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Concluding her analysis of a decade of homelessness crisis and advocacy in the United States, Mary Ellen Hombs, a noted advocate for the homeless, addressed the question of “What comes next?” with the following words:

We must envision the future as including a right to housing, [and] also a living wage and the substantive education and training to achieve it, or the availability of public assistance benefits that allow people to live in dignity and not continued need. We must call out the good-will that exists among the nation’s people.¹

This American vision of the future echoes another American voice--that of the United States as a member of the General Assembly of the United Nations at the adoption of the Universal Declaration of Human Rights in 1948. The Declaration states in part:

Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability.²

The striking harmony between the founding document of modern international human rights law and the vision of one dedicated to the fight against homelessness suggests that it is worthwhile to ask the following question: Can the fight against homelessness in the United States benefit from international human rights law? This article will try to answer the question in a pragmatic way by considering human rights law as a tool to fight homelessness rather than using homelessness as an opportunity to discuss human rights.

The attitude of the United States toward international human rights is, to say the least, ambiguous. On one hand, the United States government consistently claims to be the world’s leader in the respect and promotion of human rights. To its credit, the United States has played a valuable role in the creation of important instruments of international human rights law such as the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.³ On the other hand, the American legal system consistently resists the influence of international human rights law.⁴

The United States’ approach to homelessness highlights the fundamental ambiguity in the relationship between the domestic legal system and international human rights law. The two-part structure of this article attempts to reflect the ambiguity. The first part describes major international human rights instruments, only some of which are formally supported by the United States. These instruments afford each individual the rights that should safeguard her from homelessness and place correlative obligations on the governments of states that have adopted the instruments. Following an overview of key provisions, the article focuses on the right to adequate housing as provided by Article Eleven of the International Covenant on Economic, Social and Cultural Rights.⁵ Based on the theory of indivisibility of international human rights law, the article then examines the effect of the deprivation of economic rights, such as the right to adequate housing, on civil and political rights, such as the...
right to life and personal security.

The second part of the article evaluates three different strategies for the use of international human rights law in United States’ courts. The first two strategies—direct enforcement and reliance on international human rights law as customary international law—use international human rights law as an independent source of binding norms. The effectiveness of these two strategies seems limited in the current judicial system. A third, less ambitious strategy suggests the use of international human rights law as a guide to interpreting domestic law. The article concludes that the present state of international and domestic law offers limited prospects of alleviating homelessness through the application of international human rights norms. If the United States becomes a party to the International Covenant on Economic, Social and Cultural Rights, however, binding obligations implicating a right to adequate housing could follow.

While this article specifically addresses homelessness, its methodology and findings should be pertinent to anyone engaged in the general fight against poverty where other provisions of international human rights law may apply.

I. SUBSTANTIVE INTERNATIONAL HUMAN RIGHTS LAW APPLIED TO HOMELESSNESS

When we hear or read about prisoners of conscience, torture, or disappearances, we automatically analyze these horrible situations in terms of international human rights violations. Yet, when we come across a man, woman, or child living on our streets, or when we hear of a family threatened with eviction, most of us are unaware that these situations also involve violations of international human rights.

This part of the article sketches the international human rights norms applicable to homelessness. The status of these norms within the American legal system will be discussed in detail in Part II of the article. In the meantime, the reader should bear in mind that not all the norms discussed here are binding on the United States. There are two reasons for this: First, several important instruments to which the United States government is party are clearly not sources of binding obligations, while other instruments have a disputed legal status. Second, the United States has not yet taken all necessary steps to become party to, and thus be bound by, most of the instruments which do create binding obligations.

A. A Brief Introduction to the Sources of International Human Rights Law

International human rights law is codified in multilateral treaties that may be called charters, covenants, conventions, or protocols. These treaties are adopted by states as members of international governmental organizations to promote and protect human rights. In essence, a treaty is the equivalent of a contract among states. Those states that decide to take part in a treaty and agree to be bound by its provisions are called “states parties.”

An international human rights treaty imposes binding obligations upon the states parties as to how they treat their own citizens. Therefore, even though individuals are not directly subject to international law, they are, in fact, the beneficiaries of international human rights law.

Thus, international human rights law is a source of individual rights which may be enforceable in domestic courts. This body of law includes the United Nations Charter, particularly Articles 55 and 56, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, and the Optional Protocol to the International Covenant on Civil and Political Rights. Together with the Universal Declaration of Human Rights, these treaties contain the core of international human rights law and form the “International Bill of Rights.”

Other sources of international human rights law are the declarations of states’ representatives issued at international conferences or meetings of international organizations, such as the United Nations General Assembly. These declarations do not create legal obligations for the states and are therefore not enforceable in domestic courts. Rather, they are “statements of principles of behavior for states toward their own citizens as well as other states.” Declarations provide valuable guidance as to how states themselves envision their responsibilities and how they interpret specific provisions of treaties. Moreover, a declaration, or elements thereof, can become binding when it is incorporated into a treaty or if it leads to the creation of
customary international law, which is binding on all states.\textsuperscript{18}

In addition to the United Nations’ global instruments, regional intergovernmental organizations have also adopted regional human rights treaties and declarations. For example, the Organization of American States (OAS) has adopted the American Convention on Human Rights\textsuperscript{19} and the American Declaration of the Rights and Duties of Man.\textsuperscript{20} The Council of Europe has adopted the European Convention for the Protection of Human Rights and Fundamental Freedoms\textsuperscript{21} and the European Social Charter.\textsuperscript{22} The Organization of African Unity has adopted the African Charter on Human and Peoples’ Rights.\textsuperscript{23} These regional systems provide additional tools in the promotion of human rights.

\textbf{B. The Right to Adequate Housing and other Economic, Social, and Cultural Rights}

Throughout history, international human rights law has focused on the protection of humanity against poverty.\textsuperscript{24} In his address to Congress on January 6, 1941, Franklin D. Roosevelt described freedom from want as one of the four essential human freedoms.\textsuperscript{25} Roosevelt’s vision strongly influenced the United Nations Charter, the Universal Declaration of Human Rights, and, thus, the whole evolution of modern international human rights law.\textsuperscript{26}

All major sources of human rights include provisions protecting freedom from want by conferring rights on every human being and imposing correlative obligations on governments. The right to adequate housing is among the rights created by these instruments. While all these instruments are helpful in the fight against homelessness, this article will primarily discuss the International Covenant on Economic, Social and Cultural Rights because of its express grant of a right to adequate housing.

\textbf{1. Major Sources of Rights}

The provisions of various international human rights instruments range from those with broad applicability to homelessness and poverty to specific provisions concerning the right to adequate housing. Obviously, a specific grant of a right to adequate housing is most important to homeless persons and their advocates. The broader mandates, however, provide valuable background for the clarification of the right to housing and may prove effective in the arguments in favor of enforcing the right.

The Universal Declaration of Human Rights broadly establishes the rights to social security and human dignity. Article 22, in particular, confers on every member of society a right to basic economic, social, and cultural entitlements that every state should recognize, serve, and protect.\textsuperscript{27} Food, clothing, housing, medical care, and other social services are listed as definitive components of the right to a minimum standard of living and dignity.\textsuperscript{28} Article 25 calls upon states to take measures to secure for every individual an adequate standard of living, particularly in cases of unemployment, sickness, or disability.\textsuperscript{29}

Article 11 of the American Declaration of the Rights and Duties of Man reiterates the obligation of the state to provide for the health and basic necessities of its population.\textsuperscript{30} This Declaration, however, limits the scope of this duty by saying that the state need only provide for its people to the extent that public resources allow.\textsuperscript{31}

Several international conventions confer similar rights on specific categories of individuals. The most recent of these instruments is the International Convention on the Rights of the Child.\textsuperscript{32} Concluded in November 1989 and entering into force in September 1990, the Convention proclaims the right of every child to social security and an adequate standard of living, including adequate nutrition, clothing, and housing.\textsuperscript{33} Article 27 calls upon states to assist parents in the realization of this right by providing "material assistance and support programs, particularly with regard to nutrition, clothing and housing."\textsuperscript{34}

The International Convention On the Elimination of All Forms of Racial Discrimination\textsuperscript{35} and the Convention on the Elimination of All Forms of Discrimination Against Women\textsuperscript{36} provide for the elimination of discrimination based on race or ethnicity or gender. These instruments require states to guarantee the equality and enjoyment of all economic, social, and cultural rights by all members of society.\textsuperscript{37}
Although the United States is not party to all the conventions enumerated above, it is party to the Universal Declaration of Human Rights and the American Declaration of the Rights and Duties of Man. The participation by the United States provides evidence that the United States government is aware of its responsibilities regarding the basic rights of the homeless. While these declarations are not legally binding on the United States, they represent an international consensus and offer support for human rights arguments on behalf of homeless persons.  

