

## **The Role and Purposes of Public Schools and Religious Fundamentalism: An International Human Rights Law Perspective**

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### **Abstract**

The question of what are today the legitimate and proper role and purposes of public schools can only be answered by a close examination and analysis of the human right to education which has been developed by such international organizations as the United Nations and the United Nations Educational, Scientific and Cultural Organization, and by such international treaties as the Convention against Discrimination in Education 1960, the International Covenant on Economic, Social and Cultural Rights 1966 and the Convention on the Rights of the Child 1989. This paper will begin by considering the various types and definitions of education and tracing the historical development of the right to education. It will then address the following questions: What are the underlying philosophical rationales of the right to education and how is this right classified? What is the minimum or core content of the right to education under both international conventional and customary human rights law? What were the historical aims and objectives of a primary public school education and what are today the contemporary aims of such an education? To what extent do these aims embrace democratic and religious values and freedoms and can they be extended to accommodate the emergence of religious fundamentalism?

### ***I. Introduction***

The concept of education can be variously defined. Education occurs in its widest sense in the interaction of the individual with the social and natural environment to which he or she belongs. Education can be defined in the broad sense to encompass “all activities by which a human group transmits to its descendants a body of knowledge and skills and a moral code which enable that group to subsist”.<sup>1</sup> In this sense, then, education is primarily concerned with the transmission to the younger generation of the skills necessary to effectively undertake the tasks of daily living and with the inculcation of the social, cultural, religious and philosophical values held by the particular community.

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<sup>1</sup> Amadou-Mahtar M’Bow (former Director-General of the United Nations Educational, Scientific and Cultural Organization), *Introduction*, THE CHILD’S RIGHT TO EDUCATION 9, 11 (G. Mialaret ed., 1979).

Education can, in turn, be more narrowly defined to refer to formal or professional “instruction imparted within a national, provincial or local education system, whether public or private”.<sup>2</sup> It is generally the case that the term ‘education’ is used in international instruments to refer to formal institutional instruction. For example, the General Conference of the United Nations Educational, Scientific and Cultural Organization (hereinafter referred to as ‘U.N.E.S.C.O.’) has defined the term ‘education’ for the purposes of its *Convention against Discrimination in Education 1960* to mean “all types and levels of [formal] education, and includes access to education, the standard and quality of education, and the conditions under which it is given”.<sup>3</sup> The European Court of Human Rights has distinguished education in its wide sense from education in its narrow sense in the following terms:

[education in the wider sense refers to] the whole process whereby, in any society, adults endeavour to transmit their beliefs, culture and other values to the young, whereas teaching or instruction refers in particular to the transmission of knowledge and to intellectual development.<sup>4</sup>

For the purposes of this paper, ‘education’ will refer merely to State-sponsored and taxpayer-funded formal teaching or institutional instruction comprising the primary (elementary) and secondary levels of education.<sup>5</sup>

It is generally accepted that formal education is an important function of the State. In its famous 1954 desegregation decision in *Brown v. Board of Education*,<sup>6</sup> the United States Supreme Court construed the Fourteenth Amendment as prohibiting the deliberate separation of the races in public schools. In the course of its judgment, the Court also confirmed that the public interest is broadly served by education:

Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society.<sup>7</sup>

The French and American Revolutions had established the concept of education as an essential task of the State as a means of enlightening the citizenry and pursuing democratic ideals.<sup>8</sup> In his famous treatise *On Liberty* John Stuart Mill asked “Is it not almost a self-evident axiom that the

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<sup>2</sup> *Ibid.*

<sup>3</sup> Article 1(2) of the *Convention against Discrimination in Education 1960*, 14 December 1960, 429 U.N.T.S. 93 (entry into force 22 May 1962).

<sup>4</sup> *Campbell and Cosans v. United Kingdom*, Judgement of 25 February 1982, Series A, no. 48 (1982) 4 E.H.R.R. 433 at para. 33.

<sup>5</sup> Pre-primary, tertiary and adult types of education are beyond the scope of this paper.

<sup>6</sup> 347 U.S. 483 (1954).

<sup>7</sup> 347 U.S. 483, 493 (1954).

<sup>8</sup> F. Volio, *The child's right to education: a survey*, in THE CHILD'S RIGHT TO EDUCATION 19, 22 (G. Mialaret ed., 1979).

State should require and compel the education, up to a certain standard, of every human being who is born its citizen?”<sup>9</sup> The pre-eminent role of the State in the provision of education has received both constitutional and conventional recognition.<sup>10</sup> Article 1 of the *Central American Convention on the Unification of the Fundamental Norms of Education 1960*<sup>11</sup> acknowledges education to be “a primary function of the State, which shall offer maximum opportunities for education”. The State is generally the chief provider of education which involves the commitment of substantial budgetary resources to the education system as well as its regulation in the interests of efficiency and fairness.<sup>12</sup>

Although children are the main beneficiaries, the right to education belongs to all individuals.<sup>13</sup> In proclaiming that “[e]veryone has the right to education”, Article 26(1) of the *Universal Declaration of Human Rights*,<sup>14</sup> adopted by the United Nations General Assembly in 1948, implicitly recognizes that education is a life-long and continuous process. This paper will examine the historical development of the human right to education and will focus on the normative content, under international conventional and customary human rights law,<sup>15</sup> of the child’s right to education at the primary and secondary levels. As will be seen later in this paper, the right to education is about both access and content. The latter includes recognition under international human rights law of the legitimate aspirational aims and objectives of formal education. It will argued that these aims and objectives, which have been the subject of long-standing and wide-ranging consensus, cannot reasonably be interpreted to accommodate religious extremism and fundamentalism.

## ***II. The Historical Development of the Right to Education and its Underlying Philosophical Rationales***

The human right to education was not fully proclaimed under international human rights law until after World War II under the auspices of the United Nations. To more fully understand the contemporary normative content of this right, it is necessary to briefly trace the historical development of education and its objectives.

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<sup>9</sup> J. S. MILL, ON LIBERTY 175 (G. Himmelfarb ed., Pelican Classics 1974) (1859).

<sup>10</sup> See Chapter 2 of DOUGLAS HODGSON, THE HUMAN RIGHT TO EDUCATION (1998).

<sup>11</sup> 770 U.N.T.S. 219 (entry into force 31 October 1963).

<sup>12</sup> D. J. HARRIS, M. O’BOYLE and C. WARBRICK, LAW OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS 540 (1995).

<sup>13</sup> As will be discussed later in this paper, however, although the right to education extends to both adults and children, the principle of compulsory education only applies to children.

<sup>14</sup> Resolution 217 A (III) (10 December 1948).

<sup>15</sup> Regional human rights standards pertaining to the right to education are beyond the scope of this paper but may be sourced from DOUGLAS HODGSON, THE HUMAN RIGHT TO EDUCATION (1998).

Prior to the Age of Enlightenment in Europe, education was primarily undertaken by parents and the Church. Education was considered a matter of public concern and State responsibility only with the emergence of the modern secular State.<sup>16</sup> Beginning in the 16<sup>th</sup> and 17<sup>th</sup> centuries, certain eminent philosophers formulated in their writings the modern conception of the individual's right to education. The imparting of knowledge, values and culture began to be conceived not only as a necessary moral and social obligation but also as a noble aim to which the individual might aspire.<sup>17</sup> John Locke and Jean-Jacques Rousseau in the *Second Treatise of Government*<sup>18</sup> and *Emile*<sup>19</sup> respectively referred to the parental obligation to educate children until they became able to make full and proper use of their freedom and faculties. Education was perceived as being of such vital importance for human life that it was conceived as a pre-existing or natural right<sup>20</sup> superior to the positive (or written) law.<sup>21</sup>

The 'democratization' of education received a fillip in the wake of the French and American Revolutions which established the promotion of education (for the benefit of the majority of citizens at least) as a State or public function. Public education was perceived as a means of realizing the egalitarian and democratic ideals upon which these revolutions were based, and education was no longer the exclusive preserve of a particular social class or the select few, as had been the case in Ancient Greece and Rome.<sup>22</sup> The unique value of education and the State's important role in promoting it were postulated by eminent men of their time including Thomas Jefferson who regarded education as necessary to protect a free people against tyranny.<sup>23</sup> Nevertheless, the right to education emerged rather belatedly in the history of civil liberties despite its importance. The classical civil liberties instruments such as the English *Bill of Rights 1689*, the *Virginia Declaration of Rights 1776*, the *American Declaration of Independence 1776* and the French *Declaration of the Rights of Man 1789* did not contain any rights specifically related to the right to education.<sup>24</sup>

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<sup>16</sup> M. Nowak, *The Right to Education*, in ECONOMIC, SOCIAL AND CULTURAL RIGHTS 189, 191 (A. Eide, C. Krause and A. Rosas eds, 1995).

<sup>17</sup> Volio, *supra* note 8, at 20.

<sup>18</sup> JOHN LOCKE, *THE SECOND TREATISE OF GOVERNMENT* (1689-1690).

<sup>19</sup> JEAN-JACQUES ROUSSEAU, *EMILE* (1762).

<sup>20</sup> "Natural rights" are those rights which can be deduced from the physical, mental, moral, social and religious characteristics of human beings which must be recognized for human beings to attain dignity and personal fulfilment.

<sup>21</sup> Those provisions of the Constitution of Ireland dealing with family and educational issues are based on natural law concepts: see B. Walsh, *Existence and Meaning of Fundamental Rights in the Field of Education in Ireland*, 2 HUMAN RIGHTS L. J. 319, 320 (1981).

<sup>22</sup> Volio, *supra* note 8, at 21.

<sup>23</sup> 17 WRITINGS OF THOMAS JEFFERSON 417.

<sup>24</sup> These instruments focussed instead upon basic political and civil rights such as freedom from arbitrary arrest, freedom of expression, opinion and religious belief, the right to life and security of the person, and freedom and equality.

