, however, the Charter itself does not contain a 'bill of rights' as such. But it is clear from Chapter X of the Charter, establishing the Economic and Social Council, that the drafters saw the elaboration of human rights norms and instruments as a matter of paramount importance. And, in fact, as soon as the UN itself was established, work began on what we now describe as the International Bill of Rights.

Despite the level of international goodwill present, it soon became apparent that initial hopes of producing a single all-

embracing human rights treaty would not prove feasible.² It was decided, therefore, in the first instance to draft a Declaration setting out the basic human rights to which all human beings were, by virtue of their humanity, entitled. This document, the Universal Declaration, was drafted with remarkable speed and was proclaimed on 10 December 1948 by the UN General Assembly as a 'common standard of achievement for all nations and peoples'.³ The Declaration was not formally binding, in the sense that a treaty would be, but it is now widely accepted as having the force of customary international law which means that it is binding on all states, even those few that are not members of the UN.⁴

Once the Universal Declaration was in place, work began on the business of translating its terms into binding treaties. Again pragmatism had to triumph over earlier idealism to the extent that it was accepted that there would have to be two treaties rather than one. These were to become known as the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). The division of rights among the two Covenants reflected differing opinions, mainly between Eastern and Western countries, on the relative importance of these categories of rights and the appropriate supervision mechanisms to ensure that states did not violate them within their own territories.

The Covenants differ from each other in important ways apart from the nature of the rights they protect. States which are parties to the ICCPR are obliged to comply immediately with its terms. The ICESCR, on the other hand, demands 'progressive realisation' of the rights which it contains. The exact obligation undertaken by states which are parties to this Covenant is set out in Art. 2.1:

Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realisation of the rights recognised in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.

The implications of this will be dealt with more fully below. The other major point of difference between the Covenants lies in the enforcement mechanism. The two principal ways of

ensuring compliance with international human rights treaties are reporting mechanisms and individual complaint procedures. Under the former, the contracting state is obliged to report periodically to a supervising body or committee setting out the manner in which it is complying, in terms of its laws and practices, with the treaty provisions.⁵ The second method, as the name suggests, involves the establishment of a process whereby individuals can lodge complaints or petitions alleging a violation of rights by the state in which they are resident.⁶ Traditionally, Eastern states have resisted the latter procedure on the basis that the observance of human rights is essentially a matter of domestic law.

The enforcement mechanism established by the Covenants is, again, the result of a compromise. Both require states to submit reports to the supervising committees. But, in addition, there is attached to the ICCPR an Optional Protocol ('protocol' in this sense being another name for a treaty) which allows for the submission of communications to the supervising committee (the Human Rights Committee) from individuals. A state may, therefore, ratify the ICCPR without ratifying the Optional Protocol. Most western states, including Ireland, have ratified both.

The International Bill of Rights, therefore, consists of the Universal Declaration, the two Covenants and the Optional Protocol to the ICCPR. The last three of these instruments were opened for signature in 1966 and entered into force in 1976 when the requisite number of ratifications and accessions had been obtained.⁷ The human rights bodies of the UN have, of course, continued to refine and develop the rights set out in the International Bill. Several other more specific treaties have been established and widely ratified, like the Convention on the Elimination of All Forms of Racial Discrimination (which Ireland, to its shame, has not ratified), the Convention Against Torture, and, more recently, the Convention on the Rights of the Child which is important for our present topic. Side by side with these UN developments, regional bodies like the Council of Europe and the Organisation of American States have been drawing up their own human rights conventions.⁸ The European Convention on Human Rights is one of the best known and most effective human rights instruments in the world.

The International Covenants have now been ratified by almost 100 states. Ireland ratified both, together with the Optional Protocol, on 8 December 1989 and they entered into

force for this country on 8 March 1990.⁹ They have been ratified by many developing countries in Africa and Asia. It is timely, therefore, to consider the implications which these instruments may have for both developed and developing countries, in terms of ensuring the survival of those being denied basic rights to food and health care.

