

7-1-1994

Are Consumer Rights Human Rights?

Sinai Deutch

Follow this and additional works at: <https://digitalcommons.osgoode.yorku.ca/ohlj>



Part of the [Consumer Protection Law Commons](#)

Article



This work is licensed under a [Creative Commons Attribution-Noncommercial-No Derivative Works 4.0 License](#).

Citation Information

Deutch, Sinai. "Are Consumer Rights Human Rights?." *Osgoode Hall Law Journal* 32.3 (1994) : 537-578.
<https://digitalcommons.osgoode.yorku.ca/ohlj/vol32/iss3/4>

This Article is brought to you for free and open access by the Journals at Osgoode Digital Commons. It has been accepted for inclusion in Osgoode Hall Law Journal by an authorized editor of Osgoode Digital Commons.

Are Consumer Rights Human Rights?

Abstract

Consumer protection has gained great importance since World War II. Similarly, the concept of human rights has become increasingly prevalent. Substantive and procedural tests of human rights support the contention that the tendency toward broadening the definition of human rights allows us to include consumer rights within that definition. In a consumer-oriented society, protection of the individual consumer is perceived as part of maintaining human dignity-especially against big business organizations, monopolies, cartels, and multinational corporations. Well-accepted doctrines of human rights, therefore, such as the emphasis on an individual's prosperity, honour, and dignity, can serve as the basis for recognizing consumer rights as human rights. An examination of several basic international and national documents reveals that it is due time to acknowledge consumer rights as human rights.

Keywords

Consumer protection--Law and legislation; Consumers--Civil rights

Creative Commons License



This work is licensed under a [Creative Commons Attribution-Noncommercial-No Derivative Works 4.0 License](https://creativecommons.org/licenses/by-nc-nd/4.0/).

ARE CONSUMER RIGHTS HUMAN RIGHTS?®

By SINAI DEUTCH*

Consumer protection has gained great importance since World War II. Similarly, the concept of human rights has become increasingly prevalent. Substantive and procedural tests of human rights support the contention that the tendency toward broadening the definition of human rights allows us to include consumer rights within that definition. In a consumer-oriented society, protection of the individual consumer is perceived as part of maintaining human dignity—especially against big business organizations, monopolies, cartels, and multinational corporations. Well-accepted doctrines of human rights, therefore, such as the emphasis on an individual's prosperity, honour, and dignity, can serve as the basis for recognizing consumer rights as human rights. An examination of several basic international and national documents reveals that it is due time to acknowledge consumer rights as human rights.

La protection du consommateur a pris une position d'importance depuis la deuxième guerre mondiale. De la même façon, le concept des droits de la personne est devenu de plus en plus répandu. Des preuves substantives et fonctionnelles soutiennent l'assertion que le tendance à élargir la définition des droits de la personne nous permet d'y inclure les droits du consommateur. Dans une société qui apprécie le consommateur, on voit la protection du consommateur individuel comme intégrale au soutien de la dignité humaine—surtout contre les grandes organisations commerciales, les monopoles, les cartels et les corporations multinationales. Par conséquent, des doctrines acceptées à l'égard des droits de la personne, tels que la prospérité, l'honneur, et la dignité, peuvent bien servir de base dans la reconnaissance des droits du consommateur comme droits de la personne. Un examen de plusieurs documents internationaux et nationaux révèle qu'il est temps de reconnaître les droits du consommateur comme droits de la personne.

I. INTRODUCTION	538
II. WHICH RIGHTS ARE HUMAN RIGHTS?	544
A. <i>Difficulties of Definition</i>	544
B. <i>Procedure: Declaration by United Nations</i>	546
C. <i>Substance: Characteristics of Human Rights</i>	548
D. <i>Summary</i>	550
III. SUBSTANTIVE TESTS OF HUMAN RIGHTS	551
A. <i>Characteristics of Human Right</i>	551
B. <i>Consumer Rights as New Human Rights</i>	554

© 1995, Sinai Deutch.

* Professor of Law and former Dean, Bar-Ilan University, Emanuel Rackman Law Center, Yaacov Herzog Faculty of Law, Ramat Gan, Israel. The author would like to thank Dr. Yaffa Zilbershaz for helpful comments and Ms. Brenda Idstein for her editorial assistance.

IV. PROCEDURAL TESTS OF HUMAN RIGHTS	557
A. <i>Introduction</i>	557
B. <i>1948 Universal Declaration of Human Rights</i>	558
C. <i>1966 International Covenant of Economic, Social and Cultural Rights</i>	559
D. <i>1985 United Nations Guidelines for Consumer Protection (UNGCP)</i>	564
E. <i>Significance of International Recognition</i>	572
F. <i>Significance of Constitutional Recognition</i>	574
V. SUMMARY AND CONCLUSION	577

I. INTRODUCTION

After World War II, the recognition of consumer law as a separate branch of rules and principles developed.¹ This development was part of a profound social change in the attitude of individuals and governments, caused by the great increase in consumer goods and services.² In recent years, this attitude has led to a surge in the volume of consumer legislation throughout the world.³ Although today there is

¹ See, for example, B.W. Harvey & D.L. Parry, *The Law of Consumer Protection and Fair Trading*, 4th ed. (London: Butterworths, 1992) 1-6; J. Mickleburgh, *Consumer protection* (Abingdon, Eng.: Professional Books, 1979) 3-7; B.A. Curran, *Trends in consumer credit legislation* (Chicago: University of Chicago Press, 1965) 5-8; K. Dameron, "The Consumer Movement" in D.A. Aaker & G.S. Day, eds., *Consumerism: Search for the Consumer Interest*, 3d ed. (New York: Free Press, 1978) 21; and S. Deutch, "Contract Law and Consumer Protection Legislation" (1991) 9 Bar-Ilan L. Stud. 133 at 133-38 [in Hebrew].

² Mickleburgh, *ibid.* at 3; Curran, *ibid.* at 1; and Deutch, *ibid.* at 134.

³ For example, in Israel, see *Consumer Protection Law, 5741-1981*, 1981, 35 L.S.I. 298; *Banking (Service to Customer Law, 5741-1981*, 1981, 35 L.S.I. 312; *Insurance Contract Law, 5741-1981*, 1981, 35 L.S.I. 91; and *Defective Products (Liability) Law, 5740-1980*, 1980, 34 L.S.I. 92.

In the United Kingdom, see *Consumer Protection Act 1987* (U.K.), 1987, c. 43; *Consumer Credit Act 1974* (U.K.), 1974, c. 39; *Fair Trading Act 1973* (U.K.), 1973, c. 41; and *Prices Act 1974* (U.K.), 1974, c. 24. In the United States, see *Consumer Protection Act*, 15 U.S.C.S. §§ 1601-1693 (1988); *National Consumer Act* (Boston: National Consumer Law Center, 1970); and National Conference of Commissioners on Uniform State Laws, *Uniform Consumer Credit Code* (New York: CCH, 1974).

a strong movement toward deregulation,⁴ the general understanding is that consumer rights should be guaranteed, at least at their existing level. Despite changes of government, there is an agreement that consumer rights should remain protected.⁵

Human rights generally bind governments and administrative bodies, but they also have an *indirect* impact on individuals and on private law.⁶ Although some are of the view that human rights are irrelevant to private law,⁷ and others suggest that human rights can be directly applied to it,⁸ the more accepted view is that they should only be applied indirectly.⁹ Consumer rights, however, are legal rights¹⁰ that

⁴ Harvey & Parry, *supra* note 1 at 6-28.