Two developments of the 19<sup>th</sup> century—the emergence of socialism and liberalism—placed education more firmly in the catalogue of human rights. The writings of Marx and Engels perceived the State as a paternal and beneficial institution whose main purpose was to secure the economic and social well-being of the entire community through positive governmental intervention and regulation. The demand for more rights during the course of the 19<sup>th</sup> century increasingly became a claim upon the State for basic welfare services and entitlements. *Laissez-faire* was gradually superseded by the perception of the State as a benevolent provider. 19<sup>th</sup> century liberal and anti-clerical thought also influenced the definition of secular educational rights in continental Europe. These educational rights were formulated to defend and advance the ideas of freedom of science, research and teaching against interference by the Church and State.<sup>25</sup> Although wary of the dangers of too much State involvement in educational matters, liberalism advocated State intervention for the purposes of reducing the dominance of the Church and protecting the rights of children against their parents.<sup>26</sup>

During the latter half of the 19<sup>th</sup> century, explicit recognition of educational rights and State responsibility for promoting them occurred in national constitutions and legislation. The Constitution of the German Empire of 1849<sup>27</sup> contained a section entitled “Basic Rights of the German People” which devoted seven provisions (Articles 152 to 158) to educational rights. Education was affirmed as a function of the State, independent of the Church, and the right of the poor to free education was proclaimed. The emerging solicitude manifested towards children prompted the enactment of child welfare legislation. Compulsory education laws were introduced to make the State responsible for providing public education and for supervising private education, and to provide children with a basic general education and vocational training. These laws provided new educational opportunities for children and withdrew many of them from the labour force. Child labour laws were also enacted to restrict the exploitation of child labour and to ensure that children were able to take advantage of these new educational opportunities.

The first instance of international recognition of the right to education occurred with the conclusion of various minorities treaties in the immediate aftermath of World War 1, as an adjunct to peace treaties signed by the Allied and Associated Powers with the defeated nations. These treaties sought to protect the religious and linguistic identities and educational rights of certain minorities which had been displaced through a post-war redrawing of national boundaries

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<sup>25</sup> Nowak, *supra* note 16, at 197.

<sup>26</sup> *Id.* at 191.

<sup>27</sup> *Paulskirchenverfassung* of March, 1849 which, although never formally in force, had a strong influence on the development of constitutionalism in continental Europe. See Nowak, *supra* note 16, at 191.

in Europe. The *Treaty Between The Principal Allied and Associated Powers and Poland* signed on 28 June 1919,<sup>28</sup> the first of the series, sought to provide detailed guarantees of minority educational rights. Article 8 thereof stated:

Polish nationals who belong to racial, religious or linguistic minorities shall enjoy the same treatment and security in law and in fact as the other Polish nationals. In particular they shall have an equal right to establish, manage and control at their own expense charitable, religious and social institutions, schools and other educational establishments, with the right to use their own language and to exercise their religion freely therein.

The second instance of the international recognition of the right to education under the auspices of the League of Nations took place with the proclamation in 1924 of the *Declaration of Geneva*.<sup>29</sup> While not directly recognizing the child's right to education, the so-called Child Welfare Charter of the League of Nations contained three operative principles which implicitly adverted to such a right:

Principle I: "The child must be given the means requisite for its normal development..."

Principle II: "...the child that is backward must be helped..."

Principle IV: "The child must be put in a position to earn a livelihood..."

The *Declaration of Geneva* formed the foundation of the *Declaration of the Rights of the Child 1959*<sup>30</sup> which went on to formulate more precise educational standards.<sup>31</sup> The *Declaration of Geneva* did not entail the assumption of legal obligations by League Member States; rather it was essentially an aspirational document in which the Fifth Assembly of the League invited "the States members of the League to be guided by its principles in the work of child welfare". Thus it was left to each League Member State to take appropriate action within its needs and resources.

In terms of the nature and importance of the right to education, it has been said that "...education is so intimately connected with what is of vital importance for human life that it is essential that it be granted to all 'as of right'".<sup>32</sup> A former Director-General of U.N.E.S.C.O. has described the child's right to education as "a requirement of human dignity".<sup>33</sup> Several rationales have been invoked to support the argument that the right to education is deserving of recognition and protection as both a fundamental human and constitutional right:

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<sup>28</sup> 112 *Great Britain Treaty Series* 232.

<sup>29</sup> Adopted 26 September 1924 by the Fifth Assembly of the League of Nations: O. J. Spec. Supp. 21, at 43 (1924).

<sup>30</sup> Adopted 20 November 1959 by the U. N. General Assembly in Resolution 1386 (XIV).

<sup>31</sup> The most important operative provision of the *Declaration of the Rights of the Child 1959* concerning education is Principle 7 which provided in part that "[t]he child is entitled to receive education, which shall be free and compulsory, at least in the elementary stages". As such, Principle 7 represented the first specific global reference to the right of the child to receive education.

<sup>32</sup> IVAN SNOOK & COLIN LANKSHEAR, *EDUCATION AND RIGHTS* 34 (1979).

<sup>33</sup> M'Bow, *supra* note 1, at 14-15.

*Education: The Social Utilitarian or Public Interest Perspective*

Certain arguments of social utility may provide a logical basis for the right to education. Public education is the primary means through which a community preserves its culture and values and transmits them to the younger generation. As Justice Brennan observed in *Plyler v. Doe*, “[w]e have recognized the public schools as...the primary vehicle for transmitting the values on which our society rests”.<sup>34</sup> It is also arguable that a proper education is a prerequisite to a more reasoned exercise of political and civil liberties. Article 21(1) of the *Universal Declaration of Human Rights 1948* proclaims that “[e]veryone has the right to take part in the government of his [or her] country, directly or through freely chosen representatives”. The attainment of a minimum level of competence is regarded as a necessary condition for the effective discharge of the right to vote and engage in political activity.<sup>35</sup> A well-educated population may also be a prerequisite to maintaining democratic structures and ideals. As the U. S. Supreme Court stated in *Plyler v. Doe*, “...some degree of education is necessary to prepare citizens to participate effectively and intelligently in our open political system if we are to preserve freedom and independence”.<sup>36</sup> A right to education can also be based on the need to train the younger generation as useful and productive members of society and the world community. Various international human rights instruments recognize the human right to education as a principal means to secure world peace through the training of its future citizens. Principle 7 of the United Nations *Declaration of the Rights of the Child 1959* states in part that the child “...shall be given an education which will...enable him [or her]...to become a useful member of society”.<sup>37</sup>

*Education as a Prerequisite to Individual Dignity*

The dignity of each human being comprises an important guiding and underlying principle of constitutional bills of rights and international human rights instruments. Some commentators maintain that an education that imparts knowledge of essential skills and trains the individual in logical thought and reasoned analysis forms the basis of individual dignity and self-respect.<sup>38</sup> Article 13(1) of the United Nations *International Covenant on Economic, Social and Cultural*

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<sup>34</sup> 457 U.S. 202, 221 (1982).

<sup>35</sup> SNOOK & LANKSHEAR, *supra* note 32, at 32.

<sup>36</sup> 457 U.S. 202, 221 (1982).

<sup>37</sup> See also Article 26(2) of the *Universal Declaration of Human Rights 1948* which provides that “[e]ducation shall be directed to the full development of the human personality . . . [and] . . . shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace”.

<sup>38</sup> William F. Foster and Gayle Pinheiro, *Constitutional Protection of the Right to Education*, 11 DALHOUSIE L.J. 755, 771 (1987-88).

*Rights 1966*<sup>39</sup> states *inter alia* that "...education shall be directed to the full development of the human personality and the sense of its dignity . . .".

### *Education as a Prerequisite to Individual Development*

A third rationale for recognizing the right to education is that without it human beings are unable to realize their potential and become fully functioning members of society. The role performed by the educational system in the personal development of the individual has been acknowledged by several international human rights instruments. Principle 7 of the U. N. *Declaration of the Rights of the Child 1959*, for example, states in part that the child shall be given an education which will enable the child to develop his or her abilities, individual judgement and sense of moral and social responsibility.<sup>40</sup> The United Nations Committee on Economic, Social and Cultural Rights has described education as an "empowerment right" and as "the primary vehicle by which economically and socially marginalized adults and children can lift themselves out of poverty and obtain the means to participate fully in their communities".<sup>41</sup>

### *Education: The Individual Welfare Perspective*

Yet another foundation for the right to education is said to lie in its consideration as a welfare right. A "welfare right" has been defined as a right to have certain necessities provided by the community at large in circumstances of compelling need if one is unable to provide them for oneself.<sup>42</sup> Well-established welfare rights include protection from starvation and the provision of basic medical care and shelter. To this list it has been sought to add education. It is argued that individuals cannot provide adequately for their own education and that they will suffer a significant and enduring disability if such is not provided to them. When conceived of as a welfare right, the function of education is to assist individuals to achieve at least a basic standard of literacy and numeracy so as to enable them to function adequately in the various spheres of life in their respective communities.<sup>43</sup> A modicum of education will provide the individual with knowledge of the ways and values of the community as well as the ability to communicate and exist more independently.

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<sup>39</sup> Adopted by the U. N. General Assembly 16 December 1966: 993 U.N.T.S. 3 (entry into force 3 January 1976).

<sup>40</sup> See also Article 26(2) of the *Universal Declaration of Human Rights 1948* and Article 13(1) of the *International Covenant on Economic, Social and Cultural Rights 1966*.

<sup>41</sup> See Paragraph 1 of *General Comment No. 13 The Right to Education*, Committee on Economic, Social and Cultural Rights, E./C.12/1999/10 (8 December 1999).

<sup>42</sup> Colin Wringle, *The Ideology of Liberal Individualism, Welfare Rights and the Right to Education*, in *THE IDEOLOGIES OF CHILDREN'S RIGHTS* 191, 192 (M. Freeman & P. Veerman eds, 1992).

<sup>43</sup> SNOOK & LANKSHEAR, *supra* note 32, at 32.