Survival rights

By the right to survival, a term not found in human rights treaties, I mean that bundle of rights necessary for the survival and welfare of human beings, including the rights to life, food, shelter and health care. It is, however, important to bear in mind that since the entire UN system is concerned, in the words of the Charter, with 'the dignity and worth of the human person', survival must be taken to mean more than mere 'freedom from death'; it must be interpreted as 'survival in conditions compatible with basic human dignity'. In this article, we will concentrate on the rights to life and food.

The Universal Declaration

The Declaration deals mainly with civil and political rights (Arts 3-21), including the right to life (Art. 3), but also includes important economic and social rights. Articles 22 to 27 proclaim rights to social security, work, rest and leisure, an adequate standard of living, education and participation in the cultural life of the community. For our purposes the text of Article 25 is of special significance:

1. Everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

2. Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

The terms of this Article speak for themselves. Assuming that the Universal Declaration is part of customary international law, it imposes, through Article 25, a firm obligation on individual states and the international community to ensure that all human beings have the means of survival.

ICCPR

Article 6(1) of the ICCPR reads: 'Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.' As already mentioned, states which are parties to this Covenant are required periodically to submit reports to the Human Rights Committee on the measures they have adopted to give effect to the terms of the Covenant.¹⁰ Most states have given a very narrow interpretation to the meaning of 'life' in Article 6 and have concentrated on issues like capital punishment, due process of law and measures to deal with arbitrary killings and enforced disappearances. The Committee is entitled, however, to seek further information from states on aspects of their reports. It also issues 'General Comments' from time to time on compliance with the various articles of the Covenant. It is very significant that on several occasions, the Committee has drawn attention to the narrow interpretation being given to the right to life by states. In 1982, for example, the Committee issued the comment that 'the right to life cannot properly be understood in a restrictive manner, as the protection of this right requires states to adopt positive measures'. The Committee considered that it would be particularly desirable for states 'to reduce infant mortality and to increase life expectancy, especially in adopting measures to eliminate malnutrition and epidemics'.¹¹ It has issued many similar comments on Art. 6 in more recent years.¹²

The ICESCR

The most specific formulation of the right to sustenance in any major human rights instrument is to be found in Article 11 of

the ICESCR which reads:

- (1) The States Parties to the present Covenant recognise the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realisation of this right, recognising to this effect the essential importance of international cooperation based on free consent.
- (2) The States Parties to the present Covenant, recognising the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed:
 - (a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilisation of natural resources;
 - (b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.

When first drafted, this Article had read simply: 'States Parties to the Covenant recognise the right of everyone to adequate food, clothing and housing.' But in 1963 at the 18th session of the UN General Assembly the Director General of the FAO, Dr. Sen, strongly advocated that the texts of Arts. 11 and 12 (on the right to health) should be extended in order to deal in a realistic way with the problem of world hunger.¹³ The text of Art. 11 as it now stands provokes mixed feelings. On the positive side, it designates as *fundamental* the right of everyone to be free from hunger. Para. (1), however, confirms the programmatic nature of the right (like, of course, all others contained in the ICESCR). The measures advocated in Para. (2) deal with scientific methods of improving food production and agrarian systems, and ensuring equitable distribution of world food supplies. It also says that regard must be had to the

problems of both importing and exporting countries. Lack of foreign exchange is often one of the major problems facing countries needing to import food. The FAO (the UN specialised agency dealing with scientific aspects of food production) has claimed that it is widely recognised that 'by adopting the measures indicated in Art. 11(2) . . . the international community would be in a position to eliminate completely the present state of chronic malnutrition and undernourishment and mitigate considerably the effects of calamities'.¹⁴

Implementation mechanisms are clearly of central importance in realising the rights to food and other prerequisites for survival. This leads to three central questions: what is meant by the 'programmatic' nature of the ICESCR? What obligations does the Covenant impose on states in regard to their own populations? What obligations does it impose on states in relation to the relief of hunger in other countries?

The obligations of the ICESCR

It is worth examining in some detail the obligations imposed by the Covenant as set out in Art. 2(1), quoted above.