2. The Right to Adequate Housing in the International Covenant on Economic, Social and Cultural Rights

The International Covenant on Economic, Social and Cultural Rights is perhaps the most important international human rights instrument for homeless persons and their advocates. The Covenant elaborates and restates directly the economic, social, and cultural rights proclaimed in the Universal Declaration of Human Rights. In addition to rights to food and clothing, the Covenant calls for a right to shelter for all people. Article 11(1) of the Covenant reformulates Article 25 of the Universal Declaration, declaring that:

The States Parties to the present convention recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing, housing and to continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international cooperation based on free consent.

Some critics view the social, economic, and cultural rights embodied in the Covenant to be without clear legal content and to impose no obligations on the states parties. It is true that the field of social, economic, and cultural rights is still evolving and there is thus no quasi-judicial international complaint mechanism similar to the one existing for civil and political rights. However, a thorough examination of the wording of the Covenant and other persuasive sources reveals that these rights do have a definable content and should create a series of obligations binding upon states.

a. The Right to Adequate Housing

Created in 1986, the Committee on Economic, Social and Cultural Rights is an expert body whose task is to assist the United Nation’s Economic and Social Council in monitoring states parties’ compliance with their obligations under the International Covenant on Economic, Social and Cultural Rights. Apart from reviewing the states parties’ reports, the Committee also issues comments on the Covenant to clarify its norms. These comments could be considered persuasive authority when interpreting the Covenant or other United Nations’ instruments that protect the right to adequate housing.

In interpreting the “adequate housing” provision of Article 11(1) of the Covenant, the Committee identifies seven core components of the right to adequate housing:

1. Legal security of tenure. According to the Committee, the right to adequate housing implies the guarantee of legal protection against forced eviction, harassment, and other threats regardless of the legal nature of the occupant’s tenure. The Committee regards forced eviction as "prima facie incompatible with the requirements of the Covenant" and justifiable only "in the most exceptional circumstances, and in accordance with the relevant principles of international law." The Committee has yet to spell out the exceptional circumstances that may justify forced eviction.

2. Availability of services, materials, and infrastructure. The Committee also states that adequate housing means housing with access to facilities essential for the occupants’ health, security, comfort, and nutrition. Facilities should include: potable drinking water; energy for cooking, heating, and lighting; sanitation and washing facilities; food storage; refuse disposal; and emergency services.

3. Affordability. The Committee believes that housing costs relative to income should not be at such a level as may threaten
50. States, therefore, should provide subsidies and protect tenants against unreasonable rent levels or rent increases.

4. **Habitability.** Adequate housing means adequate space and sufficient protection against inclement weather and other threats to physical safety or health.

5. **Accessibility.** The Committee regards it as the states parties’ obligation to ensure accessibility for disadvantaged groups such as the elderly, children, the physically and mentally disabled, and victims of natural disasters.

6. **Location.** The Committee views as inadequate housing built on polluted sites or in close proximity to pollution sources. It also finds that the location of housing should allow its occupants access to employment, schools, and other social services.

7. **Culturally adequate.** The Committee believes that adequate housing means that the occupants are allowed the expression of their cultural identity.

Although the United States is not a party to the Covenant, at the very least these seven components reflect international housing standards. Regardless of whether or not the components are legally enforceable in any court, advocates for homeless persons should find these explanations of international housing standards useful when arguing on their clients’ behalf.

### b. The Nature and Extent of States’ Obligations Toward the Realization of the Right to Adequate Housing

As explained above, the International Covenant on Economic, Social and Cultural Rights recognizes a legal right to adequate housing and imposes on governments correspondent affirmative obligations. However, the Covenant does not go so far as to require a government to build housing for its entire population or to provide housing free of charge to all who request it. To determine the obligations of a state party to the Covenant with respect to the right to adequate housing, Article 11(1) must be read in combination with Article 2(1), which addresses general state party obligations:

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

The wording of Article 2(1) has given rise to conflicting interpretations. According to the Restatement of Foreign Relations Law, if the United States ratifies the Covenant, it will largely determine for itself the meaning of “full realization” of rights, and the speed of realization, and whether it is using “the maximum of its available resources” for this purpose. The Committee on Economic, Social and Cultural Rights and the majority of experts, however, are of the opinion that Article 2(1) does create readily identifiable obligations. In his 1993 progress report, the Special Rapporteur on the Right to Adequate Housing of the United Nations’ Sub-Commission on Prevention of Discrimination and Protection of Minorities tried to synthesize the states’ obligations after consulting all major authoritative sources. Of particular relevance to the fight against homelessness are the following conclusions drawn from his report and its sources.

The words “undertakes to take steps,” found in Article 2(1) of the Covenant, create an immediate obligation which must be observed directly upon ratification of the Covenant. Although the full realization of pertinent rights may be achieved progressively, a state must begin implementing the Covenant immediately once it becomes party. More specifically, governments are required to develop a national housing strategy that defines “objectives for the development of shelter conditions.” The Special Rapporteur also suggests that in the formulation of the strategy, governments should consider the timing and method for their implementation and should consult and solicit participation from all social sectors, including homeless people and their representatives.
Article 2(1) requires states parties to use “all appropriate means, including particularly the adoption of legislative measures,” to achieve the full realization of the rights recognized by the Covenant. However, the Committee on Economic, Social and Cultural Rights finds that legislative measures alone are not sufficient to fulfill a state party’s obligation. The Special Rapporteur interprets “all appropriate means” to include legislative, administrative, judicial, economic, and educational measures.

The Special Rapporteur also believes that the phrase “to the maximum of its available resources” requires that states parties strive for “an equitable and effective use of and access to the resources available.” In addition, regardless of their economic status, states parties must observe “a minimum core obligation” to promote the rights created by the Covenant. A state “in which any significant number of individuals is deprived of basic shelter and housing is, prima facie, failing to perform its obligations under the Covenant.” The state cannot justify its failure to provide basic shelter by alleging a lack of available resources unless it satisfactorily demonstrates that it has used all available resources toward the fulfillment of its minimum obligations.

The wording of the phrase which requires states parties to use all available resources to provide basic shelter appears to leave great discretion to each state. The framers of the Covenant, however, stated that in accommodating the text to the changing realities of states parties’ economic circumstances, they did not intend to let states parties arbitrarily and artificially determine for themselves the level of commitment required by the Covenant. The Committee on Economic, Social and Cultural Rights, which is in charge of monitoring states parties’ compliance, has authority to scrutinize states on this matter. Therefore, states parties do not have unlimited discretion.

The obligation “to achieve progressively the full realization” of the rights under the Covenant requires that states parties move as expeditiously and effectively as possible towards full realization. Therefore, the Covenant does not allow a government to indefinitely defer its efforts to ensure the full realization of the right to adequate housing. Moreover, certain clauses of the Covenant, such as the non-discrimination clause and the obligation to monitor the realization of rights, are immediately binding and do not require progressive realization.

Several commentators concur with the conclusions of the Special Rapporteur and further refine the scope of states parties’ obligations under the Covenant by identifying different “layers” of duties. The layers include recognizing, respecting, protecting, promoting, and fulfilling the right to adequate housing. These duties, according to the commentators, derive from both the general tenor of the Covenant and the specific wording of Article 11(1) itself.