Education may be regarded as a commodity to which an individual is entitled both as an end in itself but also as a means to other welfare rights.<sup>44</sup> In the latter sense, education may be conceived as an empowering right whereby the provision of education to the required level will make it easier for the individual to secure employment and thereby to satisfy such needs as accommodation, health care and nutritional requirements. The U. S. Supreme Court has stressed the critical importance of education to all individuals and drawn upon some of the foregoing rationales in the following passage from its decision in *Plyler v Doe*:

Public education is not a 'right' granted to individuals by the Constitution. But neither is it merely some governmental 'benefit' indistinguishable from other forms of social welfare legislation. Both the importance of education in maintaining our basic institutions, and the lasting impact of its deprivation on the life of the child, mark the distinction...The American people have always regarded education and [t]he acquisition of knowledge as matters of supreme importance. We have recognized the public schools as a most vital civic institution for the preservation of a democratic system of government, and as the primary vehicle for transmitting the values on which our society rests...In addition, education provides the basic tools by which individuals might lead productive lives to the benefit of us all. In sum, education has a fundamental role in maintaining the fabric of our society. We cannot ignore the significant social costs borne by our Nation when select groups are denied the means to absorb the values and skills upon which our social order rests.<sup>45</sup>

### ***III. The Classification of the Human Right to Education***

Historically the first generation of human rights preceded the second and third generations. The rights enumerated in such 18<sup>th</sup> century instruments as the *Virginia Declaration of Rights 1776*, the *American Declaration of Independence 1776* and the *Declaration of the Rights of Man* proclaimed by the French National Assembly in 1789 were essentially freedoms concerning areas of human conduct which were regarded as beyond the scope of State intervention. In the heyday of *laissez-faire*, individual autonomy and liberty were emphasized; the State being perceived as a servant of free enterprise and as a potential threat to its freedom and the liberty of the people.<sup>46</sup> The classical civil liberties<sup>47</sup> enshrined in these 18<sup>th</sup> century declarations are today catalogued in more prescriptive terms in the *International Covenant on Civil and Political Rights*<sup>48</sup> which was adopted by the United Nations General Assembly in 1966.

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<sup>44</sup> C. A. WRINGE, CHILDREN'S RIGHTS: A PHILOSOPHICAL STUDY 146 (1981).

<sup>45</sup> 457 U.S. 202, 221 (1982) (citations and some internal quotation marks omitted).

<sup>46</sup> Governmental mandates were limited accordingly to defence, foreign relations and the administration of criminal and civil justice.

<sup>47</sup> Such as freedom from arbitrary arrest, freedom of opinion and religious belief, and freedom of expression.

<sup>48</sup> Adopted by the U. N. General Assembly 16 December 1966, 999 U.N.T.S. 171 (entry into force 23 March 1976).

Unlike first generation rights which seek to restrict governmental action and interference in human affairs, second generation rights require governments to take positive action by conferring benefits upon eligible individuals. Economic and social rights coincided with the 19<sup>th</sup> century emergence of socialism which perceived the State as a beneficial institution whose main purpose was to secure the economic and social well-being of the entire community through governmental intervention and regulation. The *laissez-faire* paradigm of the State was gradually superseded by the perception of the State as a “benevolent provider”. The demand for rights in the 20<sup>th</sup> century increasingly became a claim upon the State for basic welfare services and entitlements. The historical culmination of the evolution of second generation rights is represented by the *International Covenant on Economic, Social and Cultural Rights*<sup>49</sup> (hereinafter referred to as the ‘*I.C.E.S.C.R.*’) adopted by the United Nations General Assembly in 1966. This instrument recognizes such rights as the right to work (Article 6), the right to social security (Article 9), the right to adequate food, clothing and housing (Article 11), the right to physical and mental health (Article 12) and the right to education (Article 13). The implementation of such rights, by their very nature, requires entitlement criteria as well as resource distribution and political control mechanisms.<sup>50</sup>

The right to education is primarily a second generation right in the sense that it is based on the socialist philosophy that human rights can only be completely guaranteed by positive State action. Consequently, the right to education obliges a State to develop and maintain a system of schools within its available resources.<sup>51</sup> The Committee on Economic, Social and Cultural Rights, the *I.C.E.S.C.R.* treaty-monitoring body, has taken a rather more expansive view to the classification of the right to education:

The right to education...is of vital importance. It has been variously classified as an economic right, a social right and a cultural right. It is all of these. It is also, in many ways, a civil right and a political right, since it is central to the full and effective realization of those rights as well. In this respect, the right to education epitomizes the indivisibility and interdependence of all human rights.<sup>52</sup>

Thus education is both a human right in itself and an indispensable means of realizing other human rights.<sup>53</sup>

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<sup>49</sup> Adopted by the U. N. General Assembly 16 December 1966, 993 U.N.T.S. 3 (entry into force 3 January 1976).

<sup>50</sup> Foster & Pinheiro, *supra* note 38, at 766.

<sup>51</sup> Nowak, *supra* note 16, at 196. Article 2(1) of the *International Covenant on Economic, Social and Cultural Rights 1966* obliges each State Party “to take steps . . . to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant . . .”.

<sup>52</sup> See Paragraph 2 of *General Comment No. 11 (1999) Plans of Action for Primary Education*, Committee on Economic, Social and Cultural Rights, E/C.12/1999/4 (10 May 1999).

<sup>53</sup> See Paragraph 1 of *General Comment No. 13 The Right to Education*, Committee on Economic, Social and Cultural Rights, E/C.12/1999/10 (8 December 1999).

#### ***IV. The Minimum Core Content of the Human Right to Education under International Conventional Human Rights Law***

Over the past 65 years or so the international community has embraced education as a basic human right. The right to education has been specifically recognized and reaffirmed in some detail by the provisions of four major international human rights instruments: Article 26(1) of the *Universal Declaration of Human Rights 1948*, Article 4(a) of U.N.E.S.C.O.'s *Convention against Discrimination in Education 1960*, Article 13(1) and (2) of the *International Covenant on Economic, Social and Cultural Rights 1966* and Article 28(1) of the *Convention on the Rights of the Child 1989*. A general right to education was directly and specifically articulated for the first time in the *Universal Declaration of Human Rights 1948*<sup>54</sup>, Article 26(1) of which stated:

Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available....

The inclusion within the *Universal Declaration* of the right to education was not a source of contention and the debate on Article 26(1) was, therefore, brief.<sup>55</sup> Elementary education would arguably include elements of fundamental education such as literacy, numeracy and tuition in the basic knowledge and skills essential for functioning in society. The requirement to supply free elementary education to children implies that each nation should establish a free public education system in order to place education within the reach of the great majority of children.<sup>56</sup> Compulsory elementary education appears to be based on the notion that every person has an irrevocable entitlement to a period of education at public expense. The apparent inconsistency between the right to education and the compulsory nature of elementary education can be accommodated if the term 'compulsory' is intended to imply that no person or body can prevent children from receiving a basic education. This imposes an obligation on the State to ensure that children receive at least an elementary education in circumstances of parental neglect or ignorance, for example.<sup>57</sup> It would appear, however, that the *Declaration's* limitation of free

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<sup>54</sup> The *Universal Declaration of Human Rights* was unanimously adopted by the United Nations General Assembly on 10 December 1948 to provide, in its own words, "a common standard of achievement for all peoples and all nations". At the time of its adoption, it was understood not to entail legally binding obligations but rather aspirational goals for the signatory States to pursue in their national laws and policies.

<sup>55</sup> K. Halvorsen, *Notes on the Realization of the Human Right to Education*, 12 HUMAN RIGHTS QUARTERLY 341, 350 (1990).

<sup>56</sup> Volio, *supra* note 8, at 25.

<sup>57</sup> *Id.* at 23.

education to elementary education falls short of the practice of many countries where secondary and even higher education are free.<sup>58</sup>

The educational provisions of the *Universal Declaration* have been reaffirmed, amplified and made more detailed by later United Nations instruments including the *International Covenant on Economic, Social and Cultural Rights*. Unlike the *Universal Declaration*, the *I.C.E.S.C.R.* is an international agreement which imposes legally binding obligations on those nations which ratify or accede to it. A number of provisions of the *I.C.E.S.C.R.* refer to education. Article 6(2) obliges States Parties to devise and implement “technical and vocational guidance and training programmes” to achieve the fuller realization of the right to work. Article 13 expands upon the content attributed to the right to education by Article 26(1) of the *Universal Declaration*. Article 13 is exclusively devoted to the right to education and, in its day, contained the most extensive and detailed provisions on this subject to be incorporated in an international legal instrument.<sup>59</sup> As a whole, Article 13 seeks to promote inexpensive, egalitarian and comprehensive education for all. In line with Article 26(1) of the *Universal Declaration*, Article 13(1) proclaims that the “States Parties...recognize the right of everyone to education” while Article 13(2)(a) requires compulsory primary education available free to all. As such, Article 13 implicitly endorses the concept of equality of educational opportunity which is reinforced by the non-discrimination language contained in Article 2(2) of the *I.C.E.S.C.R.*<sup>60</sup> As one commentator has observed, the right to education is the only human right for which international law stipulates a corresponding duty in the form of compulsory education until the end of primary education.<sup>61</sup> Compulsory education is an important means by which the State protects children from their parents and economic exploitation.<sup>62</sup> As the Committee on Economic, Social and Cultural Rights has observed, “[t]he element of compulsion serves to highlight the fact that neither parents, nor guardians, nor the State are entitled to treat as optional the decision as to whether the child should have access to primary education . . .”<sup>63</sup> Nevertheless, the principle of compulsory

<sup>58</sup> M. El Fasi, *The Right to Education and Culture*, 9 JOURNAL OF THE INTERNATIONAL COMMISSION OF JURISTS 33, 34 (1968).

<sup>59</sup> This was due largely to the fact that U.N.E.S.C.O., with which the drafters consulted, favoured detailed provisions on the right to education: *U.N. Annotations* 112, para. 36.

