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Resist attempts to dilute our human rights

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Professor Hilary Charlesworth

Sixty years after the UN's declaration, its principles are still under threat.

THE 60th anniversary of the adoption of the Universal Declaration of Human Rights by the UN General Assembly will be celebrated on December 10. For the first time, a general catalogue of the rights of individuals was made the explicit subject of international standards. The then president of the General Assembly, Australia's 'Doc' Evatt, predicted that "millions of people, men, women and children all over the world, would turn to it for help, guidance and inspiration".

The UDHR is the umbrella for the modern international human rights system, comprising general and specific human rights treaties at international and regional levels. All countries have ratified at least one of the UN's human rights treaties; indeed 80% of UN members have ratified four or more. The UDHR is also the basis of constitutional rights guarantees in 90 countries, although it is not yet fully implemented in Australia.

A 60th birthday is usually the moment to celebrate a life well lived, but this is not an apt measure for the UDHR. It was and remains a controversial document. One controversy has dogged the UDHR since its adoption – can it claim universal application in a world marked by religious, cultural and civilisational differences?

The future of the declaration involves balancing the power of universal ideals with the inevitable specificity of their translation in particular local contexts. But claims that human rights do not acknowledge cultural difference are overplayed and are regularly used as a gambit for governments to avoid human rights scrutiny.

Although experts from many nations were involved in drafting the UDHR, some countries argued that the UDHR was a Western enterprise and recent debates at the UN show that the issue of universality is still contested. Last year the UN Human Rights Council adopted a resolution, introduced by Pakistan, entitled "Combating defamation of religions". The resolution encourages states to prohibit criticism of religion and focuses on Islam in particular. The religious defamation issue was framed as one of Western rights against Islamic values.

The resolution conflicts with the protections of freedom of thought, belief, opinion and expression set out in the UDHR and later human rights treaties. It contains no criteria to determine when freedom of speech crosses over into unacceptable religious defamation. While international human rights standards accept the possibility of limitations on freedom of opinion and expression, for example to protect public order or public health, it is not clear why religions should be protected against criticism.

Although it is clear that there has been inadequate attention given to understanding Islam in the West, the resolution seems more intent on protecting religious ideas rather than individuals' right to religious freedom.

Attacks on the universality of human rights are also common in the West, although they are not usually pitched in these terms. Western governments regularly find international human rights standards as irksome and confronting as non-Western governments.

The conduct of the "war of terror" in particular has led Western governments to resist the universal application of the UDHR. One local example is the 2005 amendments to the Commonwealth Criminal Code, enacted after the London bombings. These amendments rest on a very broad definition of terrorism and introduced preventative detention orders and control orders and expanded the definition of sedition.

The Australian laws raise serious human rights questions: both preventative detention and control orders are mechanisms that are inconsistent with the rule of law and with human rights principles such as the right to a fair trial and the right not to be arbitrarily detained. The sedition provisions are inconsistent with international guarantees of freedom of speech. As Conor Gearty argued in his 2006 Oxford Amnesty Lecture, the war against terrorism is built on a division of the world into "good" and "evil" camps. The idea of human rights developed over the past 60 years is that human rights attach to every person.

The new wave of anti-terror laws undermine this development by establishing categories of people who are unable to claim the full protection of basic rights because they have been tarred as "terrorists".

So, we can see that the universality of human rights remains controversial 60 years after the adoption of the UDHR.

All types of governments tend to stake out areas in which recourse to human rights standards is suspect. In this sense, the UDHR remains a radical document.

We should hold onto the ideal of universality in the human rights area.

Universal principles can accommodate pluralism and cultural diversity while embodying a commitment to a flourishing human life.

The idea of universal human rights is valuable also in that it makes us scrutinise opposing claims of culture carefully.

Whenever exceptions to human rights based on cultural difference are proposed, we should investigate the political agenda of the culture claim.

Professor Hilary Charlesworth is Professor of International Law and Human Rights at the ANU. Tonight she will deliver the 2008 Annual Lecture for the Centre for Dialogue, La Trobe University, at the Darebin Arts and Entertainment Centre in Preston. The lecture is open to the public.

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