First, states parties have the obligation to “recognize” and “respect” the right to housing as a human right. This requires that a government abstain from taking measures which may diminish the legal status of the right. States must “refrain from any action which prevents people from satisfying their rights themselves when they are able to do so.” Further, the state must undertake steps to ensure universal enjoyment of this right among its population and eliminate legislation or policies that compromise this right.

Next, states are obliged to “protect” the right to adequate housing by preventing violations of this right by third parties such as landlords and property developers. The state may achieve this protection through measures aimed at conferring legal security of tenure and by protecting residents from discrimination, harassment, or other threats. It should also create enforcement mechanisms to provide redress to victims of such actions. Additionally, the state should ensure that the costs of housing is commensurate with income levels and allows satisfaction of other basic needs.

The obligation to “promote” the right to adequate housing requires that states formulate laws and policies that will ensure the realization of the right. Effective measures include legislative pronouncement of the right, creation of entitlements, and identification of specific national goals for the universal fulfillment of the right to adequate housing.

Finally, the obligation to “fulfill” the right to adequate housing imposes on states the duty to “provide assistance to those in need when no other reasonable possibility to obtain such assistance is forthcoming.” This applies in situations such as unemployment, old age, disasters, and other crises. To achieve this goal, the state may resort to a variety of strategies such as tax-exemption, low-interest credits, new housing construction, market-regulation, and the provision of public services.
Article 2(2) of the Covenant contains a non-discrimination principle applicable to the entire Covenant that is particularly relevant to homelessness in the United States. The Article requires states parties to ensure that the rights guaranteed under the Covenant be exercised without discrimination based on race, gender, religion, political belief, or property status. States must not only abstain from discrimination, but must also take affirmative action on behalf of disadvantaged groups. These measures should target not only the state but private persons and entities engaged in public activity as well.

Recent demographic studies in the United States show that the rate of homelessness among African Americans is more than triple the rate among the rest of the population. The racial demographics of the homeless population in the United States makes the non-discrimination principle of the Covenant particularly relevant to the fight against homelessness. If the United States were to become party to the Covenant, the non-discrimination principle would require the government to take affirmative action to alleviate the disparity.

In sum, the right to adequate housing contained in the Covenant and the correlative obligations imposed on state parties, particularly as defined by the United Nations and other experts, would substantially strengthen the fight against homelessness in the United States. However, the United States is not yet party to the Covenant. One strategy that advocates could pursue, therefore, would be persuading the United States’ government to endorse the Covenant. This and other strategies will be discussed in part II of the article. In the meantime, the United States is party to the International Covenant on Civil and Political Rights. Although this covenant does not implicate a right to housing, it addresses civil and political rights that affect homeless persons. These rights and their significance for homeless persons will be discussed in the next section.

C. Civil and Political Rights

Being homeless means not only lacking adequate housing, but often living in life-threatening and degrading conditions, being the target of local laws restricting access to public spaces, and being involuntarily separated from one’s children or spouse. Thus, in addition to directly violating such social and economic rights as the right to adequate housing, homelessness also jeopardizes effective enjoyment of the most basic civil and political rights, such as the right to life and personal security, the right to freedom of movement, and the right to family life and privacy.

Unlike the social and economic rights discussed above, civil and political rights enjoy the protection of both the United States Constitution and international human rights law. Although the Constitution does not extend the scope of these rights as far as international human rights law, it accords them full recognition. Because civil and political rights enjoy the more favorable status and are less controversial than social and economic rights, they may prove very useful tools for the advocate.

This section casts a new light on these well-known and respected civil and political rights, using the principle of indivisibility of international human rights law. The principle of indivisibility recognizes factual and legal interrelationships among all rights, whether they are civil and political rights or social, economic, and cultural rights. Simply put, the principle of indivisibility asserts that these two sets of rights are really two sides of the same coin. A violation of one set of rights necessarily entails a violation of the other. Conversely, actions promoting one set of rights also have a positive impact on the other. Thus, meaningful enjoyment of civil and political rights is impossible without the enjoyment of social, economic, and cultural rights.

I. The Right to Life

Every human being has the inherent right to life. This right shall be protected by law.

* Homeless people frequently die of exposure to the cold and other hazards of living on the streets. Those who are able to escape the streets often have to face other risks due to the extremely bad conditions of many shelters. The risk of catching tuberculosis, for example, is real because many shelters are overcrowded and badly ventilated. Human immunodeficiency
virus (HIV) infection, particularly prevalent among the homeless population, increases this risk.99 These health risks lend support to the assertion that the life of a homeless person is endangered simply because she is homeless. This highlights the intimate link between the most basic civil right--the right to life--and an economic and social right such as the right to adequate housing: A violation of the latter results in a violation of the right to life.

In its General Comment on the Right to Life, the Human Rights Committee, the international body in charge of monitoring states parties’ compliance with the Covenant on Civil and Political Rights,100 expresses the view that the right to life cannot properly be understood in a restrictive manner.101 The protection of this right, the Committee asserts, requires that states take affirmative actions.102 Specifically, the Committee recommends that states parties adopt all possible measures to reduce infant mortality and increase life expectancy.103

Many states protect the right to life in their national Constitutions. Interpretations of these provisions also illuminate the scope of the right to life. For example, Article 21 of the Indian Constitution protects the right to life. The Supreme Court of India has held that the right to life contained in the Indian Constitution “includes the right to live with human dignity and all that goes along with it, namely the bare necessities of life such as adequate nutrition, clothing, and shelter.”104 In the Bombay Pavement Dwellers Case, the same court decided that “the eviction of the petitioners [from their dwellings] will lead to deprivation of their livelihood and consequently to the deprivation of life.”105 In that case, the Court concluded, “that the right to life . . . includes the right to livelihood.”106

Thus, the right to life, as recognized by the International Covenant on Civil and Political Rights and defined by tribunals throughout the world, may provide support for advocates on behalf of homeless persons in the United States.107

2. The Rights to Privacy and the Protection of the Family

A national survey of shelters conducted by the Department of Housing and Urban Development (HUD) in 1988 revealed that each night there were between 20,000 and 30,000 families in shelters.108 In addition, HUD found that at least 2.6 million precariously housed families were in direct danger of becoming homeless.109 The magnitude of this problem calls for an examination of the rights of the family as a unit.

The international human rights instruments discussed in this article provide some basic rights for the family, namely the rights to privacy and the protection of the family unit. This section will explore how homelessness deprives families of these rights.

a. Implications of Shelter Requirements on the Rights to Privacy and Family

No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence . . . .110

Besides the cold, the hunger, the danger, and the shame, homeless families often suffer the despair and anguish of being separated from one another. Most homeless shelters have restrictive admission policies which conflict with the desire of a family to stay together. According to the 1988 HUD survey, more than half of all family shelters (which constitute thirty-nine percent of all shelters) prohibit visits from partners, nearly one-third reject large families, and twenty-three percent do not admit adolescent *68 males.111 These admission restrictions may, in part, explain the overrepresentation of single-parent families consisting of young mothers and very young children among the sheltered homeless population.112

In addition to denying shelter to a significant portion of homeless persons, these shelter policies may constitute arbitrary or unlawful interference with family and privacy within the ambit of Article 17 of the Covenant on Civil and Political Rights. Article 17 not only prohibits arbitrary interference by the state, it imposes a duty on the state to protect the family against interference by private parties.113 The admission policies described above, whether applied by a public or a private entity, interfere with the rights to privacy and the family protected by the Covenant on Civil and Political Rights by forcing an
individual to choose between a shelter and her family.\textsuperscript{114}

\textbf{b. The Right of the Family to Protection vs. Family Homelessness}

The family is the natural and fundamental group unit of society and is entitled to protection by society and State.\textsuperscript{115}

The plight of homeless families raises the question of the legality of family homelessness itself. Article 23 of the Covenant on Civil and Political Rights goes beyond the prohibition against interferences contained in Article 17. It creates an affirmative duty on the part of the state to protect the existence of the family.\textsuperscript{116} The state must contribute to the maintenance of familial relations through institutional guarantees, such as legal recognition, and a number of non-institutional guarantees, such as financial assistance, tax privileges, relief in setting up a household, and protection of mothers.\textsuperscript{117} Certainly the prevalence of homeless families in the United States demonstrates that the United States has not fulfilled its obligation to protect the family as a “natural and fundamental group unit of society.”