<sup>60</sup> Article 2(2) states: “The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” According to the Committee on Economic, Social and Cultural Rights, “[t]he prohibition against discrimination enshrined in article 2(2) of the Covenant is subject to neither progressive realization nor the availability of resources; it applies fully and immediately to all aspects of education and encompasses all internationally prohibited grounds of discrimination.”: see Paragraph 31 of *General Comment No. 13 The Right to Education*, Committee on Economic, Social and Cultural Rights, E/C.12/1999/10 (8 December 1999).

<sup>61</sup> Nowak, *supra* note 16, at 204.

<sup>62</sup> *Id.* at 205.

<sup>63</sup> See Paragraph 6 of *General Comment No. 11 (1999) Plans of Action for Primary Education*, Committee on Economic, Social and Cultural Rights, E/C.12/1999/4 (10 May 1999).

primary education was introduced in many Western nations long before education was recognized as a human right, and implies that it is in the best interests of children that they undertake at least a basic minimum of education. The compulsion principle is related to the principle of free education in the sense that by imposing an obligation on States Parties to provide free primary education, attendance can more easily be made compulsory.

The Committee on Economic, Social and Cultural Rights has obtained guidance<sup>64</sup> on the proper interpretation of the term “primary education” from the *World Declaration on Education for All*,<sup>65</sup> Article 5 of which states:

The main delivery system for the basic education of children outside the family is primary schooling. Primary education must be universal, ensure that the basic learning needs of all children are satisfied, and take into account the culture, needs and opportunities of the community.

The term “basic learning needs” is defined, in turn, by Article 1 of the *World Declaration* as “essential learning tools (such as literacy, oral expression, numeracy, and problem-solving) and the basic learning content (such as knowledge, skills, values, and attitudes) required by human beings to be able to survive, to develop their full capacities, to live and work in dignity, to participate fully in development, to improve the quality of their lives, to make informed decisions, and to continue learning”.

Unlike Article 26(1) of the *Universal Declaration*, Article 13 makes specific reference to secondary education. Article 13(2)(b) reads:

Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education.

It is apparent from the wording of this provision that secondary education is not required to be compulsory. This is partly due to recognition that many families, particularly in developing countries, require the income generated by children of secondary school age to survive. The provision of free secondary education would, however, make a significant contribution to secondary education being accessible to all. The Committee on Economic, Social and Cultural Rights has interpreted the phrase “generally available” to signify “. . . firstly, that secondary education is not dependent on a student’s apparent capacity or ability and, secondly, that secondary education will be distributed throughout the State in such a way that it is available on

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<sup>64</sup> See Paragraph 9 of *General Comment No. 13 The Right to Education*, Committee on Economic, Social and Cultural Rights, E/C.12/1999/10 (8 December 1999).

<sup>65</sup> Adopted by the World Conference on Education for All: Meeting Basic Learning Needs (Jomtien, Thailand, 5-9 March 1990).

the same basis to all.”<sup>66</sup> According to the Committee, while the normative content of secondary education will vary among States Parties and over time, it should include completion of basic education, the consolidation of the foundations of life-long learning and the preparation of students for vocational and higher educational opportunities.<sup>67</sup> The wording of Article 13 appears to require States Parties to prioritize primary education over secondary education, as their obligations in relation to primary and secondary education are not identical. States Parties are obliged to prioritize the introduction of compulsory, free primary education for all, such duty being immediate in nature.<sup>68</sup>

Article 13 regards States Parties as having the principal responsibility for the direct provision of education in most circumstances.<sup>69</sup> Implementation of the right to education as contained in Article 13 is progressive in nature and requires positive State action, as States Parties to the *I.C.E.S.C.R.* are obligated to improve the existing conditions concerning education to the maximum of their available resources. This is made clear by Article 2(1) of the *I.C.E.S.C.R.* which provides that “[e]ach State Party...undertakes to take steps...to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant...“. According to the Committee on Economic, Social and Cultural Rights, States Parties must take “...positive measures to ensure that education is culturally appropriate for minorities and indigenous peoples, and of good quality for all...[and provide for] the adaptability of education by designing and providing resources for curricula which reflect the contemporary needs of students in a changing world . . .”.<sup>70</sup> Nevertheless, the State’s responsibility to provide education is not exclusive, as is recognized by Article 13(3) which states that “[t]he States Parties...undertake to have respect for the liberty of parents...to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.” Article 13(4) of the *I.C.E.S.C.R.* recognizes “the liberty of individuals and bodies to establish and direct educational institutions” subject to the education therein being delivered in conformity with State-prescribed minimum educational standards. These minimum educational standards may relate to issues such as admission, curricula and the recognition of

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<sup>66</sup> See Paragraph 13 of *General Comment No. 13 The Right to Education*, Committee on Economic, Social and Cultural Rights, E/C.12/1999/10 (8 December 1999).

<sup>67</sup> See Paragraph 12 of *General Comment No. 13 The Right to Education*, Committee on Economic, Social and Cultural Rights, E/C.12/1999/10 (8 December 1999).

<sup>68</sup> *Id.* at paragraphs 25, 48 and 51.

<sup>69</sup> *Id.* at para. 48.

<sup>70</sup> *Id.* at para. 50.

certificates.<sup>71</sup> Provided these standards are complied with, separate educational systems or institutions for racial, ethnic minority or religious groups shall be deemed not to constitute a breach of the *I.C.E.S.C.R.*<sup>72</sup>

The *Convention on the Rights of the Child*,<sup>73</sup> adopted by the United Nations General Assembly on 20 November 1989, contains a number of provisions concerning education. Article 28 thereof, together with Article 29 concerning the aims of education, represents the most comprehensive formulation of the right to education at the international level. Article 28(1) states *inter alia* that:

States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:

make primary education compulsory and available free to all;

encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need...

Article 28(1)(b) is based on the wording of Article 13(2)(b) of the *I.C.E.S.C.R.* The former provision is weaker than its counterpart, however, in two significant respects. First, States Parties to the *Convention on the Rights of the Child* are merely required to “encourage the development of different forms of secondary education” whereas under the *I.C.E.S.C.R.* “[s]econdary education in its different forms...shall be made generally available...”.<sup>74</sup> Secondly, the introduction of free secondary education is accorded a lower priority in the *Convention on the Rights of the Child* than it is under the *I.C.E.S.C.R.* presumably because many States still cannot afford to offer it free.<sup>75</sup>

Apart from the recognition of the right to education in mainstream general international human rights agreements, this right has also been recognized by international human rights instruments which seek to regulate specific topics of international concern. The *Convention against*

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<sup>71</sup> *Id.* at para. 29.

<sup>72</sup> *Id.* at para. 33. See also Article 2 of U.N.E.S.C.O.’s *Convention against Discrimination in Education 1960* which deems that minority linguistic and religious education shall not constitute discrimination if participation in such separate educational systems is optional and provided the education conforms to such minimum standards as may be laid down by the State for education of the same level.

<sup>73</sup> 1577 U.N.T.S. 3 (entry into force 2 September 1990).

<sup>74</sup> See Commission on Human Rights *Report of the Working Group on a Draft Convention on the Rights of the Child* E/CN.4/1989/48 (2 March 1989) p. 82, para. 463 (U.N.E.S.C.O. suggestion that the words “encourage the development of” be deleted so as not to derogate from existing standards).

<sup>75</sup> The Japanese delegation was only prepared to accept the wording of Article 28(1)(b) on the understanding that it would not impose any legal obligation on the States Parties to implement a system of free secondary education: Commission on Human Rights *Report of the Working Group on a Draft Convention on the Rights of the Child* E/CN.4/1989/48 (2 March 1989) p. 82, para. 464.

*Discrimination in Education 1960* (hereinafter referred to as the ‘C.A.D.E.’),<sup>76</sup> adopted by the General Conference of U.N.E.S.C.O. on 14 December 1960, is the first international instrument to prescribe comprehensive international standards for public education. The *C.A.D.E.* seeks particularly to eliminate discrimination and ensure equal treatment and equality of opportunity to education of all types and at all levels. Discrimination in education had been investigated as one of a number of studies of discrimination in various fields by the Sub-Commission on the Prevention of Discrimination and Protection of Minorities under the authorization of the United Nations Commission on Human Rights. Special Rapporteur Charles Ammoun’s 1957 report entitled *Study of Discrimination in Education*<sup>77</sup> proposed the drafting of an international convention on the elimination of discrimination in education and set out the fundamental principles on which such a convention would be based. These principles were incorporated and expanded in the *C.A.D.E.*<sup>78</sup>

It is clear from the preambular paragraphs of the *C.A.D.E.* that it is based on Articles 2 and 26 of the *Universal Declaration of Human Rights* which deal respectively with the principle of non-discrimination and the right of every person to education and which, when read together, prohibit discrimination in education. At the time of the adoption of the *C.A.D.E.* in 1960, young women and members of minority groups were denied access to universities in many countries<sup>79</sup> and racially segregated school systems existed in countries such as South Africa.<sup>80</sup> For the purposes of the *C.A.D.E.*, the term ‘education’ refers to all types and levels of education including access to education, the quality of education, and the conditions under which it is delivered. The democratization of education is achieved by three critical operative provisions. Article 1(1) broadly defines the term ‘discrimination’ for the purposes of the *Convention* in such a way as to catch both direct and indirect discrimination. ‘Discrimination’ includes “any distinction, exclusion, limitation or preference which, being based on race, colour, sex, language, religion, political or other opinion, national or social origin, economic condition or birth, has the *purpose or effect* of nullifying or impairing equality of treatment in education . . .”.<sup>81</sup> Article 1(1) also explicitly considers as discriminatory the deprivation of any person or group of persons of access to education, the subjection of any person or group to education of an inferior standard and (subject to certain exceptions stipulated in Article 2) racially segregated educational

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<sup>76</sup> 429 U.N.T.S. 93 (entry into force 22 May 1962).

<sup>77</sup> United Nations publication, Sales No. E.57.XIV.3.