⁵ Harvey & Parry, *ibid.* at 12-16; and J.A. Spanogle, "Regulation of the Bank-Customer Relationship in the United States" (1993) 4 J. Banking & Fin. L. & Practice 18 at 23. In Israel, during the 1980s and 1990s, the majority in the Knesset shifted several times. These changes had no influence on consumer legislation. Laws proposed by one government were approved in a Knesset under the majority of another party.

⁶ See A. Barak, "Protected Human Rights and Private Law" in I. Zamir, ed., *Klinghoffer Book on Public Law* (Jerusalem: Harry and Michael Sacher Institute for Legislative Research and Comparative Law, Hebrew University of Jerusalem, 1993) 163 [in Hebrew]. See also A. Barak, "Protected Human Rights: Scope and Limitations" (1993) L. & Govt. Israel 253 at 262 [in Hebrew].

⁷ See K. Swinton, "Application of the Canadian Charter of Rights and Freedoms: Commentary" in W.S. Tarnopolsky & G.-A. Beaudoin, eds., *The Canadian Charter of Rights and Freedoms* (Toronto: Carswell, 1982) 41; J.D. Whyte, "Is the Private Sector Affected by the Charter?" in L. Smith, et al., eds., *Righting the Balance: Canada's New Equality Rights* (Saskatoon: Canadian Human Rights Reporter, 1986) 145; and *R.W.D.S.U. v. Dolphin Delivery Ltd.*, [1986] 2 S.C.R. 573.

⁸ K.M. Lewan, "The Significance of Constitutional Rights for Private Law: Theory and Practice in West Germany" (1968) 17 Int'l & Comp. L.Q. 571 at 573-76; and "Protected Human Rights and Private Law," *supra* note 6 at 181-84.

⁹ D.P. Kommers, *The constitutional jurisprudence of the Federal Republic of Germany* (Durham: Duke University Press, 1989) at 368-77; D.P. Kommers, "The Jurisprudence of Free Speech in the United States and the Federal Republic of Germany" (1980) 53 So. Cal. L. Rev. 657; and "Protected Human Rights and Private Law," *ibid.* at 186-89 and at 193ff.

¹⁰ The literature on this subject is quite abundant. See Harvey & Parry, *supra* note 1; Mickleburgh, *supra* note 1; R. Cranston, *Consumers and the law*, 2d ed. (London: Weidenfeld & Nicholson, 1984); P.J. Aronstam, *Consumer protection, freedom of contract, and the law* (Cape Town: Juta, 1979); R. Lowe & G. Woodroffe, *Consumer Law and Practice*, 3d ed. (London: Sweet & Maxwell, 1991); N. Reich & H.-W. Micklitz, eds., *Consumer Legislation in the EC Countries: A Comparative Analysis* (New York: Van Nostrand Reinhold, 1981) [see also seven additional volumes, which review consumer legislation in Germany, France, Belgium & Luxembourg, Denmark, Netherlands, United Kingdom & Ireland, and Italy]; E.H. Hondius, *Unfair Terms In Consumer Contracts* (Utrecht: Molengratt Institute for Private Law, 1987); P.F. Smith & D. Swann, *Protecting the consumer: an economic and legal analysis* (Oxford: M. Robertson, 1979); and U. Bernitz & J. Draper, eds., *Consumer protection in Sweden: legislation, institutions, and practice*, 2d ed. (Stockholm: Institute of Intellectual Property and Market Law, Stockholm University, 1986); *Encyclopedia of Consumer Law* (London: Sweet & Maxwell, 1980).

bind both individuals and governments. This raises the question of what can be the advantage of recognizing consumer rights as human rights. It seems that, notwithstanding their legal status, consumer rights can still benefit from being acknowledged as human rights.¹¹

The thesis of this paper is that basic consumer rights should be considered human rights. The difficulty is that characterizing many values as human rights might weaken the idea and importance of human rights as compared to other legal rights. It has been argued that admission of new rights could create a damaging climate in terms of the value and validity of existing human rights.¹² Thus, the proclamation of new human rights can be justified only when the need is sufficiently great and when the chance of acceptance by the international community is strong.

Despite these considerations, I believe that consumer rights have reached a point that justifies a serious consideration of whether or not to recognize them as human rights. Opponents of additional human rights perpetuate the myth that human rights are limited in number.¹³ Their opinions are not shared by the entire international community, but instead reflect the American view.¹⁴ Certainly, if there is a readiness to acknowledge new rights,¹⁵ the international consensus that consumers should be protected¹⁶ mandates inclusion of consumer rights. The tendency to broaden the scope of various rights and to include the variants as constitutional rights furthers the argument. If basic consumer rights are not admitted as human rights, they will be overridden when in conflict with other constitutional rights. For instance, part of Israel's constitutional law is the new *Basic Law*:

¹¹ The subject of the possible effect of recognizing consumer rights as human rights is beyond the scope of this paper. In brief, the effect of recognition could influence the following issues: (1) creating additional legislation on consumer protection where such legislation is lacking; (2) promoting the enforcement of existing laws and regulations; (3) balancing consumer rights and other conflicting human rights, such as freedom of contract or freedom of occupation; (4) influencing governments and the judiciary to intervene within the existing legal rules and regulations; and (5) interpreting current legal rules to avoid conflict with other human rights. (Each of these statements can be supported, discussed, and elaborated upon; however, as noted, it is beyond the scope of this paper.)

¹² See P. Alston, "Human Rights and Basic Needs: A Critical Assessment" (1979) *Hum. Rts. J.* 19 at 39.

¹³ *Ibid.* at 45.

¹⁴ See section IV.C, below.

¹⁵ See S.P. Marks, "Emerging Human Rights: A New Generation for the 1980s?" (1981) 33 *Rutgers L. Rev.* 435 at 451.

¹⁶ See section IV.D, below.

*Freedom of Occupation.*¹⁷ This law states that every citizen may practise any occupation and that the freedom can be restricted only by a statute enacted for a proper cause and for the public benefit. The same principle applies to the right to obtain a licence to practise a certain trade. When a licence is denied for the purpose of consumer protection, it is possible that a court might decide that freedom of occupation, as a constitutional right, overrides consumer rights. Although freedom of occupation can be limited with proper cause, it is for the court to determine what constitutes a proper cause. When constitutional rights are under attack, the tendency of the court is to restrict their infringement. Acceptance of consumer rights as human rights, however, would enable them to become equal to the constitutional right of freedom of occupation. They would then be able to compete on an equal basis with other human rights values.