\textbf{3. The Right to Freedom of Movement and Choice of Residence}

Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.\textsuperscript{118}

Recent years have seen a disquieting rise in the passage of local anti-homeless ordinances.\textsuperscript{119} These ordinances limit the access of homeless people to public spaces such as parks, public buildings, and streets by outlawing activities such as standing, sleeping, sitting, and bathing in these spaces. Article 12(1) of the Covenant on Civil and Political Rights, quoted above, requires that states parties honor the liberty of movement and freedom of residence of its constituents. Liberty of movement means the right to move freely about the entire territory of a state party.\textsuperscript{120} Freedom of residence means the right to set up a temporary or permanent residence at any location in the state’s territory.\textsuperscript{121}

Anti-homeless ordinances clearly restrict both the liberty of movement and freedom of residence of homeless persons. Article 12(3) of the Covenant on Civil and Political Rights permits restrictions on these freedoms only if they are (1) provided by law, (2) consistent with the other rights recognized in the Covenant, and (3) necessary to protect national security, public order, health, and morals, or the rights and freedom of others.\textsuperscript{122}

Whether specific restrictions are permissible or not is beyond the scope of this article; the point here is only to show the link between the right to adequate housing and the violation of the basic civil rights to move freely in one’s own country and to choose one’s residence. Because homeless people have no other choice but to live and perform such vital activities as sleeping and washing in public spaces, ordinances that otherwise may seem reasonable and permissible impose unacceptable restrictions on their freedom of movement and residence.\textsuperscript{123}

\textsuperscript{69} As yet, no case in the United States has addressed the legality of these anti-homeless ordinances within the context of international human rights law. However, \textit{Pottinger v. City of Miami}\textsuperscript{124} offers an interesting constitutional analogy. Plaintiffs in the case, about 6000 homeless individuals, challenged Miami’s policy of arresting the homeless for performing essential activities in public. A federal district court held that since no other place was available for homeless people to perform such essential activities, the arrest policy violated homeless persons’ Fourteenth Amendment equal protection guarantee with respect to the fundamental right to travel, the Eighth Amendment right to be free from cruel and unusual punishment, the Fourth Amendment right to be free from unreasonable searches and seizures, and the Fourteenth Amendment right to procedural due process.\textsuperscript{125} Consequently, the court ordered the parties to agree on two arrest-free zones where homeless people could remain without being arrested for harmless conduct.\textsuperscript{126} Unfortunately, due to its effect of confining homeless individuals to small geographic areas, the solution offered by the court seems in some respects worse than the problem it sought to solve.\textsuperscript{127}
II. THE CHALLENGE OF ENFORCING HUMAN RIGHTS: USING INTERNATIONAL HUMAN RIGHTS ON BEHALF OF THE HOMELESS IN UNITED STATES COURTS

The preceding section shows that international human rights law offers a novel perspective on homelessness, allowing us to analyze the problem in terms of the violation of rights. Whether these rights are justiciable in the United States federal and state courts will now be addressed. Because extensive literature on the problem of enforcing international human rights law in United States courts already exists, what follows is only a brief outline of practical and strategic recommendations applicable to fighting homelessness.

Attempts to enforce international human rights law in United States courts may be futile. This section examines three ways to apply international human rights law in court and points out the problems and potential of each. These three strategies are: (1) direct enforcement; (2) reliance on customary international law; and (3) interpretive use of international human rights law.

A. Direct Enforcement: A Dead End?

Article VI, Section 2 of the United States Constitution (the Supremacy Clause), provides that an international treaty to which the United States is a party has the same status and effect as federal law. Treaties, therefore, are directly enforceable in U.S. courts in the same way as federal statutes are. Thus, at first glance, direct enforcement of human rights law seems an extremely promising approach. However, both practical and doctrinal obstacles exist to limit its potential.

The practical limitations to the incorporation of international human rights instruments into domestic law are two-fold. First, the United States is not party to several treaties that are significant to the fight against homelessness. Second, other key instruments, to which the United States is a party, are not “treaties” and thus do not rise to the level of supremacy afforded by Article VI, Section 2 of the Constitution. In addition to these practical obstacles, case law has significantly limited the reach and effect of international treaties in United States courts through the development of the doctrine of self-executing treaties.

1. Practical Limitations

The foremost practical limitation on the use of international human rights laws in the United States is that the United States is not party to the following major international treaties: the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Rights of the Child, the International Convention on the Elimination of All Forms of Racial Discrimination, and the International Convention on the Elimination of All Forms of Discrimination Against Women. These instruments include provisions that could make a crucial difference to the homeless in this country if they were justiciable in domestic courts. With the exception of the Convention on the Rights of the Child, these treaties have awaited ratification for more than fifteen years, having been opposed by both the Reagan and Bush Administrations. The Clinton Administration, however, has expressed support for these instruments.

So far, the current Administration has transmitted the conventions concerning racial discrimination and women’s rights to the Senate. The Senate gave its recommendations and consent to the ratification of the International Convention on the Elimination of All Forms of Racial Discrimination on June 24, 1994; the United States will become party to this convention as soon as President Clinton deposits the instrument of ratification with the Secretary General of the United Nations. The International Convention on the Elimination of All Forms of Discrimination Against Women is currently before the Senate Foreign Relations Committee. There is also some hope that the Convention on the Rights of the Child will be ratified in the foreseeable future. Several Senators, in search of co-sponsors, have circulated a draft resolution urging the President to sign the Convention and submit it to the Senate for advice and consent.

Unfortunately, the International Covenant on Economic, Social and Cultural Rights, despite having been signed by President Carter and submitted to the Senate for ratification, is unlikely to be ratified any time soon. Although the Clinton
Administration has expressed strong support for the Covenant, an important segment of the American political establishment is fiercely opposed to the idea of social and economic rights.

Another major obstacle to the use of international human rights law in the United States is that the two major declarations to which the United States is a party, the Universal Declaration of Human Rights and the American Declaration of the Rights and Duties of Man, are not treaties. Therefore, these declarations themselves do not bind the United States in the manner provided by the Supremacy Clause. Viewed as interpretive documents to other international agreements, however, these declarations may arguably have binding effects.

The Universal Declaration, for example, could be binding on the United States if it is considered an authoritative interpretation and application of Articles 55 and 56 of the United Nations Charter, which are binding on all the members of the United Nations. The International Court of Justice has lent support to this argument by recognizing that the human rights provisions of the Charter constitute binding obligations on all United Nations members; the Court, however, left open the question of whether the Universal Declaration is an authoritative elucidation of these obligations. Several human rights groups have unsuccessfully used this argument in amicus briefs seeking to establish the self-executing nature of Articles 55 and 56 of the United Nations Charter and incorporate specific provisions of international human rights instruments into domestic law.

Like the Universal Declaration, the American Declaration of the Rights and Duties of Man is not a treaty. Nevertheless, the Inter-American Commission on Human Rights believes that the Declaration has acquired binding force upon OAS members through its integration into the OAS Charter, as amended by the Protocol of Buenos Aires. Since the United States is a member of the Charter and the Protocol, it should also be bound by the Declaration. No reported decision of a United States court has considered this question, and the United States has rejected the Commission’s position.

2. The Doctrine of Self-Executing Treaties

The United States Supreme Court has further limited the possibility of directly enforcing a provision of one of the few international human rights treaties to which the United States is party. According to the Supreme Court, the United States Constitution requires that treaty provisions be self-executing in order to confer a right on an individual. For a treaty to be self-executing, it must operate “by itself, without the aid of any legislative provision.”

To determine whether a treaty provision is self-executing, a court first examines the intention of the United States when it ratified the treaty. A court will also consider the language and purposes of the agreement as a whole, the circumstances surrounding its execution, the nature of the obligations imposed by the agreement, the availability of action, and the capability of the judiciary to resolve the dispute. If a court does not find the provision to be self-executing, it will not enforce the treaty provisions unless implementing legislation exists.