<sup>78</sup> H. Cullen, *Education Rights or Minority Rights?*, 7 INTERNATIONAL JOURNAL OF LAW AND THE FAMILY 143, 148 (1993).

<sup>79</sup> Consider, for example, the former Japanese policy of denying financial assistance to students of the Korean minority wishing to pursue university studies: Y. Iwasawa, *Legal treatment of Koreans in Japan: The Impact of International Human Rights Law on Japanese Law*, 8 HUMAN RIGHTS QUARTERLY 131, 175 (1986).

<sup>80</sup> Nowak, *supra* note 16, at 202.

<sup>81</sup> Emphasis supplied by author.

systems. Article 3 obliges States Parties to abrogate any laws or administrative practices which involve educational discrimination, to ensure that there is no discrimination in the admission of pupils to educational institutions, and not to allow any differences of treatment by the public authorities between nationals<sup>82</sup>, except on the basis of merit or need, in the setting of school fees and the granting of financial assistance to pupils.<sup>83</sup> Article 4 states in part:

The States Parties...undertake furthermore to formulate, develop and apply a national policy which...will tend to promote equality of opportunity and of treatment in the matter of education and in particular:

To make primary education free and compulsory; make secondary education in its different forms generally available and accessible to all...

To ensure that the standards of education are equivalent in all public education institutions of the same level...

Article 4(a) of the *C.A.D.E.* essentially reaffirms the provisions of Article 26(1) of the *Universal Declaration of Human Rights* but does add a reference to secondary education. One method of achieving equality of opportunity is to make education free and compulsory until a legislatively specified minimum age.

### ***V. Recognition of the Human Right to Education under Customary International Law***

It remains to consider whether certain aspects of the normative content of the right to education, particularly the right to free public primary education and the right to equality of educational opportunity, have joined the corpus of customary international law. Customary international law develops from generally accepted practices which nations follow out of a sense of legal obligation.<sup>84</sup> Article 38(1)(b) of the *Statute of the International Court of Justice*<sup>85</sup> instructs the Court to apply “international custom, as evidence of a general practice accepted as law” in the resolution of disputes submitted to it. The two critical elements for the existence of a customary norm of international law are a uniform practice adhered to generally by States (the so-called *usus* requirement) and their belief that the practice is required by international law (the so-called

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<sup>82</sup> The use of the term ‘national’ implies that differential treatment may be legally accorded in the case of non-nationals subject to the jurisdiction of the State Party.

<sup>83</sup> Pursuant to Article 5(e)(v) of the *International Convention on the Elimination of All Forms of Racial Discrimination*, adopted by the United Nations General Assembly in Resolution 2106 A (XX) of 21 December 1965, States Parties “undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone . . . to equality before the law, notably in the enjoyment of . . . the right to education and training”.

<sup>84</sup> *Restatement (Third) of Foreign Relations Law of the United States* 702 cmt. a (1987).

<sup>85</sup> The International Court of Justice, the principal judicial organ of the United Nations, was established pursuant to Chapter XIV of the *Charter of the United Nations 1945*.

*opinion juris* requirement). Unlike treaties and conventions, a rule of customary law binds even those States which have never formally recognized it.<sup>86</sup> National and international courts have relied on international treaties and declarations as well as national constitutions and laws to assist them in determining whether a practice has crystallized into a customary norm.

As we have seen, the normative content of the right to education has been most comprehensively prescribed by the following international human rights law instruments:

- Article 26, *Universal Declaration of Human Rights 1948*;
- Articles 1, 2, 3 and 4, *Convention against Discrimination in Education 1960*;
- Article 13, *International Covenant on Economic, Social and Cultural Rights 1966*;
- Article 28, *Convention on the Rights of the Child 1989*.

While the latter three instruments entail binding legal obligations for the States Parties, those United Nations Member States which adopted the *Universal Declaration* in 1948 understood the instrument to contain non-binding aspirational principles to guide them in the formulation of national laws and policies.<sup>87</sup> Over six decades on, a strong argument can be made that the *Universal Declaration* represents binding customary rules of international law. The continual adherence to the provisions of the *Universal Declaration* by States which joined the United Nations after 1948 and the incorporation of its principles into the constitutions of numerous States have prompted courts and prominent scholars to conclude that they now represent customary norms.<sup>88</sup>

In terms of a stocktake, the following international human rights instruments all prescribe free public primary education:

- Article 26(1), *Universal Declaration of Human Rights 1948*;
- Article 4(a), *Convention against Discrimination in Education 1960*;
- Article 13(2), *International Covenant on Economic, Social and Cultural Rights 1966*;

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<sup>86</sup> Article 38 of the *Vienna Convention on the Law of Treaties*, 23 May 1969, 1155 U.N.T.S. 331 (entry into force 27 January 1980). This is subject to the “persistent objector” exception.

<sup>87</sup> H. LAUTERPACHT, *INTERNATIONAL LAW AND HUMAN RIGHTS* 397 (1950).

<sup>88</sup> *Filartiga v. Peña-Irala* 630 F.2d 876, 883 (2d Cir. 1980); L. Sohn, *The New International Law: Protection of the Rights of Individuals Rather than States*, 32 AM. U. LAW REVIEW 1, 17 (1982) (“The Declaration, as an authoritative listing of human rights, has become a basic component of international customary law, binding on all states, not only on members of the United Nations.”).

- Article 28(1)(a), *Convention on the Rights of the Child 1989*,

Considering the uniformity of language employed in these instruments as well as their widespread ratification, customary international law would now appear to require access for all children to a free public primary education.<sup>89</sup>

The right to equality of educational opportunity or the right to gain access to, and enjoy, educational programmes without discrimination has also featured prominently in international human rights instruments. Article 28(1) of the *Convention on the Rights of the Child 1989* provides that “States Parties recognize the right of the child to education...on the basis of equal opportunity . . .”. The *Convention against Discrimination in Education 1960* reaffirms the commitment of the *Universal Declaration of Human Rights 1948* to the principle of non-discrimination in the educational sphere. The following international human rights instruments also seek to guarantee the right to equality of educational opportunity through a combination of provisions relating to a general right to non-discrimination and specifically to the right to education:

- Articles 2 and 26, *Universal Declaration of Human Rights 1948*;
- Articles 2(2) and 13, *International Covenant on Economic, Social and Cultural Rights 1966*.

It can be asserted with reasonable confidence, therefore, that at least two educational principles have now acquired the status of customary norms: the right to free public primary education and the right to equality of educational opportunity.<sup>90</sup>

## ***VI. The Minimum Core Content of the Human Right to Education under International Conventional and Customary Human Rights Law***

Over the past 65 years or so the international community has embraced education as a basic human right which imposes a number of significant positive obligations upon States. Under international human rights law, States are required at the minimum to establish and maintain

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<sup>89</sup> S. Knight, *Proposition 187 and International Human Rights Law: Illegal Discrimination in the Right to Education*, 19 HASTINGS INTERNATIONAL AND COMPARATIVE LAW REVIEW 183, 197 (1995); D. HODGSON, THE HUMAN RIGHT TO EDUCATION 63 (1998).

<sup>90</sup> C. de la Vega, *The Right to Equal Education: Merely a Guiding Principle or Customary International Legal Right?*, 11 HARVARD BLACK LETTER LAW JOURNAL 37 (1994); C. Christopher, *Plyler v. Doe and the Right of Undocumented Alien Children to a Free Public Education*, 2 BOSTON UNIVERSITY INTERNATIONAL LAW JOURNAL 513 (1984); Knight, *supra* note 89. These two principles are explicitly and uniformly codified in widely ratified international human rights instruments and the national laws of many States.

adequate educational facilities. The relevant provisions of the major international human rights and anti-discrimination instruments and customary law principles recognize the following State obligations:

- (a) primary education shall be compulsory and available free to all;
- (b) secondary education in its various forms shall be made generally available and accessible to all; free secondary education and financial assistance in case of need shall be introduced on a progressive basis;
- (c) access to, and treatment in, educational programmes at all levels shall be on the basis of non-discrimination and equality of educational opportunity;
- (d) subject to certain conditions, States must respect the liberty of individuals and bodies and minority groups to establish and direct educational institutions.<sup>91</sup>

### ***VII. Aims and Objectives Associated with the Human Right to Education***

The child's right to education is not only a matter of fair access to educational opportunities but also about content.<sup>92</sup> The debate concerning the aims and objectives of education long preceded the adoption of the modern human rights instruments. These aims ranged from the emancipation of the child to the inculcation of civic, social and moral duties. It is now common for provisions of international human rights treaties which recognize the right to education also to articulate the basic aims or goals sought to be realized by the exercise of the right. These provisions furnish common goals to be pursued by the educational systems of all countries. These goals are often based on religious or moral values and political imperatives.<sup>93</sup> The most detailed and comprehensive provision on the aims of education in international law can now be found in Article 29(1) of the *Convention on the Rights of the Child 1989*. The exercise of the right to education is not intended merely to acquire skills and knowledge but to achieve a variety of objectives which will enure to the benefit not only of individuals but to the communities within which they live. As one commentator has aptly remarked, "[t]he right to education, while primarily an individual right, can be understood within its social function of developing people as full citizens of their society".<sup>94</sup> It is not, therefore, a question of merely communicating

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<sup>91</sup> See Article 13(3)(4) of the *International Covenant on Economic, Social and Cultural Rights 1966* and Article 2 of the *Convention against Discrimination in Education 1960*.

<sup>92</sup> Paragraph 3 of *General Comment No. 1 The Aims of Education*, Committee on the Rights of the Child, CRC/GC/2001/1 (17 April 2001).

<sup>93</sup> Nowak, *supra* note 16, at 193.

