
An introduction to treaties for international social workers

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Daniel Pollack

Yeshiva University, USA

Elisa Rosman

Early Childhood Policy Consultant, Washington, DC, USA

Abstract

International disputes may emanate from any number of issues, including concerns involving territory, finance, trade, ethnicity, natural resources, or religion. International treaties serve as a mechanism to address these concerns. Throughout history, treaties and conventions have played an important role in international relations. Of course, the full contours of the numerous international treaties in force cannot be documented. In this brief article, and with the caveat that we can only speak in generalities, we 1) offer some fundamental principles of treaties, 2) identify some major treaties and conventions of interest to the international social work community, and 3) make some comments regarding how those treaties affect international social work professionals. Space constraints naturally preclude us from commenting more in depth.

Keywords

convention, international, social worker, state, treaty

Corresponding author:

Daniel Pollack, Yeshiva University, 500 West 185th Street, New York, NY 10033, USA.

Email: dpollack@yu.edu

Fundamental principles of international treaties

Despite their diverse nature and number, some general principles of international treaties can be offered:

- In theory, states enter into treaties out of desire for consistency, predictability, and stability that the legal framework of a treaty affords. In turn, this allows for the promotion and free flow of understanding and trust and the reduction of arbitrary and unilateral actions.
- A treaty binds only those states which sign that particular treaty. Only by ratifying a treaty can a state bind itself to the treaty. Parties which have not adopted the treaty are not obligated, nor are they entitled to take advantage of the treaty's provisions. While the purpose of a treaty is to specify and regulate the law pertaining to a given subject, a treaty does not necessarily indicate that other customary practices are not recognized and in force.
- Every international treaty reduces the scope of unilateral authority a state has regarding the subject matter of the treaty. And so, when a state ratifies a treaty while simultaneously making reservations to specific aspects of that treaty, the treaty is thereby weakened. The state may appear irresolute and indecisive or, alternatively, the state may have some legitimate reasons for its reservations.
- Typically, since treaties are between states, only a state has the standing to enforce the treaty. Unless specified in the treaty itself, an organization or individual's right to sue on the treaty must be gained before the merits of a cause of action can be heard. Consequently, if a treaty violation is alleged, the initial standing or jurisdictional hurdles may be more daunting than proving the merits of one's case.
- The signatories' intentions in enacting a treaty is embodied in the actual language of the treaty, though in certain cases explanatory documents or history may help to clarify the intent of the signors. These may indicate, in layperson's language, the design or purpose the states had in drafting a particular aspect of the treaty or even of the treaty as a whole. The importance of this cannot be understated. When approving a treaty, a state may clarify its understanding of the treaty or of a particular provision. As such, this declaration may subtly, intentionally or unintentionally, extend or limit the application of the terms of the treaty. A state may violate its obligations under the provisions of a treaty by acting on an interpretation of the treaty that it posited unilaterally.
- The form and format which guides how states write treaties is now codified. This document is the Vienna Convention on the Law of Treaties (Vienna Convention) of 1969, entered into force on 27 January 1980.

Some treaties and conventions of interest to the international social work community

Many of the treaties introduced here are rooted in, inter alia, the Universal Declaration of Human Rights (1948). As a group they cover a range of fundamental human rights.

ICERD International Convention on the Elimination of All Forms of Racial Discrimination, 21 December 1965

Full text available at: <http://www2.ohchr.org/english/law/pdf/cerd.pdf>

Summary. This treaty is committed to the elimination of racial discrimination in any form. It specifically highlights the need to eliminate doctrines and policies that legitimize discrimination, such as apartheid, segregation, and separation.

The Convention specifically states that all people, regardless of race, color, and ethnicity, shall enjoy the following rights: equal treatment before the tribunals and all other organs administering justice; security of person and protection by the state against violence or bodily harm; political rights; and civil rights. Civil rights include: the right to freedom of movement and residence within the border of the state; the right to leave any country, including one's own, and to return to one's country; the right to nationality; the right to marriage and choice of spouse; the right to own property; the right to inherit; the right to freedom of thought, conscience and religion; the right to freedom of opinion and expression; the right to freedom of peaceful assembly and association; and economic, social and cultural rights. Economic, social and cultural rights include: the rights to work, to free choice of employment, to just and favorable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favorable remuneration; the right to form and join trade unions; the right to housing; the right to public health, medical care, social security and social services; the right to education and training; the right to equal participation in cultural activities; and the right of access to any place or service intended for use by the general public, such as hotels, restaurants, cafes, theatres and parks.