Of all the instruments discussed above, only the United Nations Charter and the International Covenant on Civil and Political Rights raise the issue of self-execution since they are the only treaties to which the United States currently is party. Under current case law, however, neither of these instruments is likely to fulfill the requirement of self-execution.

a. The United Nations Charter

Articles 55 and 56 of the United Nations Charter could potentially bind the United States to the norms of the Universal Declaration of Human Rights. Although current case law seems to undermine this theory, the provisions may still hold some promise.

In *Sei Fuji v. California*, the California Supreme Court ruled that Articles 55 and 56 of the United Nations Charter are not self-executing because they “lack the mandatory quality and definiteness which would indicate an intent to create justiciable rights in private persons immediately upon ratification.” The court found that the articles are intended merely “as a promise...
of future action by the member nations.”155 Most federal and state courts have fully embraced the Sei Fuji specificity test.156

Several commentators have criticized Sei Fuji’s analysis and urged that it be rejected.157 While the Supreme Court has never expressly addressed the United Nations Charter’s domestic enforceability, it is noteworthy that in Oyama v. California,158 four Supreme Court Justices endorsed the idea that the Charter should be binding on United States courts.159

To counter the courts’ position and to achieve direct enforcement of Articles 55 and 56 and other specific human rights norms, human rights groups have advanced the argument that the various United Nations human rights conventions, in particular those documents making up the International Bill of Rights,160 are authoritative interpretations of Charter provisions.161 Thus, these conventions afford sufficient specificity to make the Charter provisions self-executing.162 The success of this theory in domestic courts will depend on whether the language in the interpreting documents is sufficiently precise and generally accepted.163 For this reason, civil and political rights such as the right to be free from torture, are more likely to be enforceable as authoritative interpretations of Articles 55 and 56, than social, economic, and cultural rights.

b. The International Covenant on Civil and Political Rights

In its ratification of the Covenant on Civil and Political Rights, the United States included a declaration stating that Articles 1 through 27 of the Covenant are not self-executing.164 Furthermore, no legislation implementing the Covenant has been adopted.165 The declaration of *72 the United States has been heavily criticized because typically the courts, not the Senate, decide whether treaty provisions are self-executing.166 It thus seems questionable whether this declaration respects the principle of separation of powers. If the terms of the Covenant indicate that it is self-executing or if the declaration otherwise contravenes the purposes of the Covenant, then the declaration may not be binding on courts.167 While this question is not yet resolved, it seems clear that the declaration will put courts in a very difficult position if confronted with the question of the enforceability of the Covenant.168

B. Human Rights as Customary International Law: An Unlikely Possibility?169

Because of the above-mentioned limitations upon direct enforcement, advocates often resort to customary international law to argue that international human rights law should be given binding effect.170 Customary international law is defined as a consistent practice in which states engage out of a sense of legal obligation.171 In the United States, customary international law has the same status as treaty law and is incorporated into the “law of the land” pursuant to the Supremacy Clause of the United States Constitution.172 Thus, customary international law is regarded as a type of federal common law.173 The main advantage of customary international law over treaty law is that it binds all states, including those that do not recognize it, unless they have consistently objected to a specific customary norm as it emerged.174 Therefore, to circumvent the absence of the United States ratification of important human rights instruments, the advocate can try to establish that the particular rights she relies on are protected by customary international law.

The difficulty, however, lies in establishing that a norm is indeed customary international law. The task requires compiling an extensive array of authorities to show the widespread acceptance of the norm by the international community. These authorities include “the works of jurists, writing professedly in public law, . . . the general usage and practice of nations, . . . judicial decisions recognizing and enforcing that law,”175 international treaties, and declarations of states.176

This strategy has been used successfully in a few cases involving victims of gross violations of civil and political rights such as torture, prolonged arbitrary detention, summary execution, and disappearances.177 However, no case so far has dealt with social, economic, and cultural rights. The lack of widespread acceptance of these rights among governments indicates that courts will probably be very reluctant to agree that the social, economic, and cultural rights violated by homelessness, such as the right to adequate housing,178 represent customary international law. Moreover, due to the difficulty of compiling the necessary authorities, reliance on customary international law to litigate against homelessness seems ambitious, given the present state of international law.179

C. Human Rights Law as a Guide to Interpreting Domestic Law: Hope on the Horizon?
Perhaps the most realistic and effective litigation strategy is to suggest to a court that the norms of international human rights law are guides to interpreting federal, state, and local laws. This approach uses international human rights law not as an independent source of legally binding obligations, but as an interpretive aid to the application of domestic law. Judge Linde of the Oregon Supreme Court encourages lawyers to use this less ambitious, but potentially effective strategy, rather than to rely on binding treaty provisions, or on customary law:

> It is potentially a powerful argument to say to a court that a right which is guaranteed by an American constitutional provision, state or federal, surely does not fall short of a standard adopted by other civilized nations. It is a much more difficult, and riskier, argument to tell a court that it must displace some law of a state or of the United States, with an external international standard.

International human rights law has been used to assist in the interpretation of domestic law in many cases at all levels of jurisdiction, including the Supreme Court. In *Thompson v. Oklahoma,* for example, the Court prohibited the execution of an offender who was under sixteen at the time of his crime because the death sentence would constitute a cruel and unusual punishment under the Eighth Amendment. In reaching its conclusion, the Court referred to three major human rights treaties that explicitly prohibited juvenile death penalties. Two of those instruments were the International Covenant on Civil and Political Rights and the American Convention on Human Rights, to which the United States was not party at the time.

Several lower court decisions are of direct interest to the fight against homelessness. In *Boehm v. Superior Court,* a California appellate court held that a county is required to include clothing, transportation, and medical care when determining the amount of minimum subsistence granted under the Welfare and Institutions Code. In interpreting the statute, the court quoted Article 25 of the Universal Declaration of Human Rights.

In *Lipscomb v. Simmons,* a three-judge panel of the Ninth Circuit invalidated, based on the Due Process Clause of the Fourteenth Amendment, an Oregon statute that denied foster care funding to children living with close relatives but granted funds to children living with non-family members. The court based its decision on the constitutional right to associate with family members and the right of the extended family to live together. It supported its conclusion with references to the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, and the American Convention on Human Rights, even though these were not cited by the parties. However, the Ninth Circuit en banc reversed the panel decision on the grounds that the Oregon statute was rationally related to the legitimate purpose of maximizing the level of benefits available to all children in foster care.

Other cases have referred to international human rights law when requiring more stringent proof of necessity for the state to terminate parental rights, when holding education to be a fundamental right under a state constitution, when protecting the right to travel within a state, and in many other situations.

Thus, the use of international human rights law as an interpretive guide in the fight against homelessness could enhance the effectiveness of federal and state laws relating to the right of access to basic needs such as adequate food, health, education, and housing. It is also highly recommended when litigating against anti-homeless policies and statutes, such as shelter closings and the restriction of access to public areas. Incorporating additional well-reasoned arguments based on international human rights law in a brief when litigating on behalf of the homeless demands only a minimal effort by the advocate, and the cases discussed above, as well as many others, show that it can make a difference.

**CONCLUSION**

International human rights law is a mechanism through which rights that provide for the basic needs of this nation’s people can be recognized and situations that negate the fundamental dignity of human beings can be eliminated. Homelessness is one of these situations. The rights implicated by homelessness are economic, social, and cultural in nature, such as the right to adequate housing, as well as civil and political in nature, such as the right to life. These rights are recognized and
protected by numerous international human rights instruments. Contrary to widespread misconceptions, international human rights law is not merely aspirational but is the source of definable individual rights and state obligations.

However, much remains to be done to make international human rights law an effective tool in the hands of those litigating against homelessness. The United States must become party to the International Covenant on Economic, Social and Cultural Rights and other major international instruments without declaring them non-self-executing. Courts must affirm their authority to interpret and apply the norms already binding the United States, including those norms found in customary international law, Articles 55 and 56 of the United Nations Charter, the International Covenant on Civil and Political Rights, and the other instruments to which the United States is party. In this regard, the doctrine of self-execution remains a major obstacle. Advocates, however, should not let the limits of direct enforcement prevent them from using international human rights norms as persuasive and interpretive tools in the fight against homelessness. For example, international human rights norms may be useful persuasive tools when advocating legislative or policy reform. In terms of current litigation strategies, the use of international human rights law as a guide to interpreting domestic law seems to be the most effective strategy. An assessment of this strategy will only be possible if more litigators are willing to make arguments based on international human rights law in their briefs.