<sup>94</sup> Cullen, *supra* note 78, at 144.

knowledge through instruction but also of assisting individuals to make maximum use of their capabilities.<sup>95</sup>

Although international law prescribes in detail the many and varied aims of education, it fails to provide any guidance as to the relative importance of each aim. It must be assumed, therefore, that all educational aims are of equal value and that it is not open to a State Party to selectively implement only some of the aims which are included in the human rights instruments which it has ratified.<sup>96</sup> Some commentators have regarded the prescription of educational goals as rather presumptuous and smacking of benevolent paternalism.<sup>97</sup> In their view, how a child's potential is to be developed is essentially a value-laden exercise.<sup>98</sup> Although the aims of education tend to vary according to the historical, political, cultural, religious or national context,<sup>99</sup> the international treaties have frequently and consistently prescribed the following four basic aims which apply to both public and private education<sup>100</sup> and which partly reflect the fundamental purposes and principles of the United Nations<sup>101</sup>:

(a) the full development of the individual's personality, talents and abilities

- Article 26(2), *Universal Declaration of Human Rights 1948*;
- Article 5(1)(a), *Convention against Discrimination in Education 1960*;
- Article 13(1), *International Covenant on Economic, Social and Cultural Rights 1966*;
- Article 29(1)(a), *Convention on the Rights of the Child 1989*.

As we have seen earlier, as well as being an essential aim of the right to education, this is also considered to be one of the underlying philosophical rationales of the child's right to education. The aim is essentially that children will develop to their maximum potential according to their abilities and talents in all dimensions of the human experience: physical, intellectual and social. The Committee on the Rights of the Child has described this goal as "the key goal of

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<sup>95</sup> Volio, *supra* note 8, at 24.

<sup>96</sup> G. VAN BUEREN, *THE INTERNATIONAL LAW ON THE RIGHTS OF THE CHILD* 253 (1995).

<sup>97</sup> See, for example, J. N. Turner, *The Rights of the Child Under the U. N. Convention*, 65 *LAW INSTITUTE JOURNAL* 38, 45 (1992); IVAN SNOOK & COLIN LANKSHEAR, *EDUCATION AND RIGHTS* 31 (1979).

<sup>98</sup> For example, Article 12(3) of the *Central American Convention on the Unification of the Fundamental Norms of Education 1962* proclaims as one of the aims of education in Central America the preparation of citizens "for the effective exercise of democracy as a political system and a way of life".

<sup>99</sup> Nowak, *supra* note 16, 189.

<sup>100</sup> Paragraph 4 of *General Comment No. 13 The Right to Education*, Committee on Economic, Social and Cultural Rights, E/C.12/1999/10 (8 December 1999).

<sup>101</sup> As enshrined respectively in Articles 1 and 2 of the *Charter of the United Nations 1945*, 26 June 1945, 1 U.N.T.S. XVI.

education”<sup>102</sup> while the Committee on Economic, Social and Cultural Rights regards it as “perhaps the most fundamental”<sup>103</sup> of educational objectives. The Committee on the Rights of the Child has observed:

Education must also be aimed at ensuring that essential life skills are learnt by every child and that no child leaves school without being equipped to face the challenges that he or she can expect to be confronted with in life. Basic skills include not only literacy and numeracy but also life skills such as the ability to make well-balanced decisions; to resolve conflicts in a non-violent manner; and to develop a healthy lifestyle, good social relationships and responsibility, critical thinking, creative talents, and other abilities which give children the tools needed to pursue their options in life.<sup>104</sup>

(b) the strengthening of respect for human rights and fundamental freedoms

- Article 55(c), *Charter of the United Nations 1945*;
- Article 26(2), *Universal Declaration of Human Rights 1948*;
- Article 5(1)(a), *Convention against Discrimination in Education 1960*;
- Article 7, *International Convention on the Elimination of All Forms of Racial Discrimination 1965*;<sup>105</sup>
- Article 13(1), *International Covenant on Economic, Social and Cultural Rights 1966*;
- Article 29(1)(b), *Convention on the Rights of the Child 1989*.

This particular educational aim is based on one of the founding purposes of the United Nations articulated in Article 1(3) of the *Charter of the United Nations 1945*, namely “...promoting and encouraging respect for human rights and for fundamental freedoms for all . . .”.

(c) the enabling of all persons to participate effectively and responsibly in a free society

- Article 13(1), *International Covenant on Economic, Social and Cultural Rights 1966*;
- Article 29(1)(d), *Convention on the Rights of the Child 1989*.

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<sup>102</sup> Paragraph 9 of *General Comment No. 1 The Aims of Education*, Committee on the Rights of the Child, CRC/GC/2001/1 (17 April 2001).

<sup>103</sup> Paragraph 4 of *General Comment No. 13 The Right to Education*, Committee on Economic, Social and Cultural Rights, E/C.12/1999/10 (8 December 1999).

<sup>104</sup> Paragraph 9 of *General Comment No. 1 The Aims of Education*, Committee on the Rights of the Child, CRC/GC/2001/1 (17 April 2001).

<sup>105</sup> Adopted 21 December 1965 by the U. N. General Assembly: 660 U.N.T.S. 195 (entry into force 4 January 1969). Article 7 states in part that “States Parties undertake to adopt immediate and effective measures, particularly in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination . . .”.

The Committee on the Rights of the Child has stated that “[t]he overall objective of education is to maximize the child’s ability and opportunity to participate fully and responsibly in a free society.”<sup>106</sup> As we observed earlier, this aim also represents one of the underlying philosophical rationales of the child’s right to education.

(d) the promotion of understanding, tolerance and friendship among all nations, racial, ethnic or religious groups and the furtherance of the activities of the United Nations for the maintenance of peace

- Article 26(2), *Universal Declaration of Human Rights 1948*;
- Article 5(1)(a), *Convention against Discrimination in Education 1960*;
- Article 7, *International Convention on the Elimination of All Forms of Racial Discrimination 1965*;
- Article 13(1), *International Covenant on Economic, Social and Cultural Rights 1966*;
- Article 29(1)(d), *Convention on the Rights of the Child 1989*.

This particular aim of education presupposes that children should be exposed to a notion of tolerance that complements fixed beliefs that they may acquire from their parents or others close to them. Children should become aware of the diversity of beliefs people hold, and appreciate what it is to be part of a society where these differences exist.<sup>107</sup>

These four main aims of education are thus essentially directed to the holistic development of the full potential of the child, a fostering of respect for human rights and civic duty, and the child’s socialization and interaction with others. In terms of the obligations prescribed by Article 13(1) of the *I.C.E.S.C.R.*, the Committee on Economic, Social and Cultural Rights has stated:

States parties are required to ensure that curricula, for all levels of the educational system, are directed to the objectives identified in article 13(1). They are also obliged to establish and maintain a transparent and effective system which monitors whether or not education is, in fact, directed to the educational objectives set out in article 13(1).<sup>108</sup>

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<sup>106</sup> Paragraph 12 of *General Comment No. 1 The Aims of Education*, Committee on the Rights of the Child, CRC/GC/2001/1 (17 April 2001).

<sup>107</sup> See P. Hobson and R. Cresswell, *Parental Rights, Education and Liberal Tolerance*, 14 DISCOURSE 44, 50 (1993).

<sup>108</sup> Paragraph 49 of *General Comment No. 13 The Right to Education*, Committee on Economic, Social and Cultural Rights, E/C.12/1999/10 (8 December 1999).

Apart from these four basic aims of education, other aims are mentioned, albeit less frequently, by various international instruments (legally binding and non-legally binding<sup>109</sup>). These other aims include the inter-generational transmission of cultural heritage,<sup>110</sup> the development of national consciousness,<sup>111</sup> the development of a sense of moral duty and social responsibility,<sup>112</sup> the development of the child's critical ability and judgment,<sup>113</sup> the development of respect for the natural environment,<sup>114</sup> and the development of the sense of dignity of the human personality.<sup>115</sup>

Article 29(1)(c) of the *Convention on the Rights of the Child 1989* is the most recent treaty attempt to formulate innovative educational aims, particularly from the child's perspective. This provision provides that "States Parties agree that the education of the child shall be directed to...the development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own." This represents a commendable effort to enhance the child's sense of identity and affiliation. Regrettably, however, Article 29(1)(c) omits to refer to religions and beliefs different from those of the child and Article 29(1) as a whole fails to make explicit reference to the social, spiritual and moral development of the child as an educational aim worthy of fulfilment.<sup>116</sup> It is also possible that some educational aims may conflict with each other, thereby causing problems in realizing them. Multicultural pluralistic societies are finding it increasingly difficult to strike a balance between cultural and minority values and national and majoritarian values.<sup>117</sup> Indeed,

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<sup>109</sup> Examples of non-legally binding international instruments prescribing educational aims include the *Declaration of the Rights of the Child 1959*, the *World Declaration on Education for All 1990*, the *Vienna Declaration and Programme of Action 1993* (Part I, para. 33 and Part II, para. 80), and the *Plan of Action for the United Nations Decade for Human Rights Education* (adopted by the U. N. General Assembly in 1996) (para. 2).

<sup>110</sup> Principle 7 of the *Declaration of the Rights of the Child 1959*; Preamble of the *World Declaration on Education for All 1990*.

<sup>111</sup> Article 29(1)(c) of the *Convention on the Rights of the Child 1989*.

<sup>112</sup> Principles 7 and 10 of the *Declaration of the Rights of the Child 1959*; Article 5(3) of the *Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief 1981* A/RES/36/55 (adopted by the U. N. General Assembly on 25 November 1981).

<sup>113</sup> Principle 7 of the *Declaration of the Rights of the Child 1959*.

<sup>114</sup> Article 29(1)(e) of the *Convention on the Rights of the Child 1989* (the first time that this educational aim has been incorporated in treaty form); Preamble of the *World Declaration on Education for All 1990*.

<sup>115</sup> Article 13(1) of the *International Covenant on Economic, Social and Cultural Rights 1966*. As was previously discussed, such aim also constitutes one of the underlying philosophical rationales of the child's right to education.

<sup>116</sup> Such a proposal had been submitted in 1983 by the Baha'i International Community, a non-governmental organization in consultative status with the United Nations Economic and Social Council: Commission on Human Rights *Report of the Working Group on a Draft Convention on the Rights of the Child* E/CN.4/1983/62 (25 March 1983) Annex II (E.CN.4/1983/WG.1/WP.2).