There also need to be remedies and protection against racial discrimination. States are required to submit to the Secretary-General of the United Nations, for consideration by the Committee, a report on the legislative, judicial, administrative or other measures which they have adopted and which give effect to the provisions of this Convention. The Convention provides detailed information for establishing a Committee on the Elimination

of Racial Discrimination and ad hoc Conciliation Commissions in order to address disputes.

This Convention specifically states that it in no way impacts distinctions made between citizens and non-citizens (unless those distinctions are discriminatory against a particular nationality). Also, special measures required to protect certain racial groups are not under the purview of this Convention.

ICCPR International Covenant on Civil and Political Rights, 16 December 1966

Full text available at: <http://www2.ohchr.org/english/law/pdf/ccpr.pdf>

Summary. This Covenant acknowledges the basic dignity and inalienable rights of all individuals. It first stresses the right of all people to self-determination. Every human also has the inherent right to life. The death penalty may be imposed only for the most serious crimes. Everyone has the right to not be subjected to cruel, inhuman or degrading treatment or punishment and also to not be subjected to medical or scientific experimentation without free consent. No one shall be held in slavery or servitude. No one shall be arrested or detained arbitrarily. If individuals are deprived of liberty (e.g. arrested), they shall still be treated with humanity and respect. Individuals have the right to privacy, as well as the right to freedom of thought and religion. Individuals have the right to their own opinions and to freedom of expression. Parents have the right to ensure the religious and moral education of their children. Individuals have the right to assemble peacefully and to form and join trade unions.

This Covenant also addresses marriage and family. The family is entitled to protection and 'The right of men and women of marriageable age to marry and to found a family shall be recognized'. Children are also entitled to a name, a nationality, and protections. The rights of citizens are also addressed, including the right to vote, to conduct public affairs, and to serve one's country.

This Covenant also concerns itself with the rights of individuals who have criminal charges brought against them. These individuals have the right to: be presumed innocent until found guilty; to understand what they are being charged with; to have time to prepare a defense; to be tried without undue delay; to have legal assistance; to know the witnesses against them; to have an interpreter if necessary; to not have to testify against one's self; and the right to an appeal.

In order to enforce the Covenant, a Human Rights Committee is established.

ICESCR International Covenant on Economic, Social and Cultural Rights, 16 December 1966

Full text available at: <http://www2.ohchr.org/english/law/pdf/cescr.pdf>

Summary. This Covenant concerns itself with the right of every person to ‘freely determine their political status and freely pursue their economic, social and cultural development’. These rights are explicitly stated as to be equal for men and women. Furthermore, all people have the right to freely dispose of their own natural wealth and resources.

This Covenant specifically concerns itself with the right to work, which individuals must freely choose and accept. The right to work specifically involves fairness in the areas of: remuneration; safe and healthy working conditions; opportunity for promotion; and rest and leisure time. The right to form and join trade unions is also clearly stated.

The family is specifically mentioned in this Covenant as the ‘natural and fundamental group unit of society’. Maternity leave is specifically mentioned as a right, and the importance of child labor laws is also stressed.

Individuals also have the right to an adequate standard of living, which includes freedom from hunger. The Covenant extends to ‘physical and mental health as well’, which is deemed to include work in the areas of: the infant mortality rate; environmental and industrial hygiene; treating diseases; and medical services. All individuals also have the right to an education.

Finally, all individuals have the right to engage in cultural life, including enjoying the benefits of scientific progress.

CEDAW Convention on the Elimination of All Forms of Discrimination against Women, 18 December 1979

Full text available at: <http://www2.ohchr.org/english/law/cedaw.htm>

Summary. This Convention begins by noting that discrimination against women continues to exist and that the elimination of such discrimination is vital to the good of society as a whole. It holds that states ‘shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men’. It also allows for special measures to help accelerate

equality and to protect maternity and holds that those measures will not be considered discriminatory.