Footnotes

1 Mary Ellen Hombs, Reversals of Fortune: America’s Homeless Poor and Their Advocates in the 1990s, 17 NEW FORMATIONS 109, 125 (1992). Mary Ellen Hombs is director of the legal services and homelessness task force at the National Housing Law Project in Washington, D.C. She was formerly a member of the Community for Creative Non-Violence, one of the most well-known homelessness advocacy groups in the United States.

2 Universal Declaration of Human Rights, G.A. Res. 217 (III), art. 25(1), U.N. Doc. A/810 (1948) [hereinafter Universal Declaration]. In addition, Article 23 provides:
Everyone who works has the right to just and favorable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.
Id. art. 23(2).


4 See infra part II.


6 For the purpose of this work, the word homeless refers to those who are “literally homeless” (living on the street or in homeless shelters, hotels, or motels), as well as to those who are “precariously housed” (threatened with becoming literally homeless because of a tenuous hold on unsafe, overcrowded, or unaffordable housing). For a discussion of the definition of homelessness, see Ronald C. Slye, Community Institution Building: A Response to the Limits of Litigation in Addressing the Problem of Homelessness, 36 VILL. L. REV. 1035, 1045 n.59 (1991).

7 In addition to aiding litigation strategies, see infra part II.C., international human rights law may also be a useful persuasive tool in advocating legislative or policy reform, educating the public, and empowering those living in poverty themselves.
FIGHTING HOMELESSNESS: CAN INTERNATIONAL..., 2 Geo. J. on Fighting...


11 See RESTATEMENT (THIRD) OF FOREIGN RELATIONS § 701 (1986).

12 In United States courts, several obstacles hinder direct enforcement of international human rights law. See infra part II.A.

13 See infra part II.A.2.a for a discussion of the U.N. Charter’s status in the United States’ legal system.

14 Optional Protocol, supra note 10.


17 On the question of the enforceability of the Universal Declaration and the American Declaration, see infra part II.A.1.

18 For a discussion of customary international law, see infra part II.A.2.

American Declaration, supra note 9.


In this, the “Four Freedoms Speech,” Roosevelt envisioned “a world founded upon four essential human freedoms”: freedom of speech and expression, freedom of every person to worship God in his own way, freedom from want, and freedom from fear. 87 CONG. REC. 44, 46-47 (1941). In his 1944 State of the Union Message, Roosevelt elaborated on the substance of freedom from want in what he called “a second Bill of Rights,” containing, among others, “[t]he right to a useful and remunerative job . . . ; [t]he right to earn enough to provide adequate food and clothing and recreation; . . . [t]he right of every family to a decent home; [t]he right to adequate medical care . . . ; [t]he right to adequate protection from the economic fears of old age, sickness, accident, and unemployment; [t]he right to a good education.” 90 CONG. REC. 55, 57 (1944).


The Article states in its entirety:

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international cooperation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

Universal Declaration, supra note 2, art. 22.28.

Id. art. 25.

Article 25 states in its entirety:

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

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

Id. art. 25.

As illustration of the applicability of international human rights norms to domestic social situations, section 2 of Article 25 may be relevant to those questioning the efficacy of “welfare reform.” Cf. Orphanages Are No Solution, N.Y. TIMES, Dec. 12, 1994, at A18 (editorial) (“There are more . . . humane . . . solutions for dealing with dependant children [of unwed mothers] than institutions like orphanages.”)

American Declaration, supra note 9, art. 11.

Id.

International Convention on the Rights of the Child, supra note 10. The United States has neither signed nor ratified the Convention and is therefore not directly bound by it. However, the Convention could be used to interpret Article 24 of Covenant
on Civil and Political Rights, to which the United States is party. Article 24(1) of that Convention states: “Every child shall have, without any discrimination . . . , the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.” Convention on Civil and Political Rights, supra note 3, art. 24(1). For the discussion of civil and political rights, see infra part I.C.

International Convention on the Rights of the Child, supra note 10, art. 27(1), (3).

Id. at 170.


Another particularly illuminating instrument is the Vancouver Declaration on Human Settlement. Supra note 8. The instrument serves to combine the goals and states’ duties set forth in the Universal Declaration of Human Rights and the International Convention on the Elimination of All Forms of Racial Discrimination. It directs states to implement direct assistance and self-help, community-based programs designed to ensure that all individuals have adequate shelter and social services. Id. § III(8). Further, it encourages states to create racially, ethnically, and socioeconomically balanced communities as a way of establishing and maintaining racial and social equality. Id.

In addition, in 1989 the General Assembly of the United Nations unanimously adopted a resolution on the Global Strategy for Shelter to the Year 2000. Supra note 8. The resolution is a general and broad affirmation that all states without exception have some form of obligation in the shelter sector.

See SCOTT LECKIE, HUMAN SETTLEMENTS PROGRAMME, INTERNATIONAL INSTITUTE FOR ENVIRONMENT AND DEVELOPMENT, FROM HOUSING NEEDS TO HOUSING RIGHTS: AN ANALYSIS OF THE RIGHT TO ADEQUATE HOUSING UNDER INTERNATIONAL HUMAN RIGHTS LAW 17 (1992). See also supra notes 16-18 and accompanying text.

Covenant on Economic, Social and Cultural Rights, supra note 5. The United States has signed but not ratified the Covenant, see infra note 134, and is therefore not directly bound by it. For further discussion of the status of the Covenant in domestic law, see infra part II.

Covenant on Economic, Social and Cultural Rights, supra note 5, art. 11(1) (emphasis added).


The Optional Protocol to the International Covenant on Civil and Political Rights institutes an individual complaint mechanism for citizens against their own state for alleged violations of the Covenant on Civil and Political Rights. Optional Protocol, supra note 10, art. 2. The Human Rights Committee has jurisdiction over these complaints. See infra note 100. No such mechanism exists to address violations of the Covenant on Economic, Social and Cultural Rights. See infra notes 43-44 and accompanying text.

The reporting obligation is the only compliance mechanism in the Covenant. The Covenant does not give any detail on the nature or periodicity of the reports to be submitted by states. See Covenant on Economic, Social and Cultural Rights, supra note 5, arts. 16-22. The Committee on Economic, Social and Cultural Rights has issued detailed guidelines and requires states to present reports every five years. Regarding the right to adequate housing, the guidelines ask states to provide detailed information including the national housing situation of vulnerable and disadvantaged groups. The Committee thus requires reporting of the number of homeless individuals and families, the number of the inadequately housed, the number of persons lacking protection against arbitrary eviction, and the number of persons whose housing expenses are above the limit of affordability defined as a ratio of income. Revised Guidelines Regarding the Form and Contents of Reports to be Submitted by States Parties under Articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights, U.N. ESCOR Committee on Economic, Social and Cultural Rights, 5th Sess., Supp. No. 3, Annex IV, ¶ 3, U.N. Doc. E/C.12/8 (1990) [hereinafter Reporting Guidelines]. The Committee also request information on laws affecting the realization of the right to housing such as land use, tenant rights, building codes, and anti-discrimination legislation, and measures taken by states parties to promote the right to housing such as affordable housing units built. Id. at 102-103. Additionally, states parties are asked to report and evaluate their policies, laws, and practices that may have negative impact on the right to adequate housing. Id. at 103.


Id. ¶ 8(a). The Covenant applies whether the accommodation arrangement is public or private, lease or owner-occupation, formal, informal, or emergency occupation.

Id. ¶ 18. See also Reporting Guidelines, supra note 44, ¶ 3 (requesting statistical information on “persons lacking legal protection against arbitrary eviction or any other kind of eviction”).

General Comment No.4, supra note 45, at ¶ 8(b).

Id.

Id. ¶ 8(c).

Id.

Id. ¶ 8(d).

Id. ¶ 8(e).

Id. ¶ 8(f).