Consumer rights, it seems, have a better chance of being identified as human rights than some of the "new" rights. Rather than being entirely new rights, they are an elaboration and expansion of recognized economic rights. Such recognition, of course, will not be achieved without opposition, and it is possible that it is premature to characterize consumer rights as mandatory human rights. It is, therefore, advisable to acknowledge them at this stage as "soft" human rights.¹⁸ The notion of soft rights in the area of consumer law is a well-

¹⁷ Sefer Hachukim, 5752-1992, 114 [in Hebrew]. For an unofficial translation, see D. Kretzmer, "The New Basic Laws on Human Rights: A Mini-Revolution in Israeli Constitutional Law?" (1992) 2 Israel L. Rev. 238 at 247.

¹⁸ See Marks, *supra* note 15 at 437. He maintains that during the emergence of recognition of human rights there are stages when it is "difficult to distinguish ... between 'hard' law and 'soft' law." He also explains that sometimes it is difficult to separate emerging social values from well-established legal rules.

known concept.¹⁹ Because soft law is not mandatory, it has a better chance of being adopted without too much opposition.

Consumer rights derive mostly from private law, but they also include public law. Consumer law is a mixture of contract, tort, criminal, and administrative law.²⁰ Regardless of the ongoing debate as to the importance of the various components of consumer law,²¹ it is clear that consumer law includes private and public law, and substantive and procedural law.²² Identification of this area as human rights, therefore, might have a direct effect on the public aspect of consumer rights.²³

Formal recognition of international human rights is declared by international organizations and then published in international documents.²⁴ Consumer rights have not yet reached this stage. It is

¹⁹ See B. Stauder, J. Feldges & P. Mülbart, "Consumer Protection in Switzerland by Means of 'Soft Law' - Practices and Perspectives" (1984) 7 J. Consumer Policy 231; J. Stuyck, "Consumer Soft Law in Belgium" (1984) 7 J. Consumer Policy 125; J. Tala, "Soft Law as a Method for Consumer Protection and Consumer Influence. A Review with Special Reference to Nordic Experiences" (1987) 10 J. Consumer Policy 341; and W.A.W. Neilson, "Administrative Remedies: The Canadian Experience with Assurance of Voluntary Compliance in Provincial Trade Practices Legislation" (1981) 19 Osgoode Hall L.J. 153. See also S.J. Rubin, "Transnational Corporations and International Codes of Conduct: A Study of the Relationship between International Legal Cooperation and Economic Development" (1981) 30 Am. U.L. Rev. 903; and M. Schoepe, "International Regulation of Pharmaceuticals: A WHO International Code of Conduct for the Marketing of Pharmaceuticals?" (1984) 11 Syracuse J. Int'l L. 121. See additional sources: D. Harland, "The United Nations Guidelines for Consumer Protection" (1987) 10 J. Consumer Policy 245; N. Reich & L.J. Smith, eds., "Issue Editors' Foreword" (1984) 7 J. Consumer Policy 111; C.M. Chinkin, "The Challenge of Soft Law: Development and Change in International Law" (1989) 38 Int'l & Comp. L.Q. 850; and K.C. Wellens & G.M. Borchardt, "'Soft Law' in European Community Law" (1989) 14 Eur. L. Rev. 267.

²⁰ For instance, the Israeli *Consumer Protection Law, 5741-1981*, *supra* note 3, includes contractual remedies (s. 32), tort remedies (s. 31), criminal sanctions (s. 23), and administrative remedies (ss. 28 and 30). The same variety of remedies exist in other areas of consumer protection, such as banking, insurance, and sale of apartments.

²¹ Some argue that private law, and especially contract law, is an important tool to consumer protections. See Deutch, *supra* note 1. Others argue that contract law is not a suitable tool for consumer protection. See J. Goldring, "Consumer Law and Legal Theory: Reflections of a Common Lawyer" (1990) 13 J. Consumer Policy 113 at 121-23; and Sir G. Borrie, *The development of consumer law and policy—bold spirits and timorous souls* (Agincourt, Ont.: Carswell, 1984).

²² Procedural rights are no less vital to consumer protection than are substantive rights. They are primarily those rights that enhance access to justice. See S. Deutch, "The Small Claims Court in Israel as a Shield to Consumers" (1982) 8 Tel-Aviv Univ. L. Rev. 345 at 346ff [in Hebrew]; and G.D.S. Taylor, "Special Procedures Governing Small Claims in Australia" in M. Cappelletti & J. Weisner, eds., *Access to Justice*, vol. 2, book 2 (Milan: Giuffrè, 1979) 595.

²³ The *Consumer Protection Law, 5741-1981*, *supra* note 3, contains mostly criminal and administrative sanctions. Various licensing requirements for the purpose of consumer protection are certainly administrative regulations.

²⁴ See section IV.A., below.

argued that such recognition is due, and the purpose of this paper is to supply the theoretical background for that recognition. The decision of which rights should be categorized as human rights is basically political; consequently, the importance of a theoretical background is questionable. It has been argued that a new human right cannot be developed until a proper theory has been established. On the other hand, the notion that human rights should be developed solely upon a theoretical plan can lead to total inaction. In reality, theory and practice are interdependent. Theory is shaped by practice just as practice is influenced by theory.²⁵ All human rights texts reflect some theoretical assumptions; there is a strong correlation between action and the justification for the action. Since consumer rights have yet to be classified as human rights, the justification for their reclassification should be presented.

In order to answer the question of whether or not consumer rights can be classified as human rights, the following issues will be discussed: (1) whether there is an accepted definition of human rights that will assist in establishing consumer rights as human rights?; (2) whether consumer rights fulfil the substantive tests of human rights?; and (3) whether there is a formal basis in international documents for acknowledging consumer rights as human rights? The answers will be based upon the 1948 *Universal Declaration of Human Rights*,²⁶ the 1966 *International Covenant on Economic, Social and Cultural Rights*,²⁷ and the 1985 *United Nations Guidelines for Consumer Protection*.²⁸ Does the *UNGCP* mark the beginning of international recognition of consumer rights as human rights?

²⁵ See A.H. Robertson & J.G. Merrills, *Human rights in the world: an introduction to the study of the international protection of human rights*, 3d ed. (Manchester: Manchester University Press, 1989) 301-03.

²⁶ 10 December 1948, GA Res. 217A (III), UN Doc. A/810 [hereinafter *Universal Declaration*].

²⁷ 19 December 1966, Can. T.S. 1976 No. 46, 993 U.N.T.S. 3, 6. I.L.M. 360 [hereinafter *ICESCR*]. See I. Brownlie, ed., *Basic documents on human rights*, 2d ed. (Oxford: Clarendon Press, 1981) at 128-45 for text of *ICESCR*.

²⁸ (New York: United Nations, 1986) (16 April 1985, GA Res. 39/248, 39th Sess., Agenda Item 12, UN Doc. A/RES/39/248) [hereinafter *UNGCP*].