Specific rights guaranteed to women include: the right to vote and to be elected; the right to participate in governmental and non-governmental organizations; the right to represent their government in international organizations; the right to acquire, change, or retain their nationality independent of the actions of their husbands; the right to an education; the right to work (with specific provisions for maternity); the right to health care; the right to family benefits; the right to financial credit; the right to all aspects of a recreational and cultural life; the right to be equal with men before the law and to have a legal capacity similar to men; and the same rights as men concerning marriage. The Convention specifically addresses the rights of women in rural areas.

The Convention also calls for the establishment of a Committee on the Elimination of Discrimination against Women, in order to ensure progress in implementing this Convention.

CAT Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 10 December 1984

Full text available at: <http://www2.ohchr.org/english/law/pdf/cat.pdf>

Summary. This Convention holds that every state 'shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction'. Furthermore, no exceptional circumstances can be used to justify torture, and a state cannot extradite an individual to another country knowing that he will be subjected to torture there. When individuals do commit torture, it must be considered an offence under criminal law. Victims of torture have the right to have their complaints heard and the right to redress/compensation.

This Convention also specifically mentions education, in that law enforcement personnel (civil and military) and medical personnel and public officials must be thoroughly educated regarding the prohibition against torture.

For purposes of enforcement, a Committee against Torture will be established.

CRC Convention on the Rights of the Child, 20 November 1989

Full text available at: <http://www2.ohchr.org/english/law/pdf/crc.pdf>

Summary. This Convention stems from the belief that childhood is entitled to special care and assistance and that the unit of the family should receive necessary care and assistance. Overall, the Convention recognizes ‘the right of every child to a standard of living adequate for the child’s physical, mental, spiritual, moral and social development’. First, a child is defined as any human being younger than 18. The Convention finds that children have the right to: life; protection from discrimination or punishment based on attributes of their parents or family; have their best interests be a primary consideration; have the institutions, services or facilities which are responsible for them meet certain standards; health care services; protection from economic exploitation; protection from sexual abuse and sexual exploitation; and to not take part in hostilities (for children under the age of 15). Children have the right to a name and a nationality and to the preservation of that name and identity. Children should not be separated from parents unless it is deemed to be in the best interest of the child. States need to ensure that children are not illegally transferred abroad.

The Convention explicitly states some rights that many may consider more ‘adult’. For example, children who are old enough to express their own views need to have the right to do so in matters impacting them. Children have the right to freedom of expression and freedom of thought, conscience, and religion. They also have the right to freedom of association and freedom of peaceful assembly. Children alleged or accused of having infringed the penal law have the same rights as defined for adults. Children are also explicitly given the right to rest, leisure, and recreation.

This Convention recognizes the role of mass media in the lives of children and encourages the mass media to provide information that is beneficial to children (e.g. children’s books).

‘States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.’

When adoption occurs, the best interest of the child must be considered. This recognizes the role of competent authorities to oversee adoptions and a place for inter-country adoption as a viable alternative.

This Convention specifically addresses children with disabilities, recognizing their right to a ‘full and decent life’, as well as the right to special care, provided free of charge whenever possible.

For purposes of enforcement, a Committee on the Rights of the Child is established.

ICRMW International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 18 December 1990

Full text available at: <http://www2.ohchr.org/english/law/pdf/cmw.pdf>

Summary. This Convention begins by recognizing that migrant workers and their families often find themselves in a particular situation of vulnerability. Given that, it holds that ‘Migrant workers and members of their families shall be free to leave any State, including their State of origin. This right shall not be subject to any restrictions except those that are provided by law, are necessary to protect national security, public order, public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in the present part of the Convention.’

Migrant workers and their families have the following rights: the right to enter and remain in their state of origin; the right to life; the right to not be subjected to torture or cruel or inhuman punishment; the right to not be held in slavery; the right to not be forced to perform labor (excluding punishment for a crime); the right to freedom of thought, conscience, and religion; the right to hold opinions; the right to freedom of expression; the right to privacy; the right to own property; the right to liberty; if arrested, the right to certain proceedings before the court; the right to not be subjected to collective expulsion; the right to work conditions that are not less favorable than those which apply to nationals of the state; the right to emergency medical care; the right of access to education for their children; the right to have the unity of the family protected; and the right to transfer their earnings and savings out of the state of employment.

Specific applications of these rights are laid out for seasonal workers, itinerant workers, project-tied workers, specified-employment workers, and self-employed workers.