<sup>117</sup> D. McGoldrick, *The United Nations Convention on the Rights of the Child*, 5 INTERNATIONAL JOURNAL OF LAW AND THE FAMILY 132, 148 (1991); S. POULTER, ENGLISH LAW AND ETHNIC MINORITY CUSTOMS *passim* (1986).

the tension between these values was noted during the drafting of the *Convention on the Rights of the Child*.<sup>118</sup>

### **VIII. Human Rights Education**

It will be recalled from the previous section that one of the principal aims of the child's right to education is the strengthening of respect for human rights. The teaching of human rights has largely developed since the founding of the United Nations in 1945. Among the purposes of the U. N. listed in Article 1(3) of its *Charter* is the achievement of international co-operation "in promoting and encouraging respect for human rights".<sup>119</sup> The purposes of human rights education have been variously stated: a prerequisite for individuals and groups seeking respect for their rights and dignity,<sup>120</sup> the improvement of racial, ethnic and religious relations,<sup>121</sup> and as a means to more fully realize human potential.<sup>122</sup> The International Congress on Education for Human Rights and Democracy, convened by U.N.E.S.C.O. at Montreal in March, 1993, proclaimed that human rights education is itself a human right as well as a prerequisite for the realization of other human rights.<sup>123</sup>

The classical formulation of human rights education is contained in Article 26(2) of the *Universal Declaration of Human Rights 1948* which states, *inter alia*, that "[e]ducation shall be directed to...the strengthening of respect for human rights".<sup>124</sup> In Resolution 217 D (III) of 10 December 1948, the U. N. General Assembly recommended that Member States publicize the text of the *Universal Declaration* and translate and disseminate its provisions principally in schools and other educational institutions.<sup>125</sup> In 1976 the U. N. Commission on Human Rights requested that U. N. organs as well as governments promote measures for the involvement of youth in human rights, including "[d]evelopment of a special curriculum on human rights for use

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<sup>118</sup> Commission on Human Rights *Report of the Working Group on a Draft Convention on the Rights of the Child* E/CN.4/1989/48 (2 March 1989) p. 85, paragraphs 478 and 479.

<sup>119</sup> Article 55(c) of the *Charter* reinforces Article 1(3) by obliging the United Nations to "promote universal respect for, and observance of, human rights and fundamental freedoms for all without distinction".

<sup>120</sup> G. Alfredsson, *The Right to Human Rights Education*, in ECONOMIC, SOCIAL AND CULTURAL RIGHTS 213 (A. Eide, C. Krause and A. Rosas eds, 1995).

<sup>121</sup> *Id.* at 222.

<sup>122</sup> Preamble to United Nations General Assembly Resolution 49/184, 49 U.N. GAOR Supp. (No. 49) at 202, U.N. Doc. A/49/49 (1994).

<sup>123</sup> The Congress adopted a *World Plan of Action on Education for Human Rights and Democracy*. See U.N. Doc. A/CONF. 157/PC/42/Add.6.

<sup>124</sup> See to the same effect Article 13(1) of the *International Covenant on Economic, Social and Cultural Rights 1966*.

<sup>125</sup> The Economic and Social Council subsequently invited U.N.E.S.C.O. to encourage and facilitate teaching about the *Universal Declaration* in schools: Resolution 314 (XI) of 24 July 1950.

in the various educational systems, whether at the primary, secondary or technical level . . .”<sup>126</sup> One of the most important and comprehensive endorsements of human rights education is contained in the *Vienna Declaration and Programme of Action* adopted by the World Conference on Human Rights at Vienna in June, 1993. Paragraph 33 of the *Vienna Declaration* reads in part:

The World Conference on Human Rights reaffirms that States are duty-bound, as stipulated in the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights..., to ensure that education is aimed at strengthening the respect of human rights and fundamental freedoms. The World Conference...emphasizes the importance of incorporating the subject of human rights education [into national education policies] and calls upon States to do so...<sup>127</sup>

The World Conference also called on all States “to include human rights,...., democracy and rule of law as subjects in the curricula of all learning institutions”.<sup>128</sup>

The contribution to human rights education by U.N.E.S.C.O., a specialized U. N. agency, is also worthy of mention. Initiatives to stimulate human rights teaching in schools have formed an integral part of U.N.E.S.C.O.’s educational programme for international understanding and teaching about the United Nations. Such initiatives have included studies of teaching methods and programmes, international and regional seminars and conferences, publications,<sup>129</sup> the revision of textbooks,<sup>130</sup> and the provision of consultative services to U. N. Member States and to teacher-training institutions assisted under the U. N. Development Programme.<sup>131</sup> In November, 1974, the U.N.E.S.C.O. General Conference adopted the *Recommendation Concerning Education for International Understanding, Co-operation and Peace and Education Relating to Human Rights and Fundamental Freedoms 1974* which contains multiple references to human rights education. Paragraph 11 thereof urges Member States to “take steps to ensure that the principles of the Universal Declaration of Human Rights and of the International Convention on the Elimination of All Forms of [Racial] Discrimination become an integral part of the developing personality of each child...by applying these principles in the daily conduct of education at each level and in all its forms . . .”. Mention should also be made of initiatives

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<sup>126</sup> Resolution 1B (XXXII) of 11 February 1976.

<sup>127</sup> U.N. Doc. A/CONF.157/23, Part I, para. 33.

<sup>128</sup> Paragraph 79 of the *Vienna Programme of Action*.

<sup>129</sup> See U.N.E.S.C.O.’s *Guidelines for Curriculum and Textbook Development in International Education* (ED/ECS/HCI).

<sup>130</sup> U.N.E.S.C.O. has organized several multilateral consultations concerning the revision of history, geography and social sciences textbooks for primary, secondary and higher education.

<sup>131</sup> UNITED NATIONS, *UNITED NATIONS ACTION IN THE FIELD OF HUMAN RIGHTS* 356, para. 151 (1988).

developed within the framework of the *United Nations Decade for Human Rights Education*, including the *Plan of Action for the Decade*<sup>132</sup> and the *Guidelines for National Plans of Action for Human Rights Education* which were developed by the Office of the High Commissioner for Human Rights to assist States in responding to the *United Nations Decade for Human Rights Education*.

As we have seen in the previous section, States have assumed a legal obligation under international conventional human rights law to take appropriate measures to promote human rights education at all levels and in all types of education. While primary responsibility is vested in States, members of the teaching profession will play a significant role in the delivery of human rights education. Perhaps the most effective forum for human rights teaching is in the primary school system where such teaching may be conveniently incorporated into civic instruction classes. As one commentator has remarked, "...familiarization of human rights at an early age is the source of self-respect and respect for others".<sup>133</sup> Topics falling within the general scope of the phrase "human rights education" include the principle of equality of rights and opportunities for all without distinction, the rule of law, the elimination of racial, ethnic and religious discrimination, and the improvement of inter-group relations through the teaching of different cultures, languages, religions and beliefs.<sup>134</sup>

### ***IX. Religious Fundamentalism, International Human Rights Law and the Human Right to Education***

The right to freedom of religion is widely recognized as a human and civil right by the mainstream international human rights treaties.<sup>135</sup> This right applies to adults and children alike.<sup>136</sup> This right includes the freedom to change one's religion or belief and the freedom to manifest that freedom or belief in teaching, practice and worship either alone or in community with others in public or private. No one should be subject to coercion which would impair his or her freedom to have or to adopt a religion or belief of his or her choice.<sup>137</sup> This section will consider to what extent, if any, current international human rights law can accommodate the

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<sup>132</sup> Adopted by the United Nations General Assembly in 1996.

<sup>133</sup> M. Seck, *A Plea for Human Rights Education in Africa*, 11 HUMAN RIGHTS LAW JOURNAL 283, 292 (1990).

<sup>134</sup> Alfredsson, *supra* note 120, at 223.

<sup>135</sup> See Article 18 of the *Universal Declaration of Human Rights 1948* and Article 18(1)(2) of the *International Covenant on Civil and Political Rights 1966*.

<sup>136</sup> See Article 14 of the *Convention on the Rights of the Child 1989*.

<sup>137</sup> Article 18(2) of the *International Covenant on Civil and Political Rights 1966*.

phenomenon of religious fundamentalism which has emerged in various religions during the course of the 20<sup>th</sup> century.

The term ‘fundamentalism’ has been defined as follows:

- a. A religious movement, which originally became active among various Protestant bodies in the United States after the war of 1914-1918, based on strict adherence to certain tenets (e.g. the literal inerrancy of Scripture) held to be fundamental in the Christian faith; the beliefs of this movement; opp. liberalism and modernism.
- b. In other religions, especially Islam, a similarly strict adherence to ancient or fundamental doctrines, with no concessions to modern developments in thought or customs.<sup>138</sup>

To the extent that the term ‘fundamentalism’ connotes an unwavering attachment to a set of irreducible beliefs<sup>139</sup> combined with aggression or antipathy towards perceived threats to those beliefs, it may fall foul of international human rights law, particularly where it leads to a lack of tolerance towards other individuals and groups of different religions and beliefs, or involves coercion which undermines freedom to have and practise a freely chosen religion or belief.

The constituent document of the United Nations was based in part on a directive “to practise tolerance and live together in peace with one another as good neighbours” in order to achieve the ends of “[saving] succeeding generations from the scourge of war” and “[reaffirming] faith in fundamental human rights [and] in the dignity and worth of the human person”.<sup>140</sup> Subsequent U.N. human rights instruments have reaffirmed unequivocally the centrality of mutual understanding and tolerance in achieving the U.N.’s *raison d’être* of maintaining world peace. Article 26(2) of the *Universal Declaration of Human Rights 1948* states in part that education “shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.” In very similar language, Article 13(1) of the *International Covenant on Economic, Social and Cultural Rights 1966* records the agreement of the States Parties that “education shall...promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.” Article 7 of the *International Convention on the Elimination of All Forms of Racial Discrimination 1965* provides in part that “States Parties undertake to adopt immediate and effective measures,

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<sup>138</sup> *The Oxford English Dictionary* Volume VI 267 (2<sup>nd</sup> ed. 1989).