II. WHICH RIGHTS ARE HUMAN RIGHTS?

A. *Difficulties of Definition*

To suggest the recognition of consumer rights as human rights raises the question: what are human rights? Not merely a legal issue, the answer involves many philosophical aspects. In fact, many of the scholars who explored it were philosophers.²⁹ The term human rights includes two components, "rights" and "human rights." Rather than examining the definition of "right,"³⁰ this paper addresses the question of when a right becomes a human right.

The problem is twofold. First, assuming that agreed lists of recognized human rights exist, do they preclude the development of new human rights? Second, assuming that the recognition of new human rights is possible, what are the criteria and the tests for classifying rights as human rights? Only if there are guidelines toward a definition of human rights is it possible to proceed and examine whether there is a justification to classify consumer rights as human rights at this stage or in the foreseeable future.

A thorough analysis of many books, articles, and documents on human rights reveals that various attempts to define human rights have led to very meagre results. There is no accepted, exhaustive list of human rights and attempts to formulate such a list have been essentially unsuccessful. As Professor Dinstein describes, "On the whole ... the layman's question: 'What exactly are my human rights?' can be answered

²⁹ In a leading symposium edited by the United Nations Educational, Scientific and Cultural Organization (UNESCO), which preceded the *Universal Declaration*, most of the articles were published by philosophers. See UNESCO, *Human Rights: Comments and Interpretations* (New York: Columbia University Press, 1949) App. IV for a list of contributors and members of the UNESCO committee. See also E.H. Pollack, ed., *Human Rights: Amintaphil I* (Buffalo: Jay Stewart Publications, 1971) iii-vi for a list of contributors; and see R.J. Vincent, *Human rights and international relations* (Cambridge: Cambridge University Press, 1986) 153-58, where most references are to philosophers and political scientists.

³⁰ There is an enormous body of literature on the subject of defining the term "right." Some of the leading publications on this subject in general and with regard to human rights in particular are: W.H. Hohfeld, *Fundamental legal conceptions as applied in judicial reasoning* (New Haven, Conn.: Yale University Press, 1919); R. Dworkin, *Taking rights seriously* (London: Duckworth, 1977); A.R. White, *Rights* (Oxford: Clarendon Press, 1984); L.E. Layman, "Right₁, Right₂, Right₃, Right₄, And How About Right_T?" in Pollack, ed., *ibid.* at 106; and J.J. Shestack, "The Jurisprudence of Human Rights" in T. Meron, ed., *Human Rights in International Law: Legal and Policy Issues*, vol. 1 (Oxford: Clarendon Press, 1984) 69 at 70-74.

only unevenly and tentatively."³¹ Professor Dinstein explained that this problem is due to the fundamental divergencies of ideology in the world. Despite various attempts to establish guidelines for human rights, there is still a major problem of concretization. He concluded that the goal of limiting sweeping generalizations remained as elusive as it ever did.³²

Leading human rights scholars agree that there is no clear answer to this problem. One scholar noted that it remained "unclear what the criteria are for deciding whether a particular claim is a human right."³³ Another scholar claimed that confusion still exists regarding "the list of rights which belongs to the category of human rights."³⁴ These doubts and questions are shared by the majority of scholars who write on this subject.³⁵

The difficulties involved in defining human rights were presented in the documents preceding the *Universal Declaration*. For the symposium initiated by the United Nations Educational, Scientific and Cultural Organization (UNESCO), and in preparation of the declaration, a memorandum and a questionnaire were sent to eminent scholars regarding the "theoretical bases of the rights of man."³⁶ The memorandum, the questionnaire, and the answers were published and served as the basis for the final results of the UNESCO inquiry on the theoretical basis of human rights. This work led to the *Universal Declaration of Human Rights*,³⁷ adopted on 10 December 1948 by the General Assembly of the United Nations at the Palais de Chaillot. In the final summary of the UNESCO committee of experts, the difficulties of establishing a complete index of human rights were emphasized several times.³⁸ The *Universal Declaration*, based on the shared convictions of

³¹ Y. Dinstein, "Human Rights: The Quest for Concretization" (1971) 1 Israel Y.B. Hum. Rts. 13 at 16.

³² *Ibid.* at 14.

³³ R.B. Bilder, "Rethinking International Human Rights: Some Basic Questions (1969) Wisc. L. Rev. 171 at 173.

³⁴ Marks, *supra* note 15 at 435.

³⁵ See, for example, Shestack, *supra* note 30 at 75.

³⁶ See UNESCO, *supra* note 29 at 251, App. IV (contributors), App. I (memorandum and questionnaire), and App. II ("The Grounds of an International Declaration of Human Rights").

³⁷ The influence of this work on the *Declaration* was stressed in the preface to the *Declaration*. See *ibid.* at 273.

³⁸ See *ibid.* at 258-59 that the common convictions of United Nations members are "stated in terms of different philosophic principles and ... divergent political and economic systems." See *ibid.* at 263: "The Committee is fully aware that these working definitions are susceptible of highly diverse particularisations and that they contain, therefore, great ambiguity."

the various members of the United Nations, was not intended to serve as a definitive list.

Forty-five years have elapsed since the adoption of the *Universal Declaration*. It is, therefore, due time to consider the necessity of acknowledging new rights. But which rights deserve to be recognized as international human rights? In particular, should consumer rights be considered as universal human rights?

There are two main approaches in answering these questions. The first is to include as human rights only those rights declared as such by institutions of the United Nations. By this approach, consumer rights cannot yet be recognized as human rights since they have not yet been acknowledged as such by the institutions of the United Nations. The second approach is to establish guidelines to outline the characteristics of human rights. Rights that fulfil these requirements will be considered to be human rights. By this approach, the characteristics of consumer rights should be analyzed in order to establish whether they can be considered human rights. Although both attitudes suffer certain deficiencies, delineated later, they can nevertheless assist us in answering the above questions.

B. *Procedure: Declaration by United Nations*

The first approach is based upon the premise that a right only becomes an international human right when so declared by the United Nations General Assembly.³⁹ This attitude is supported by several scholars, but it suffers from some deficiencies. The United Nations General Assembly was never recognized as the supreme legislator of international law and there is no shared understanding that every United Nations resolution can turn a right into a human right.⁴⁰ Even if a United Nations resolution cannot turn a right into a human right, however, a repetition of a rule might have a normative power, which could lead to the creation of a customary human right norm. Some scholars also question the desirability of certain provisions declared by

³⁹ See Bilder, *supra* note 33 at 173.