This paragraph has already been subjected to exhaustive scholarly analysis.¹⁵ Of particular interest are the Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights. These were principles drawn up by a group of distinguished experts in international law convened by the International Commission of Jurists and other bodies in 1986.¹⁶ This group drew up a set of principles which it believed should govern the interpretation of the Covenant. With regard to states' obligations 'to take steps', the Group concluded: 'All states have an obligation *to begin immediately* to take steps towards full realisation of the rights contained in the Covenant'.¹⁷ It also concluded that the obligation to achieve progressively the full realisation of the rights contained in the Covenant requires states 'to move as expeditiously as possible towards the realisation of the rights'.¹⁸

With regard to the most crucial element in Art. 2(1), the obligation on states to achieve the rights 'to the maximum of its available resources', the Limburg Principles hold that this term refers to both the resources within a State and those available from the international community through international co-

operation and assistance. They also hold that 'states Parties are obligated, regardless of the level of economic development, to ensure respect for minimum subsistence rights for all.'¹⁹ It should be recalled that when the Covenant was being drafted, the US had suggested that the words 'for this purpose' be added to the 'to the maximum of its available resources'. The suggestion was not adopted after many states rightly objected to the level of discretion which this form of wording would give to states in the allocation of their resources.

The Covenant, then, imposes definite, positive obligations on contracting states. The allowance which it makes for progressive implementation is not to be interpreted as a licence for inertia. As to the obligations of those parties towards their own populations, it is clear that they must, in accordance with the above interpretation, begin to honour the terms of the Covenant immediately following ratification. Under the Vienna Convention on the Law of Treaties, Art. 31 (1) of which states that 'a treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in light of its object and purpose', states are obliged to give effect to the substance, and not merely to the form, of their treaty obligations.²⁰ So, a state which has ratified the ICESCR should proceed to re-allocate its resources to ensure that all its people (citizens and others) have the means of survival to the greatest extent compatible with human dignity.

The final question, and the more awkward one, concerns the obligations which the ICESCR may impose on states to ensure that the rights it protects are accorded to people outside their own borders or, for that matter, outside their own continents. To phrase the question in a more concrete fashion, does ratification of the Covenant by Ireland and other developed countries impose any legal obligation on them to work towards the eradication of hunger and poverty in the developing world? An examination of the *travaux préparatoires* of the Covenant fails to yield any indication of a positive duty to give aid to poorer states.²¹ On the other hand, Arts. 55 and 56 of the UN Charter mandate joint and separate action by all member states in cooperation with the UN itself to further the aims of Article 55 which, as we have seen, include the promotion of higher standards of living and universal respect for human rights and fundamental freedoms. The Limburg Principles hold that this co-operation 'must be directed towards the establishment of a social and economic order in which the rights and freedoms set forth in the Covenant can be fully realised'.²² This mandate is

reflected in Art. 2(1) of the ICESCR which requires states to take steps 'individually *and through international co-operation and assistance*' to achieve the realisation of the rights set out in the Covenant (emphasis added). Under this provision, states are certainly obliged to *accept* assistance necessary for the fulfilment of the Covenant's obligations. It follows that other states are envisaged as contributors. What may be said with some certainty, therefore, is that all states which are parties to the Covenant are obliged to *co-operate* in good faith in international efforts to secure the rights of people everywhere. This co-operation will require material assistance from those states that can afford it as well as a commitment from all states to have regard, in the formulation of their domestic and foreign policies, to the needs of the people (as opposed to the governments) of developing countries.

Implications of Ireland's accession

Ireland is now a full party to both Covenants and the Optional Protocol to the ICCPR. This means that the government will be answerable to the supervising body, the Committee on Economic, Social and Cultural Rights, in regard to the manner in which it is fulfilling the terms of the ICESCR within the state. It will have to provide reasonably detailed information on the steps it is taking to ensure that everyone has adequate nutrition, health care, social security rights and so forth. The Committee will be particularly anxious to ensure that those of minority status, like members of the travelling community, are being fully accorded their rights.²³ But our concern here is with the developing countries. As suggested above, it is unlikely that the Covenant can, as yet, be interpreted as imposing a distinct obligation on any state to provide aid for other countries, but it does impose an obligation to *co-operate* in international efforts to secure the right of people everywhere to survival. If Ireland is to interpret the Covenant in good faith, as it must do, it will have to examine closely its present policies in regard to development aid, and, in particular, the amount of such aid which it can, in good faith, provide. But its obligations do not end there. It must also make use of its membership of the UN and of any specialised agencies of the UN in which it is represented, to press for the provision of greater development assistance to those countries needing it. It should be remembered that, now that it has acceded to the Covenants,