Furthermore, states ‘shall as appropriate consult and co-operate with a view to promoting sound, equitable and humane conditions in connection with international migration of workers and members of their families’.

For enforcement purposes, the Convention calls for the establishment of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families.

CPED International Convention for the Protection of All Persons from Enforced Disappearance, 20 December 2006

Full text available at: <http://www2.ohchr.org/english/law/pdf/disappearance-convention.pdf>

Summary. This Convention's central tenet is that no person shall be subjected to enforced disappearance and there are no circumstances that justify enforced disappearance. Also, no person shall be held in secret detention. Furthermore, it is incumbent on states to ensure that enforced disappearance is an offense under criminal law. States also are required to act in a proactive way: 'No State Party shall expel, return, surrender or extradite a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to enforced disappearance.'

The convention clearly delineates very specific information that is available to the relatives of individuals who have been deprived of their liberty.

For enforcement purposes, a Committee on Enforced Disappearances will be established.

CRPD Convention on the Rights of Persons with Disabilities, 13 December 2006

Full text available at: <http://www2.ohchr.org/english/law/pdf/disabilities-convention.pdf>

Summary. 'The purpose of the present Convention is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity.' States shall also prohibit all discrimination on the basis of disability. Persons with disabilities are defined as those with long-term physical, mental, intellectual, or sensory impairments. This Convention is based on several principles which are worth noting here: respect for the inherent dignity and independence of each person; non-discrimination; full participation and inclusion in society; respect for difference and diversity; equality of opportunity; accessibility; equality between men and women; and respect for children with disabilities.

States are required to ensure the above rights with the appropriate means, including: legislative and administrative measures; creating accessible goods, services, equipment, and facilities; adaptive technology; and providing accessible information. States are also required to raise awareness regarding individuals with disabilities.

The Convention specifically addresses the issue of individuals with disabilities and their families: 'States Parties shall take effective and appropriate measures to eliminate discrimination against persons with disabilities in all matters relating to marriage, family, parenthood and relationships.' Individuals with disabilities also have the right to an education and the right to work.

For implementation purposes, the Convention calls for states to collect statistical and research data to ensure that the rights guaranteed are in fact being met. States also need to identify one 'focal point' in the government concerned with implementing the Convention. A Committee on the Rights of Persons with Disabilities will also be established.

How treaties affect international social work professionals

Each international treaty has its own identity and purpose, separate from that of the individual country that signs it. In theory, despite this autonomy, the treaty reflects the individual and collective signors' values and desires. The adage *pacta sunt servanda* ('agreements are to be kept') is the cornerstone of international law. Why then would there be an enforcement problem? How are treaties enforced? More particularly, how can social workers enforce treaties? In truth, the problem of enforcement has remained pertinacious. Many incidents of noncompliance go unaddressed. Among the most prominent reasons are that some treaties do not have a dispute resolution mechanism, only certain people and entities have standing to bring an action under the terms of the treaty, the financial outlay may be prohibitive, and there are simply too few effective transnational coordinating bodies that are suitably equipped to undertake complex litigation. Perhaps this reality reflects the fact that we are always facing a conundrum: in some international spheres there is a great desire and a track record of cooperation and success; in other spheres there is a heightened dissonance and a concerted uncooperative attitude.

With the undeniable fact of globalization and ever-increasing interconnectedness of communication has come an increase in the need and desire of states to govern their relations with each other. How do international treaties affect individual social workers? While social workers may not know it, international treaties affect us in many ways. For instance, there may be administrative regulations, economic sanctions, boycotts, export controls, employment, trade, tax concerns, or any number of other treaty-based agreements in effect between the social worker's country and a country in which she or he wishes to interact. Consequently, it is not surprising that there are thousands of multi-lateral, regional, and bi-lateral treaties dealing with all kinds of issues. Coupled with technological advances, today's global political turmoil offers social workers unique challenges and opportunities for international involvement and influence. And so, international treaties have implications for international social workers at the local, national, regional, and intercontinental level. Yet the direct impact of international treaties on international social work can only be understood in light of wider cultural, political, and economic contexts.

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Author biographies

Daniel Pollack is Professor, School of Social Work, Yeshiva University, New York, USA.

Elisa Rosman is an early childhood policy consultant based in Washington, DC, USA.