⁴⁰ See R.A. Falk, "On the Quasi-legislative Competence of the General Assembly" (1966) 60 *Am. J. Int'l L.* 782 at 783-91, noting that the resolutions of the Assembly are not binding *per se* and that the General Assembly has only limited power regarding international legislation. See also M. Mendelson, "The Legal Character of General Assembly Resolutions: Some Considerations of Principles" in K. Hossain, ed., *Legal Aspects of the New International Economic Order* (London: Frances Pinter, 1980) 95 at 95.

international covenants and conventions as human rights.⁴¹ According to these views, it is quite clear that not every United Nations resolution will be sufficient to transform any privilege into a human right. There is strong criticism regarding the tendency of various United Nations organizations to proclaim additional human rights without taking the necessary procedural steps to approve the resolutions.⁴² This tendency was described as haphazard and anarchic; therefore, various procedural reforms were suggested. Even supporters of a dynamic approach to the expansion of human rights will not accept the notion that a General Assembly resolution can transform any right into a human right.⁴³ The process of international recognition is nonetheless vital in affirming the international status of a human right. I would consider it to be a procedural requirement for defining a right as a human right. This measure will be analyzed later in order to examine whether consumer rights are, or have, the chance to be recognized as human rights in the foreseeable future.

The first approach recognizes international human rights only as those rights that were officially affirmed as human rights in the 1948 *Universal Declaration* and in international covenants such as the 1966 *ICCPR* and the 1966 *ICESCR*. The titles of the two covenants can serve as the elementary classification of human rights into five groups: (1) civil, (2) political, (3) economic, (4) social, and (5) cultural.⁴⁴ The international covenants were approved in 1966, more than twenty-five years ago, and whether or not it is desirable to consider them as a final list of human rights is questionable. Rights are based on human needs. Those needs change from time to time.⁴⁵ There is no reason to prevent the inclusion of additional rights. The fact that certain rights were recognized many years ago does not necessarily make them more

⁴¹ See, for example, P. Alston, "U.S. Ratification of the Covenant on Economic, Social and Cultural Rights: The Need for an Entirely New Strategy" (1990) 84 Am. J. Int'l L. 365, regarding the opposition of the United States to ratify the 1966 *ICESCR*. See also *International Covenant on Civil and Political Rights*, 19 December 1966, Can. T.S. 1976 No. 47, 999 U.N.T.S. 171, 6 I.L.M. 368 [hereinafter *ICCPR*]; and *International Convention on the Elimination of All Forms of Racial Discrimination*, 7 March 1966, Can. T.S. 1970 No. 28, 660 U.N.T.S. 195, 5 I.L.M. 352.

⁴² See P. Alston, "Conjuring up New Human Rights: A Proposal for Quality Control" (1984) 78 Am J. Int'l L. 607 at 607.

⁴³ See Falk, *supra* note 40; and Alston, *ibid.* at 607-14.

⁴⁴ Dinstein, *supra* note 31 at 16-17.

⁴⁵ See G.T. Butcher, "The Immediacy of International Law for Howard University Students" (1988) 31 How. L.J. 435 at 446, observing that to consider only civil and political rights as human rights "is the luxury of the well-endowed." Civil rights without economic rights are relatively meaningless.

important than the rights that were only recently approved. It is evident that the age of a right provides no assurance of its potential implementation. Although "freedom of religion is one of the most ancient concepts, ... it has so far proved impossible to reach a consensus" as to its substance.⁴⁶ On the other hand, a relatively new right such as freedom from discrimination has received wide support and a certain level of implementation.⁴⁷

C. *Substance: Characteristics of Human Rights*

There is no doubt as to the importance of the rights enumerated in the international covenants. The question is whether the covenants constitute an exhaustive definition of human rights. In my opinion, to classify the human rights recognized in the international covenants as a complete list would be too conservative because as social needs emerge, the need for legislation to satisfy them leads to the development of additional human rights.⁴⁸ However, even according to those that are willing to accept new human rights, the importance of the recognized rights in the international covenants cannot be disregarded. The *Universal Declaration* and the two international covenants undoubtedly serve as the basis of international human rights.

The second approach is to present guidelines, which will identify the characteristics of human rights, and then to analyze consumer rights according to these guidelines. Many attempts have been made to define the characteristics of human rights. Although these attempts suffer from serious limitations, they shed light on the nature of human rights. Some of them will be examined in order to study their usefulness as guidelines toward the recognition of consumer rights as human rights. For instance, Cranston has suggested that a "human right is something that pertains to all men at all times,"⁴⁹ " 'economic and social rights' cannot logically be considered universal human rights,"⁵⁰ "[a]nother test of a human right is that it shall be a genuinely universal moral right. ... A

⁴⁶ See T. Meron, "Teaching Human Rights: An Overview" in Meron, ed., *supra* note 30, 1 at 16.

⁴⁷ *Ibid.*

⁴⁸ See Marks, *supra* note 15 at 436-37; L.B. Sohn, "Protection of Human Rights Through International Legislation" in Institut International des Droits de l'Homme, ed., *René Cassin Amicorum Discipulorumque Liber*, vol. 1 (Paris: Pédone, 1969) 324 at 331.

⁴⁹ M. Cranston, *What are Human Rights?* (London: Bodley Head, 1973) at 23.

⁵⁰ *Ibid.* at 54.

further test of a human right, or universal moral right, is the test of *paramount importance*,⁵¹ and finally, a “human right is something of which no one may be deprived without a grave affront to justice.”⁵² This approach, which defines human rights as rights of the greatest importance, is weighted with at least two flaws. First, clear criteria as to what makes a right “very important” and as to who decides whether or not they are met are non-existent. Second, categorization of human rights as only those of the greatest importance leads to the rejection of economic and social rights as human rights,⁵³ although these rights have been declared as human rights in the international covenants. This conservative approach, which is also the official attitude of the United States administration, was rejected by almost all members of the United Nations.⁵⁴ While there are basic differences between civil and political rights on the one hand and between economic and social rights on the other hand, discussed later, it is commonly agreed that all are human rights. The Cranston quotation also suggests that all human rights are general and, as such, relevant to the entire world community.⁵⁵ This statement fits most human rights. But human rights are intended also to protect children, minorities, and women as underprivileged groups; they cannot be defined as rights of the general public. The above characterization can therefore serve as a description of human rights, but not as a definition.

Other attempts to define human rights have not been more successful. One scholar delineated the following as a description of human rights:

In a legal sense the term *human rights* is used to designate those liberties of thought and action that the international community and international law seek to protect, not only against infringement by other individuals but also by the government of states, including the states of which the individuals in question are nationals.⁵⁶

⁵¹ *Ibid.* at 67.

⁵² *Ibid.* at 68.

⁵³ See M. Cranston, “Human Rights, Real and Supposed” in D.D. Raphael, ed., *Political Theory and the Rights of Man* (London: Indian University Press, 1967) 43 at 49-53.

⁵⁴ See B. Stark, “Economic Rights in the United States and International Human Rights Law: Toward an ‘Entirely New Strategy’ ” (1992) 44 *Hastings L.J.* 79 at 80, stating that the *ICESCR* was ratified by 104 nations and that “the United States is the only major industrialized democracy that has not yet ratified the Covenant.” See also Alston, *supra* note 41, for an analysis of the United States opposition to the *ICESCR* and of the ways to overcome this opposition.

⁵⁵ *Supra* note 49. See also Vincent, *supra* note 29 at 9.