Ireland will be able to exercise increased influence in these matters. Hitherto, there was the danger that Irish diplomatic efforts would have been thwarted by our own failure to accede to the two major Covenants.

The Convention on the Rights of the Child

In November 1989, the UN General Assembly adopted the Convention on the Rights of the Child.²⁴ This is another major convention and a landmark in international human rights law. It sets out the entire range of rights to which children are entitled and these obviously include many economic and social rights. One of the remarkable features of the Convention is the speed with which it has been accepted internationally. By the end of January 1991, it had been ratified by 70 states²⁵ and many others, including Ireland, had signed it. Speaking in the Dáil after his return from the World Summit on Children in New York in September 1990, the Taoiseach confirmed that he had signed the Convention and said that 'a derailed examination of the terms of this Convention, to identify whether domestic legislative measures are necessary to enable us to proceed rapidly to ratify it, is now underway'.²⁶

This Convention covers many matters not hitherto included in major human rights instruments. It deals with criminal justice procedures, education, the right to freedom from sexual abuse and exploitation, and many other matters. Art. 24 deals with the right of the child to 'the highest attainable standard of health'. It commits member states to pursue several specified objectives including the reduction of infant and child mortality, and the combatting of disease and malnutrition. Art. 27 deals with the right of every child to a standard of living 'adequate for the child's physical, mental, spiritual, moral and social development'. The primary responsibility for the realisation of this right is placed on parents but states are required, within their means, to assist parents to implement this right where such assistance is necessary.

The effectiveness of this Convention remains to be seen. But as Philip Alston, a leading expert in the field of economic and social rights, has stated: 'By encouraging Governments to recognise and officially endorse a range of *rights* for children, the Convention strengthens the hand of those demanding

changes in the relevant social and economic policies.²⁷ This is undoubtedly true. Many countries in which there is a very high infant and child mortality rate have ratified this Convention. They are, therefore, under a binding international obligation to organise their resources and finances so as to ensure that priority is given to the basic welfare and survival rights of children. Likewise, developed countries will be under an obligation similar to that imposed by the ICESCR to co-operate internationally in programmes to eliminate poverty and malnutrition.

Finally, in an Irish context, there is one important aspect of the Convention on the Rights of the Child which merits attention. This is the education policy set out in Arts. 28 and 29. According to Art. 29 (1) (b), one of the primary purposes of education should be to develop 'respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations'. Unfortunately, this is one aspect of the Convention which Ireland cannot claim to be honouring right now because of the absence of any formal component of human rights education in our school curricula. This is something which should be remedied immediately. It is only through cultivating awareness of human rights issues and problems from an early age that a civic and political commitment to the elimination of human rights abuses will eventually develop.²⁸

Conclusion

Broadening the concept of the right to life

The right to life is well protected in Ireland. The Constitution has been amended to protect the right to life of the unborn child²⁹ and, more recently, capital punishment has been abolished for all crimes.³⁰ But far less attention has been given to the right to life of persons already born in terms of supplying them with the means necessary for survival. It would be ironic if a country which accorded such strong protection to certain aspects of life in its constitution and laws was not to the forefront in the international effort to protect life from other forms of attack, notably, hunger and malnutrition. A broader understanding of the right to life at national level will eventually lead to a healthier foreign policy in terms of development aid levels and participation in international programmes to combat hunger and hunger-related diseases.