<sup>139</sup> For example, where the doctrinal beliefs are not open to scrutiny, evaluation, analysis and/or criticism either by members within or outside the religious group.

<sup>140</sup> See the Preamble of the *Charter of the United Nations 1945*.

particularly in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination and to promoting understanding, tolerance and friendship among nations and racial or ethnical groups . . .”. Article 29(1)(d) of the *Convention on the Rights of the Child 1989* also refers to the accord among States Parties thereto that the child’s education shall be directed to “[t]he preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance...and friendship among all peoples, ethnic, national and religious groups...“.

The U.N. Committee on the Rights of the Child, the treaty-monitoring body established under the *Convention on the Rights of the Child 1989*, has made some very useful observations on these issues in the course of delivering its *General Comments* thereunder which are designed to elucidate various treaty provisions for interpretative purposes:

[The agreement of the States Parties concerning the aims and objectives of the child’s right to education as alluded to in Article 29(1) of the Convention on the Rights of the Child 1989] overcomes the boundaries of religion, nation and culture built across many parts of the world. At first sight, some of the diverse values expressed in article 29(1) might be thought to be in conflict with one another in certain situations. Thus, efforts to promote understanding, tolerance and friendship among all peoples, to which paragraph (1)(d) refers, might not always be automatically compatible with policies designed, in accordance with paragraph (1)(c)[of Article 29], to develop respect for the child’s own cultural identity, language and values [and] for the national values of the country in which the child is living...But in fact, part of the importance of this provision lies precisely in its recognition of the need for a balanced approach to education and one which succeeds in reconciling diverse values through dialogue and respect for difference.<sup>141</sup>

The Committee’s concern for various forms of intolerance, including religious intolerance, is reflected in the following passage:

The Committee also wishes to highlight the links between article 29(1) and the struggle against racism, racial discrimination, xenophobia and related intolerance. Racism and related phenomena thrive where there is ignorance, unfounded fears of racial, ethnic, religious, cultural and linguistic or other forms of difference, the exploitation of prejudices, or the teaching or dissemination of distorted values. A reliable and enduring antidote to all of these failings is the provision of education which promotes an understanding and appreciation of the values reflected in article 29(1), including *respect for differences*, and challenges all aspects of discrimination and prejudice. Education should thus be accorded one of the highest priorities in all campaigns against the evils of

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<sup>141</sup> Emphasis supplied by author. See Paragraph 4 of *General Comment No. 1 The Aims of Education*, Committee on the Rights of the Child, CRC/GC/2001/1 (17 April 2001).

racism and related phenomena...[T]eaching can effectively contribute to the prevention and elimination of racism, ethnic discrimination, xenophobia and related intolerance.<sup>142</sup>

The United Nations has also addressed the issue of religious intolerance in several General Assembly resolutions. In its *Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion and Belief 1981*,<sup>143</sup> the U. N. General Assembly reaffirmed Article 18(2) of the *International Covenant on Civil and Political Rights 1966* that “[n]o one shall be subject to coercion which would impair his [or her] freedom to have a religion or belief of his [or her] choice.”<sup>144</sup> The *Preamble* of the *Religious Intolerance Declaration 1981* also added that “it is essential to promote understanding, tolerance and respect in matters relating to freedom of religion and belief and to ensure that the use of religion or belief for ends inconsistent with the Charter of the United Nations is inadmissible.”<sup>145</sup> In a 1993 Resolution on the *Elimination of All Forms of Religious Intolerance*,<sup>146</sup> the U.N. General Assembly urged all States “to take all appropriate measures to combat hatred, intolerance and acts of violence, including those motivated by religious extremism, and to encourage understanding, tolerance and respect in matters relating to freedom of religion or belief”<sup>147</sup> after having noted in its *Preamble* the importance of education in ensuring tolerance of religion or belief. This was followed two years later by a 1995 U.N. resolution which condemned “all instances of hatred, intolerance and acts of violence, intimidation and coercion motivated by religious extremism and intolerance of religion or belief”.<sup>148</sup>

U.N.E.S.C.O. has also been sensitive to the phenomenon of religious extremism and intolerance and the potential of education to address it. In November, 1974, its General Conference adopted the *Recommendation Concerning Education for International Understanding, Co-operation and Peace and Education Relating to Human Rights and Fundamental Freedoms 1974*, Paragraph 39 of which recommends that U.N.E.S.C.O. Member States should ensure that educational materials are free from elements liable to give rise to contempt or hatred with regard to other groups or peoples. And to mark 1995 as the U. N. Year of Tolerance, the U.N.E.S.C.O. General Conference adopted the *Declaration of Principles on Tolerance*.<sup>149</sup> The term ‘tolerance’ is defined as “harmony in difference” and is described as not only a moral duty but a legal

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<sup>142</sup> Emphasis supplied by author. See Paragraph 11 of *General Comment No. 1 The Aims of Education*, Committee on the Rights of the Child, CRC/GC/2001/1 (17 April 2001).

<sup>143</sup> Proclaimed by United Nations General Assembly Resolution 36/55 of 25 November 1981.

<sup>144</sup> Article 1(1).

<sup>145</sup> Preambular Paragraph 5.

<sup>146</sup> United Nations General Assembly Resolution 48/128 (20 December 1993).

<sup>147</sup> Paragraph 4.

<sup>148</sup> See Paragraph 4 of United Nations General Assembly Resolution 50/183 (22 December 1995).

<sup>149</sup> Adopted by the U.N.E.S.C.O. General Conference on 16 November 1995.

requirement.<sup>150</sup> Tolerance “involves the rejection of dogmatism and absolutism”.<sup>151</sup> For the purposes of this paper, Article 1(4) of the *Tolerance Declaration* is particularly important:

The practice of tolerance means that one is free to adhere to one’s own convictions and accepts that others adhere to theirs. It also means that one’s views are not to be imposed on others.

Article 4 of the *Declaration* acknowledges that education is the most effective means of preventing intolerance<sup>152</sup> and that it is necessary to promote teaching methods that will address the religious sources of intolerance.<sup>153</sup> In this regard, the *Vienna Programme of Action*, adopted by the World Conference on Human Rights at Vienna in 1993, noted the Conference’s view that human rights education is essential for fostering mutual understanding, tolerance and peace<sup>154</sup> and called on Governments to promote an increased awareness of human rights and mutual tolerance.<sup>155</sup>

The current position on these issues under international human rights law appears to be as follows. Both adults and children enjoy the human right to freedom of religion and this right may be practised with zeal and fervour, either alone or in community with others. However, a practice of this right characterized by religious fanaticism which involves a lack of respect for other religions or beliefs, coercion and an undermining of another individual’s or group’s freedom to have or adopt a religion or belief of choice crosses the line, as it were. This would constitute a direct breach of an international treaty obligation<sup>156</sup> and could trigger the application of restraints under Article 18(3) of the *International Covenant on Civil and Political Rights 1966* which states:

Freedom to manifest one’s religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.<sup>157</sup>

Pursuant to this provision, a State Party to the *I.C.C.P.R.* may lawfully (through legislation or policy) prescribe limitations to the right to freedom of religion where its exercise by an individual or group would impair the exercise of the fundamental rights and freedoms of others which would clearly include the right to freedom of religion, a long-recognized human and civil right. Such legislation could be general in nature and scope or could be targeted specifically at

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<sup>150</sup> Article 1(1).

<sup>151</sup> Article 1(3).

<sup>152</sup> Article 4(1).

<sup>153</sup> Article 4(2).

<sup>154</sup> See Paragraph 78.

<sup>155</sup> See Paragraph 82.

<sup>156</sup> Article 18(2) of the *International Covenant on Civil and Political Rights 1966*. See the text accompanying note 137 *supra*.

<sup>157</sup> Emphasis supplied by author.

the education sector in order to discourage school practices which exhibit intolerance (in the sense alluded to above) of other religions or beliefs.

### *X. Conclusion*

This paper has attempted to examine the legitimate role and purposes of primary and secondary schools through the prism of international human rights law. It has analysed the various definitions of education, traced the historical evolution of the right to education and identified its main underlying philosophical rationales. In examining the minimum or core content of the human right to education under both international conventional and customary human rights law, it is evident that such a right is not only concerned with equitable access issues but with content as well. Numerous mainstream international human rights treaties have identified various aims and objectives of education, including the strengthening of respect for human rights and fundamental freedoms and the promotion of understanding, tolerance and friendship among religious and ethnic groups. The normative framework of the right to education has also been usefully interpretatively elaborated upon by the U. N. Committee on Economic, Social and Cultural Rights and the Committee on the Rights of the Child.

A proselytizing, fanatical and aggressive practice of religion or belief, either generally or within the education sector, based on dogmatism, absolutism and inerrancy of scripture appears antithetical to not only current international human rights law but the very principles and purposes upon which the United Nations was founded: namely the practice of tolerance and the living together in peace and harmony as good neighbours in order to save future generations from the scourge of war.<sup>158</sup> Human rights and fundamental freedoms are not absolute and unqualified; they must also be exercised reasonably and responsibly with due regard to the reasonable exercise by others of their human rights and freedoms (which include the right to freedom of religion and belief).<sup>159</sup> To the extent that religious fundamentalism or extremism involves the disparaging of other religions or beliefs, coercion or the undermining of the right to freedom of religion or belief by others, it cannot currently be accommodated (and arguably as a matter of good public policy should never be) under the principles and norms upon which contemporary international human rights law is based.

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<sup>158</sup> See the Preamble of the *Charter of the United Nations 1945*.

<sup>159</sup> See generally DOUGLAS HODGSON, *INDIVIDUAL DUTY WITHIN A HUMAN RIGHTS DISCOURSE* (2003).

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