⁵⁶ C.H. McLaughlin, “Human Rights” in *The Guide to American Law: Everyone’s Legal Encyclopedia*, vol. 6 (St. Paul, Minn.: West, 1984) 90 at 90.

This passage certainly cannot be considered to be a definition of human rights. Human rights are not limited to "liberties of thought and action" since they include various rights that require action such as the right to education. Today, the right to education is widely recognized in international documents and in domestic legislation,⁵⁷ which proves that human rights are not confined to liberties. Despite this criticism, the description includes guidelines, such as the need for international recognition of human rights and the suggestion that these rights should include protection against states and against individuals. Other scholars highlight additional characteristics of human rights, such as the need to focus on the individual and to emphasize the individual's prosperity, honour, and development.⁵⁸ Certain human rights, some scholars maintain, can be categorized as the right to human dignity.⁵⁹

D. Summary

Despite the differences between the two approaches, they represent the two basic requirements for a right to be considered a human right. The first approach, which considers as human rights only those rights that have been approved by organizations of the United

⁵⁷ See *Universal Declaration*, art. 26; *ICESCR*, art. 13; *Compulsory Education Law, 5709-1949*, 1949, 3 L.S.I. 195. In 1978, a major amendment was made by *Compulsory Education Law (Amendment No. 11) 5738-1978*, 1978, 32 L.S.I. 156. The right to education for children in their early stages should be compulsory. See S. Goldstein, "The right for education" in *Human Rights and Civil Liberties in Israel (A Reader)*, vol. 3 (1992) 567 [in Hebrew].

⁵⁸ See C. Palley, *The United Kingdom and Human Rights* (London: Stevens & Sons, 1991) 52; J.E. Nowak & R.D. Rotunda, *Constitutional Law*, 4th ed. (St. Paul, Minn.: West, 1991) at 939-41, dealing with freedom of speech; and R. Gabizon, "Human Rights" in R. Gabizon & H. Schneider, eds., *Human Rights and Civil Liberties in Israel: A Reader*, vol. 1 (1991) 25 at 27-32 [in Hebrew].

⁵⁹ This issue has been discussed in numerous articles and books. See, for example, Shestack, *supra* note 30 at 75-98, dealing with the sources of human rights and presenting eleven old and modern theories on human rights; Alston, *supra* note 12 at 36-54, reviewing the "needs not covered by existing human rights," the "need for new human rights," the process by which rights become part of international law (at 39), the lack of conceptual clarity regarding human rights, the criticism on the limited approach to human rights (at 46), and the connection between basic needs and human rights (at 50ff); and Marks, *supra* note 15, addressing the new generation of human rights (at 439-41) and responding to the objection to the creation of new human rights (at 451-52). Prosperity of individuals and their self-fulfillment are a rationale for human rights as expressed in many writings on freedom of expression. See, for example, A. Barak, "Freedom of Expression and its Limits" (1991) 40 *HaPraklit* 5 [in Hebrew]; and T. Scanlon, "A Theory of Freedom of Expression" in R.M. Dworkin, ed., *The Philosophy of Law* (London: Oxford University Press, 1977) 153.

Nations, stresses the procedure of declaring human rights.⁶⁰ The second approach, which delineates various characteristics of human rights, emphasizes the substance of human rights, or those demands of substantive value that justify the recognition of a right as a human right. Neither strategy can exclusively serve as the test of human rights. Both are inconclusive and subject to criticism. Rights that fulfil both requirements, however, are certainly human rights. Human rights are, therefore, based on both procedural and substantive requirements. Both conditions should be met before deciding whether consumer rights can be acknowledged as human rights. In order to explore whether consumer rights meet the substantive criteria presented in the previous pages, some of their basic features will be examined in the next section.

III. SUBSTANTIVE TESTS OF HUMAN RIGHTS

A. *Characteristics of Human Rights*

Substantive tests are essential for the recognition of a right as a human right. In the previous section, certain characteristics of human rights were cited, which can serve as guidelines to assess whether consumer rights are human rights. Some of the guidelines are that (1) human rights should pertain to the entire human community and not to any specific group; (2) human rights are the characterization of the individual as a primary concern, emphasizing the individual's prosperity, honour, and development; and (3) human rights are rights of the individual against powerful governments.⁶¹

Consumer rights are rights of the individual and not rights of a group. Consumers are not a separate group of people, since every person is a consumer from time to time. With respect to products and services needed for private use, every vendor is also a consumer.

⁶⁰ See, Alston, *supra* note 42 at 608, where he criticizes the adoption of new human rights without establishing adequate procedures and without due consideration. He suggests procedural reforms to ensure that new rights will not be proclaimed without proper scrutiny.

⁶¹ See also L. Henkin, "Introduction" in L. Henkin, ed., *The International Bill of Rights: The Covenant on Civil and Political Rights* (New York: Columbia University Press, 1981) 1 at 2, where he states that the "idea of limitations on government ... in favour of individual autonomy, dignity, and need, has taken root." He added that the "idea of human rights includes the 'rights of freedom from mistreatment and undue governmental intrusion.'" Sir R. Jennings & Sir A. Watts, eds., *Oppenheim's International Law*, 9th ed., vol 1., part 2 (Harlow, Essex: Longman, 1992) 849-50; "Protected Human Rights and Private Law," *supra* note 6 at 165-66; and A. Rubinstein, *Constitutional Law in the State of Israel*, 4th ed. (1991) 701-02 [in Hebrew].

Accordingly, consumer rights are rights of the individual and, as such, should be acknowledged as human rights.

Consumer rights focus on the individual to whom basic rights to fair trade and safe products are granted. One of the main ideas behind consumer protection is that the individual is entitled to protection notwithstanding that, on the basis of a cost-benefit analysis, the economy might benefit if the individual consumer receives defective goods or hazardous products. Similarly, one of the main features of human rights is an emphasis on the individual as opposed to the collective. The acknowledgement that human rights protect the individual's prosperity, honour, and development makes consumer rights suitable to be declared as human rights.

Several human rights can be classified under the heading of the right to human dignity. In an editorial comment in a leading journal on human rights, the importance of human dignity was presented as a "universal social good."⁶² Human dignity as a human right has been recognized in various United Nations documents.⁶³ As a universal value, human dignity is relevant to economic and social rights. It draws upon the intrinsic worth of every person. The comment concludes that, by relying upon the conception of human dignity, "we can extend and strengthen human rights by formulating new rights or construing existing rights to apply to new situations."⁶⁴ In a consumer society, protection of the individual consumer is part of maintaining human dignity. If not given the right to fair trade, the right to a fair contract, and the right of access to courts, a person's dignity is disregarded. At the end of the day, these rights are no less important than other human rights.⁶⁵

Consumer rights are similar to other accepted human rights in other aspects as well. Human rights are intended to protect the individual from arbitrary infringements by government. In the same way, the individual consumer is entitled to protection against big business organizations, monopolies, cartels, and multinational corporations. The big business organization should be considered less

⁶² O. Schachter, "Human Dignity as a Normative Concept: Editorial Comment" (1983) 77 *Am. J. Int'l L.* 848 at 848.