Id.

Id. ¶ 8(g).

The Right to Adequate Housing: Progress Report Submitted by Mr. Rajindar Sachar, Special Rapporteur, U.N. Commission on
Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities, U.N. Doc. E/CN.4/Sub.2/15 (1993) [hereinafter U.N. Report on the Right to Adequate Housing]. On the nature and purpose of economic, social, and cultural rights, the following excerpt from a commentator is illuminating: “The individual [or family] is expected, wherever possible through her or his own efforts and by use of his or her own resources, to find ways to ensure the satisfaction of his or her own needs, individually or in association with others.” Asbjorn Eide, Article 25, in UNIVERSAL DECLARATION ON HUMAN RIGHTS: A COMMENTARY 385, 387 (Asbjorn Eide et al. eds., 1992).

Covenant on Economic, Social and Cultural Rights, supra note 5, art. 2(1).

RESTATEMENT (THIRD) OF FOREIGN RELATIONS, supra note 11, § 701 n. 11.


U.N. Report on the Right to Adequate Housing, supra note 57. See also LECKIE, supra note 38, at 28-30.

Limburg Principles, supra note 60, at princ. 16 (“All states parties have an obligation to begin immediately to take steps towards full realization of the rights contained in the covenant.”). LECKIE, supra note 38, at 28.


Id. ¶ 52.

Id. ¶ 50. Preparatory documents and debates show, however, that legislative measures are not mandatory, except in the case where existing legislation is in violation of obligations assumed under the covenant. LECKIE, supra note 38, at 28.


Id. ¶ 56.

Id. ¶ 60.

Id.; General Comment No. 3, supra note 60, ¶ 10.

U.N. Report on the Right to Adequate Housing, supra note 57, ¶ 57; General Comment No.3, supra note 60, ¶ 10. For a more detailed analysis of these words, see Limburg Principles, supra note 60, at princs. 25-28.

LECKIE, supra note 38, at 29-30.
72 \textit{Id.} at 30.

73 \textit{U.N. Report on the Right to Adequate Housing, supra} note 57, ¶ 58; Alston & Quinn, \textit{supra} note 60, at 166.

74 \textit{U.N. Report On The Right To Adequate Housing, supra} note 57, ¶ 59; General Comment No. 3, \textit{supra} note 60, at ¶ 9.


76 \textit{Id.}

77 \textit{Id.} ¶ 62. However, the United States' declaration of non self-execution accompanying its ratification of the International Covenant on Civil and Political Rights clearly endangers the legal status of the rights recognized in the Covenant, since it limits their enforceability in domestic courts. \textit{See infra} part II.A.2.

78 \textit{U.N. Report on the Right to Adequate Housing, supra} note 57, ¶ 66. This obligation specifically enjoins the state from endorsing forced or arbitrary eviction. \textit{Id.} ¶ 67.

79 \textit{Id.} ¶¶ 62-63.

80 \textit{Id.} ¶ 69.

81 \textit{Id.} ¶ 70.

82 \textit{Id.} ¶ 72.

83 \textit{Id.} ¶ 70.

84 \textit{Id.} ¶ 73; \textit{LECKIE, supra} note 38, at 64.

85 \textit{U.N. Report on the Right to Adequate Housing, supra} note 57, ¶ 78.

86 \textit{Id.} ¶ 78.

87 \textit{Id.} ¶ 74; \textit{LECKIE, supra} note 38, at 65.

88 Covenant on Economic, Social and Cultural Rights, \textit{supra} note 5, art. 2(2).

89 \textit{Id.} art. 2(1).

90 \textit{Limburg Principles, supra} note 60, at princ. 40.
91 Gary Blasi, *And We Are Not Seen: Ideological and Political Barriers to Understanding Homelessness*, 37 AM. BEHAVIORAL SCIENTIST 563, 575-79 (1994) (showing that, while African Americans constitute approximately 12.1% of the United States population in 1990, recent surveys of the homeless population found that between 39 and 47% of those living in shelters and on the streets are African American). *See also* Peter H. Rossi, *Troubling Families: Homeless Families in America*, 37 AM. BEHAVIORAL SCIENTIST 342, 358-65, 380 (1994) (showing that minority groups are disproportionately overrepresented among homeless families).

92 Covenant on Civil and Political Rights, *supra* note 3.

93 For a comparison between the United States federal and state constitutions and the Universal Declaration of Human Rights, see *WRONKA, supra* note 24.

94 For example, the Bill of Rights enumerates the civil and political rights deemed most essential in the American political system. *U.S. CONST. amends. I-X*.

95 *See NEWMAN & WEISSBRODT, supra* note 41, at 385-90 and sources cited *infra* note 138.

96 *FIERENS, supra* note 26, at 139-48; *LECKIE, supra* note 38, at 41-52.


98 For a list of recent reports on the deaths of homeless people, see Leonard Adler, *SOS for SSI: The Unfulfilled Promise to Homeless Americans*, 1 GEO. J. ON FIGHTING POVERTY 304, 316 n.1 (1994).


100 The Human Rights Committee is an independent body of experts created under Article 28 of the Covenant. Covenant on Civil and Political Rights, *supra* note 3, art. 28.


102 *Id.*

103 *Id.* Similarly, the European Commission on Human Rights, a tribunal that receives individual complaints under the European Convention for the Protection of Human Rights and Fundamental Freedoms, has ruled that the right to life imposes on states an obligation to take measures necessary to protect life. Association X v. United Kingdom, 14 Eur. Comm’n H.R. 78 (1978) However, it left open the extent to which a state is required to act. *Id.; see FIERENS, supra* note 26, at 132. The European Commission has also left open the question of whether states must provide free medical services when the life of a person is endangered. *See X v.*
Ireland, 7 Eur. Comm’n H.R. 78 (1976). In X v. Ireland the Commission ruled the complaint ineligible for review since the plaintiff was already receiving free medical care from the government. Id.

Mullin v. Administrator, Union Territory of Delhi, 1 S.C.C. 608, 618-19 (India 1981).

Tellis v. Bombay Municipal Corp., 3 S.C.C. 545, 575 (India 1985). Although it prevented the eviction, it does not seem that the Court required the municipal authority to take affirmative measures to provide the plaintiffs housing.

Id.

The extent that the right is enforceable will be discussed in part II of this article.

See Rossi, supra note 91, at 366.

Id. at 349, 379 (defining precariously housed families as those headed by a single parent with an income below 51% of the poverty line).

Covenant on Civil and Political Rights, supra note 3, art. 17(1). Accord Universal Declaration, supra note 2, art. 12; American Convention on Human Rights, supra note 10, art. 11; European Convention for the Protection of Human Rights and Fundamental Freedoms, supra note 21, art. 8.

Rossi, supra note 91, at 371-72.

Id. at 358-65, 379.

Covenant on Civil and Political Rights, supra note 3, art. 17; MANFRED NOWAK, U.N. COVENANT ON CIVIL AND POLITICAL RIGHT: CCPR COMMENTARY 289 (1993). As a rule, international human rights law only regulates the relationship between the individual and the state. This is called the vertical effect of a treaty. Id. Some provisions however, such as the one discussed here, also create an enforceable right in relationships between private parties. The treaty is then said to have a horizontal effect. Id.

The analysis of “arbitrary interference” necessary for litigation requires a level of treatment beyond the scope of this article. For such an analysis, see id. at 287-307.

Covenant on Civil and Political Rights, supra note 3, art. 23. Accord Universal Declaration, supra note 2, art. 16; American Convention on Human Rights, supra note 10, art. 17.

See NOWAK, supra note 113, at 406-07.

Id.

Covenant on Civil and Political Rights, supra note 3, art. 12(1). Accord Universal Declaration, supra note 2, art. 13; American Declaration, supra note 9, art. 8; American Convention on Human Rights, supra note 10, art. 22.


Id. at 203.

Covenant on Civil and Political Rights, supra note3, art. 12(3).


Id. at 1583.

Id. at 1584.


The Supremacy Clause provides in full:
This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitutions or Laws of any State to the Contrary notwithstanding.
U.S. CONST. art. VI, § 2 (emphasis added).


