

As an expert in International Law and Human Rights, I consider that the proposed footnote, if it is taken in its strict literal terms, is unnecessary. However, the footnote creates a problematic legal ambiguity. For those reasons I think the footnote should be deleted.

The footnote is technically unnecessary because it only reminds the difference between a treaty, which is a binding instrument for those States that are parties of it, and a UNGA declaration which is, in formal terms, a non-binding document. Besides, it is clear that the endorsement of a State of a text which makes reference to a previous treaty that this State has not ratified does not imply that this State is thus ratifying the treaty in question. The same can be said, *mutatis mutandi*, in relation to a text that makes reference to a UNGA declaration that this State has not voted in favor previously. These are obvious points.

However, the footnote suggests that a UNGA declaration can never become binding and is totally irrelevant for a State, unless this State explicitly declares its support for that declaration. However those two conclusions are wrong in international law.

First, today it is accepted that the Universal Declaration of Human Rights, which was originally a non-binding UNGA declaration, has become globally binding, either as part of customary international law or as an expression of general principles of law accepted by civilized nations (Art 38 Statute of ICJ). This declaration is thus binding for all States, including many that never voted in favor of the declaration or that have never expressed formally a support for the declaration.

Second, a UNGA declaration is part of the so called soft law and as such has some legal relevance in international law. The reason is that such declarations express an emerging consensus of States and the international community on an important point of law, especially in the Human Rights field. States have a duty to fulfill, in good faith, their obligation to take joint and separate action in co-operation with the United Nations to achieve universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion, according to articles 1, 2, 55 and 56 of the United Nations Charter. Thus, even if it is a UNGA declaration is a non-binding instrument, it is a document that deserves some respect and deference by all States according to these principles of the United Nations

Charter. Thus, these declarations can have some legal relevance even for States that have not endorsed them explicitly.

Of course, the legal effect of different UNGA declarations is not the same. It depends on several factors, such as the degree of support in the GA, the acceptance by Courts and human rights treaty bodies, a later endorsement by other States, and so forth. The legal effect of a UNGA can be also different for different countries. In that sense, the fact that a specific State has not voted in favor a UNGA is not irrelevant and that is accepted by international law. However, the footnote suggests that a UNGA can never have any legal relevance on States that have not endorsed it and that is simply wrong.

I think that it is better to suppress a footnote that is technically unnecessary and at the same time creates legal ambiguity.

*Rodrigo Uprimny is member of the CESCR, member of the ICJ and professor emeritus at the National University in Colombia. Mr Uprimny clarifies that this opinión is not made officially in the name of the CESCR; however, he considers that most members of the CESCR agree with it.*