Footnotes

1. Fuller accounts will be found in J. P. Humphrey (1973), 'The International Law of Human Rights in the Middle Twentieth Century', *The Present State of International Law and Other Essays*, International Law Association; T. Burgenthal, *International Human Rights in a Nutshell*, West Publishing, St. Paul, Minn.; T. Meron, (ed.), (1984) *Human Rights in International Law: Legal and Policy Issues*, Oxford University Press.
The texts of almost all UN Human Rights instruments will be found in UN (1988), *Human Rights: A Compilation of International Instruments*, New York and Geneva; the text of the UN Charter is to be found in I. Brownlie (1983), *Basic Documents in International Law*, Oxford University Press.
2. Humphrey (1973), op. cit.
3. Universal Declaration, Preamble, para. 8.
4. J. P. Humphrey (1988), 'The Magna Carta of Mankind' in P. Davies, (ed.), *Human Rights*, Routledge, London and New York.
5. The reporting requirements of the ICCPR are set out in Art. 40 and of the ICESCR in Arts. 16 and 17.
6. This is the principal enforcement mechanism of the European Convention on Human Rights.
7. A complete list of the states which have signed and ratified all UN human rights instruments, together with the texts of any reservations entered, will be found in (1977 with updates) *Human Rights - Status of International Instruments*, UN, New York and Geneva.
8. The European Convention entered into force in 1953 and the American Convention in 1978.
9. V. Power and G. Quinn, 'Ireland's Accession to the United Nations Human Rights Covenants' (1989), 7, *Irish Law Times*, pp.36-40, 69-73.
10. Under Art. 40 of ICCPR, a state party must submit a report one year after the entry of the Covenant into force for that state, and thereafter whenever the Human Rights Committee requests. Under Art. 17 of ICESCR, states must submit their reports in stages within one year of the entry into force of the Covenant for the state concerned.
11. CCPR/C/21 Add. 1, 26 August 1982, para. 5.
12. e.g. CCPR/C/21 Add 4 (14/11/84) para. 3 and CCPR/C/Rev 1, 19 May 1989, p.5.
13. P. J. Dobbert, 'Right to Food' in R. J. Dupuy (1979) *The Right to Health as a Human Right*, Hague Academy of International Law.
14. Report by FAO on progress made in achieving the observance of article 11 of the ICESCR (E/1981/22).
15. See P. Alston and K. Tomashevski (1984), *The Right to Food*, Martinus Nijhoff, Dordrecht, Netherlands; P. Alston and G. Quinn (1987) 'The Nature and Scope of States parties' Obligations under the ICESCR', 9, *Human Rights Quarterly*, 156; E. W. Vierdag (1978) 'Legal Nature of the Rights Granted by the ICESCR', 9, *Netherlands Yearbook of International Law*, 69.
16. Text of Limburg Principles (LP) will be found in (1987), 9, *Human Rights Quarterly*, 126.
17. LP 16 (emphasis added)
18. LP 21
19. LP 25
20. Text of Convention in Brownlie (1983), op. cit., p.349.
21. P. Alston and G. Quinn (1987), op cit.
22. LP 30.
23. See P. Alston and B. Simma (1987) 'First Session of UN Committee on Economic, Social and Cultural Rights', 81, *American Journal of International Law*, 80.
24. The text of this Convention will be found in UN *Fact Sheet* series (No.

- 10); see also The Council for Social Welfare (1991) *The Rights of the Child – Irish Perspectives on the UN Convention*, Dnblin; C. Price Cohen (1988), *Independent Commentary: United Nations Convention on the Rights of the Child*, New York, Defence for Children International. There is a useful bibliography on the rights of the child in UN (1991) 4 *Human Rights Newsletter*, 6.
25. Cf. UN (1991), 4, *Human Rights Newsletter*, 3.
 26. Dáil Debates, 31 October 1990, col. 647.
 27. (1991), 4, *Human Rights Newsletter*, 2.
 28. T. O'Malley (1991), 'The UN Convention on the Rights of the Child: A Challenge for Ireland' in Council for Social Welfare (1991), op. cit.
 29. Constitution of Ireland, Art. 40.3.3.
 30. Criminal Justice Act 1990.