⁶³ *Ibid.* at 849.

⁶⁴ *Ibid.* at 853.

⁶⁵ For the importance of human dignity in creating human rights, see *ibid.* at 851, and at n. 4, where Schachter mentions that the President of the German Constitutional Court, Justice Benda, expressed his opinion that it is the duty of the government "to protect individuals against material want."

like an individual, who bargains on equal terms, and more like a government, which controls the private consumer.

There is a school of thought that considers standard contracts as private lawmaking by large economic corporations.⁶⁶ The inequality of bargaining power leads to contracts of adhesion and to the erosion of the basic right to negotiate.⁶⁷ Where an individual consumer is one party and a strong economic organization is the other party, the organization can impose its will on the consumer on "a take it or leave it" basis,⁶⁸ thereby disregarding the consumer's honour and dignity. Since every person is a consumer from time to time, it is a common problem. In order to introduce equality and justice into the market, the inequality must be alleviated by consumer protection legislation. Consumer rights are intended to prevent abuse of power and, in this sense as well, are similar to other well-defined economic human rights,⁶⁹ which protect the individual against abuse of power by governments.

It is also necessary today to regulate consumer protection on an international level. More and more transactions are conducted by transnational corporations.⁷⁰ Commerce has become increasingly international and the problem of hazardous goods and defective products is not merely a national concern. These developments have already led to some international recognition of consumer rights by the United Nations and other international organizations.⁷¹ This paper

⁶⁶ See G. Shalev, *Exemption Clauses* (Jerusalem: Alpha Press, 1974) at 36-44 [in Hebrew]; W.D. Slawson, "Standard Form Contracts and Democratic Control of Lawmaking Power" (1971) 84 Harv. L. Rev. 529; and S. Deutch, *Unfair Contracts: The Doctrine of Unconscionability* (Lexington, Mass.: Lexington Books, 1977) 1 at 3-4. See also, A.J. Duggan, *The Economics of Consumer Protection: A Critique of the Chicago School Case Against Intervention* (Adelaide: Adelaide Law Review Research Papers, University of Adelaide, 1982) at 60-88.

⁶⁷ See F. Kessler, "Contracts of Adhesion—Some Thoughts About Freedom of Contract" (1943) 43 Colum. L. Rev. 629 at 632; and S. Deutch, "Standard Contracts—Methods of Control: The Conceptual Framework of the 1982 Law" (1985) 7 Tel-Aviv Stud. L. 160 at 166ff and at n. 19. See generally, Hondius, *supra* note 10.

⁶⁸ Kessler, *ibid.*

⁶⁹ See ICESCR, arts. 7, 9; and *Universal Declaration*, arts. 1, 17, 22, 23.

⁷⁰ The importance of multinational and transnational corporations is growing. There is an enormous body of literature on the subject, including the *Suffolk Transnational Law Journal*, a law review dedicated entirely to this subject. Some of the leading articles on this subject include: E.M. Fox, "Harnessing the Multinational Corporation to Enhance Third World Development—The Rise and Fall and Future of Antitrust as Regulator" (1989) 10 *Cardozo L. Rev* 1981; W. Kolvenbach, "The European Economic Community and the Transnational Corporation" (1984) 5 *N.Y.L. Sch. J. Int'l & Comp. L.* 253; Rubin, *supra* note 19; and J.I. Charney, "Transnational Corporations and Developing Public International Law" (1983) *Duke L.J.* 748.

⁷¹ See section IV.A, below.

claims that the time is ripe to go further and to recognize basic consumer rights as human rights.

Modern theories of human rights⁷² also provide a solid ground for admitting consumer rights as human rights. One approach suggests a theory of justice,⁷³ perceiving principles of fairness, self-respect, and equality⁷⁴ as the foundation of human rights. These principles are the basis of consumer protection and accordingly can justify the acknowledgement of consumer rights as human rights. Another modern theory of human rights that can ground recognition is the theory based on dignity,⁷⁵ which maintains that human dignity is an ultimate value. As previously explained, one of the goals of consumer protection is protection of the dignity of the consumer. Therefore, this theory can serve as an additional support for accepting consumer rights as human rights.

B. *Consumer Rights as New Human Rights*

According to some substantive tests of human rights, consumer rights can be recognized as human rights. These tests, although not conclusive, supply sufficient guidelines in delineating the main features of human rights. The above analysis suggests that consumer rights satisfy part of the substantive tests of human rights. Hence, the suggestion to include them as human rights has merit.

This suggestion also raises the question of whether new human rights as the third generation of rights should be acknowledged as human rights.⁷⁶ The assumption is that there are three generations of human rights.⁷⁷ Although some writers question the desirability of distinguishing between generations of human rights,⁷⁸ this classification

⁷² See Shestack, *supra* note 30.

⁷³ See *ibid.* at 90-94.

⁷⁴ *Ibid.*, based on J. Rawls, *A theory of justice* (Cambridge, Mass.: Belknap Press of Harvard University Press, 1971).

⁷⁵ Shestack, *supra* note 30 at 95-97.

⁷⁶ Robertson & Merrills, *supra* note 25 at 255-56.

⁷⁷ The term "generations" as opposed to "categories" indicates that human rights are dynamic and developing, rather than stationary. See Marks, *supra* note 15 at 439, where he explains that the objection to slavery was a change of the nineteenth century as opposed to the eighteenth century.

⁷⁸ See, for example, M. Mushkat, *The Human Rights: Reflections on the Holocaust, The Waldheim case and the struggle for peace* (Tel Aviv: Papyrus, 1990) at 102 and 116 [in Hebrew]. He questions whether the division between different generations assists in enforcement of human

is nevertheless accepted by most. The first generation deals with civil and political rights while the second generation addresses economic, social, and cultural rights. The first generation of human rights includes the rights developed in England and France during the seventeenth and eighteenth centuries.⁷⁹ The second generation of rights was influenced by the revolutions of the early twentieth century and, consequently, deals with economic, social, and cultural rights. These rights are characterized by intervention rather than abstention of the state and include the right to decent working conditions, the right to social security, and the right to education and health. Second generation rights are positive rather than negative. They were acknowledged in the *Universal Declaration* of 1948 and in the *ICESCR* of 1966.

Third generation rights encompass rights that have not been recognized as international human rights, but that were nevertheless approved by various organizations of the United Nations.⁸⁰ They attempt to extend the scope of human rights beyond those found in the *Universal Declaration* and the two international covenants. The new rights include the right to development, the right to share the common heritage of humankind, and the right to peace. This new generation of human rights met strong opposition, which has not yet subsided.⁸¹ Indeed, Professors Robertson and Merrills raise the issue of whether these concepts are "human rights in any meaningful sense of the term."⁸² Their answer is that they should *not* be considered human rights. They give three reasons for their position.⁸³ Their first argument notes that "the word 'human' in the expression 'human rights' has a specific

rights. He also criticizes the lack of enforcement of second generation rights in developing countries.