See generally part I.

President Johnson signed the Convention on the Elimination of All Forms of Racial Discrimination in 1966; President Carter signed the other three conventions.


In June 1993, on the opening day of the first World Conference on Human Rights in 25 years, Secretary of State Warren Christopher announced that the Clinton Administration would press for the ratification of the Convention on the Elimination of All


As of this writing, the resolution has nearly fifty co-sponsors. Rumors are also circulating in the human rights community that the State Department is about to issue a memo recommending that the President sign the Convention.

See supra note 134.


Article 55 states:
The United Nations shall promote. . . universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion.
U.N. CHARTER art. 55.

Article 56 states:
All members pledge themselves to take joint and separate action in cooperation with the Organization for the achievement of the purposes set forth in Article 55.
U.N. CHARTER art. 56.

This argument was endorsed by Judge Tanaka of the International Court of Justice in The South West Africa Cases (Ethiopia v. South Africa, Liberia v. South Africa), 1966 I.C.J. 6, 293 (Tanaka, J., dissenting), cited in NEWMAN & WEISSBRODT, supra note 41, at 582-83.

In the Case Concerning United States Diplomatic and Consular Staff in Tehran, the Court said:
Wrongfully to deprive human beings of their freedom and to subject them to physical constraint in conditions of hardship is in itself manifestly incompatible with the principles of the Charter of the United Nations, as well as with the fundamental principles enunciated in the Universal Declaration of Human Rights.
Case Concerning United States Diplomatic and Consular Staff in Tehran (United States v. Iran), 1980 I.C.J. 3, 42 (May 24) (emphasis added). See also, Advisory Opinion on the Legal Consequences for States of the Continued Presence of South Africa in Namibia, 1971 I.C.J. 16, 57 (June 21). Decisions of the International Court of Justice are binding only as between the parties before the Court. Statute of the International Court of Justice, June 26, 1945, art. 59, 59 Stat. 1055, 1062. (All Member States of the United Nations are automatically parties to the Statute of the I.C.J. U.N. CHARTER art. 93.) However, its decisions comprise a source of international law, see art. 38(1), 59 Stat. at 1060, and enjoy the authority and prestige attached to the Court. Similarly, although advisory opinions of the Court have no binding effect, they too have persuasive authority in international law.

NEWMAN & WEISSBRODT, supra note 41, at 582 n.14. The doctrine of self-executing treaties will be discussed in the next section.

See, e.g., Case 2141, Inter-Am. C.H.R. 25, OEA/ser.L./VII.54, doc. 9, rev. 1, at nn.15-17 (1981), cited in NEWMAN & WEISSBRODT, supra note 41, at 262. The Inter-American Court has not yet explicitly confirmed this position but has stated in an advisory opinion: “That the Declaration is not a treaty does not thus import the conclusion that it lacks legal effect.”
Even if a court were to adopt the position of the Inter-American Commission, it may not find the relevant provisions to be self-executing.

In the case that lead to Advisory Opinion OC-10/89 the United States told the Court that the Declaration “was not drafted as a legal instrument” and therefore did not carry “a binding set of obligations.” NEWMAN & WEISSBRODT, supra note 41, at 303 n.2 (Supp. 1993).

For a list of the international human rights treaties to which the U.S. is party, see Bayefsky & Fitzpatrick, supra note 128, at 4 n.7.

Foster v. Neilson, 27 U.S. 253, 256 (1829). The Court reasoned that “a treaty is in its nature a contract between two nations, not a legislative act. It does not generally effect of itself the object to be accomplished, especially so far as its operation is infra-territorial, but is carried into execution by the sovereign power of the respective parties to the instrument.” Id.

Id. By comparison, the question of whether constitutional provisions must be implemented by legislation has been answered negatively. See, e.g., Brown v. Board of Education, 347 U.S. 483 (1954) (The equal protection clause of the Fourteenth Amendment prohibits racial segregation of public schools without further legislative action.).

See, e.g., Cook v. United States, 288 U.S. 102, 119 (1933).

Frolova v. U.S.S.R., 761 F.2d 370, 373 (7th Cir. 1985).

See supra part II.A.1.

See id.; NEWMAN & WEISSBRODT, supra note 41, at 583 n.14 (collecting sources).

242 P.2d 617 (Cal. 1952).

Id. at 622.

Id.

See, e.g., Hitai v. INS, 343 F.2d 446, 468 (2d Cir. 1965); Davis v. INS, 481 F. Supp. 1178, 1183 n.7 (D.D.C. 1979). However, the holding of Sei Fuji has dubious precedential value because the statements about the non-self-executing character of the Charter provisions were dicta. People v. Mirmirani, 636 P.2d 1130, 1138 n.1 (Cal. 1981) (Newman J., concurring). In general, courts reason that Articles 55 and 56 are phrased in general terms that are hortatory and create obligations enforceable only through political and diplomatic processes. See, e.g., Frolova, 761 F.2d at 374-75.

332 U.S. 633 (1948).

Id. at 649-50 (Black, J., concurring); see Strossen, supra note 157, at 814.

See supra part I.1.

See supra notes 139-40 and accompanying text.

See NEWMAN & WEISSBRODT, supra note 41, at 582 & n.14.

Id. at 583.


Asked in private about the prospects of implementing legislation being adopted, a person working for the State Department on the compliance report that the United States must submit under the Covenant answered: “There will never be implementing legislation.” Interview with Employee of the State Department assigned to the Covenant Compliance Report, in Washington, D.C. (Spring 1994). Of course, whether such legislation will be passed ultimately depends on Congress and not on the State Department. Nevertheless, such comments are illustrative of the state of mind within the administration.


This darkens the prospects of successfully using the theory of the indivisibility of human rights on behalf of the homeless since the binding force of the Covenant itself is questionable.

This section is no more than a functional outline of the problem; for more detail, see Bayefsky & Fitzpatrick, supra note 128, at 3-33 and NEWMAN & WEISSBRODT, supra note 41, at 594-620.

Bayefsky & Fitzpatrick, supra note 128, at 47.

RESTATEMENT (THIRD) OF FOREIGN RELATIONS, supra note 11, § 102.

The Paquete Habana, 175 U.S. 677, 700 (1900).

174 Bayefsky & Fitzpatrick, supra note 128, at 3.


176 See Case Concerning Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v. United States), 1986 I.C.J. 14, 97, 123 (June 27) (finding that the United States’ adoption of the Helsinki Final Act at the Conference on Security and Cooperation in Europe, Aug. 1, 1975, 14 I.L.M. 1292, signifies “the existence and the acceptance by the U.S., of a customary principle [of non-intervention,] which has universal application”).


178 Covenant on Economic, Social and Cultural Rights, supra note 5, art. 11(1).

179 See NEWMAN & WEISSBRODT, supra note 41, at 596. Customary international law constantly evolves. The conclusion that a norm has not achieved the status of customary international law does not preclude the possibility of future use.


181 Bayefsky and Fitzpatrick, supra note 128, at 72-76.


183 Id. at 838 (plurality opinion).

184 Id. at 831 n.34.

185 The Court also looked to the Geneva Convention Relative to the Protection of Civilian Persons in Times of War, Aug. 12, 1949, 6 U.S.T. 3516, to which the United States was party.

186 223 Cal. Rptr. 716 (Ct. App. 1986).

187 Id. at 721.

188 Id., quoting Universal Declaration, supra note 2, art. 25(1). For the text of Article 25(1) of the Declaration, see supra note 29 and accompanying text.

189 884 F.2d 1242 (9th Cir. 1989).

190 Id. at 1249-50.
191 *Id.* at 1244 n.1 (“This right is so fundamental that it has been recognized by the Universal Declaration of Human Rights . . . ”). *See also* Bayefsky & Fitzpatrick, *supra* note 128, at 79; Newman & Weissbrodt, *supra* note 41, at 669.

192 Lipscomb v. Simmons, 962 F.2d 1374, 1384 (9th Cir. 1992).


197 *See supra* Part I.C.


199 On the limited role the courts can play in the fight against homelessness and the danger of relying on judicial decisions for social change, see Davis, *supra* note 127.