⁷⁹ See Marks, *supra* note 15 at 437-38. The French and American revolutions, he says, "have left a permanent imprint" on the first generation of human rights. These rights "were conceived negatively as 'freedoms of' rather than as positive 'rights to'" (freedom of religion, freedom of opinion, expression, assembly, movement, and more). See also Robertson & Merrills, *supra* note 25 at 3.

⁸⁰ See, for example, Alston, *supra* note 42; Marks, *supra* note 15 at 440; and R.Y. Rich, "The Right to Development as an Emerging Human Right" (1983) 23 *Vir. J. Int'l L.* 287.

⁸¹ Robertson & Merrills, *supra* note 25 at 255-59. See also Marks, *ibid.* at 440-41, where he claims that the first two generations of human rights are a result of three revolutions, the bourgeois revolution, the socialist revolution, and the anticolonialist revolution. The human rights that emerged from these revolutions were confronted by strong opposition. Therefore, it is not surprising that the third generation of human rights includes rights that are not part of the first two generations, but that have a reasonable chance "of being accepted as international human rights" in the foreseeable future. The third generation rights are "rights of solidarity."

⁸² Robertson & Merrills, *ibid.* at 257-59.

⁸³ *Ibid.* See also Marks, *supra* note 15 at 251, referring to the strong opposition to new human rights.

meaning. ... Rights pertaining to human beings by virtue of their humanity.”⁸⁴ The Preamble of the *ICESCR* and of the *ICCPR* state that “these rights derive from the inherent dignity of the human person.” Robertson and Merrills argue that human rights are rights of the individual, stemming from the individual’s nature as a human being, and not rights of groups, associations, or other collectivities.⁸⁵ With a few exceptions, both covenants are concerned with individual rights. Accordingly, “human rights” should be designated to individuals rather than to groups and collectivities. Rights of groups and collectivities should be named “collective rights” and not “human rights.” Consumers, however, do not act as a group or as a collectivity. Every person is a consumer from time to time. This particular criticism of new human rights is, therefore, irrelevant to consumer rights. It also seems that in a consumer society where every person purchases consumer goods and services, the right of a consumer to be protected is an essential part of the right to the adequate standard of living already recognized under Article 11 of the *ICESCR*.⁸⁶

Robertson and Merrills’ second argument against the recognition of new rights as human rights deals with the use of the term “rights” in this context. They argue that new human rights, such as economic development and environmental protection, are not rights in any meaningful sense. They should be objectives of social policy and items on a political programme, but they are not legally enforceable claims. Advocates of new human rights confuse objectives of social policy with legal rights.⁸⁷ This view is certainly not pertinent to consumer rights. Although thirty years ago consumer rights were more related to social policy than to binding rules, today consumer rights are legal rights under most legal systems. There is no question regarding their nature as legal rights. The question of this paper is whether or not they can also be considered human rights.⁸⁸

⁸⁴ Robertson & Merrills, *ibid.* at 257-58.

⁸⁵ *Ibid.* at 258.

⁸⁶ See also H.H. Cohn, *The Law* (Jerusalem: Bialik Institute, 1991) at 595 [in Hebrew]; and *Universal Declaration*, art. 25.

⁸⁷ Robertson & Merrills, *supra* note 25 at 259. See also A.P. Rubin, “Are Human Rights Legal?” (1990) 20 *Israel Y.B. Hum. Rts.* 45, stating that human rights are legal only if adopted into legal documents.

⁸⁸ In this respect, consumer rights are inherently different from other “new” human rights. For instance, the basic needs approach has been approved in a series of international documents and resolutions, but it contains goals and recommendations rather than legal rights. See Alston, *supra* note 12 at 23-26.

Professors Robertson and Merrills' third argument against the recognition of new human rights is founded on the fact that these rights are not part of international treaties. They suggest that there is a distinction between moral rights and legal rights. There may be a moral right to a clean environment, but there is no such legal right until it has been incorporated into an international treatise. They argue, therefore, that until the process of lawmaking has taken place, new human rights remain inside the realm of goals and objectives and outside the domain of legal rights.⁸⁹ Since consumer rights have not yet been recognized as human rights in any United Nations covenants, this position is indeed relevant to consumer rights. It reiterates the premise that the validity of human rights should also be evaluated according to the procedural requirements for the recognition of human rights in international institutions and documents. Consumer rights have not yet reached the stage of formal recognition. The essence of this paper is to examine whether consumer rights should be incorporated into future international documents, maintaining that since substantively they can be considered human rights, incorporation should take place in the near future. The next section attempts to prove the international community's readiness to approve consumer rights as human rights, as reflected by various statements in international documents.

IV. PROCEDURAL TESTS OF HUMAN RIGHTS

A. Introduction

One of the requirements for acknowledging rights as human rights is the integration of the rights into formal international documents. The importance of procedure in accepting rights as human rights cannot be underestimated.⁹⁰ It is clear that, over the years, the *Universal Declaration* and the two international covenants have contributed to the development of human rights and have prompted international recognition of human rights.⁹¹ Because of these

⁸⁹ Robertson & Merrills, *supra* note 25 at 259.

⁹⁰ See Alston, *supra* note 42 at 609, about the need for procedural reform in this area and, at 617-18, on the usefulness of procedural requirements.

⁹¹ See L.B. Sohn, "The New International Law: Protection of the Rights of Individuals Rather Than States" (1982) 32 *Am. U L. Rev.* 1 at 17: "The Declaration, as an authoritative listing of human rights, has become a basic component of international customary law, binding on all states, not only on members of the United Nations."

documents, undoubtedly there is wide recognition of civil, political, economic, and social rights.

Although formal acceptance is not the sole test of a human right, it is certainly a strong indication of that right. Accordingly, when consumer rights attain international recognition by the organizations of the United Nations, their status as international human rights will be more likely. Since consumer rights are basically economic rights, their recognition should be based upon the declared economic rights of the *Universal Declaration* and the covenants. Although none of the documents explicitly identified consumer rights as economic rights, there is sufficient evidence in the documents to support the claim of indirect acknowledgement.

B. 1948 *Universal Declaration of Human Rights*

The first international document to deal with the issue of economic rights as human rights was the *Universal Declaration of Human Rights*, which was based on the United Nations *Charter*.⁹² Article 55 declares that "the United Nations shall promote: ... c. universal respect for, and observance of, human rights and fundamental freedoms." The United Nations conferred power on the United Nations Economic and Social Council (ECOSOC) to promote these goals.⁹³

UNESCO did preparatory work for the *Universal Declaration*, which was adopted by the General Assembly on 10 December 1948 in resolution 217A (III).⁹⁴ The *Declaration* was the first comprehensive human rights declaration to be proclaimed by an international organization. The detailed catalogue of economic and social rights proclaimed by the *Declaration* is of special significance to consumer protection. Among other rights, the *Declaration* states the individual's "right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity"⁹⁵ and the "right to a standard of living adequate for the health and well-being of himself and of his family."⁹⁶

⁹² *Everyone's United Nations*, 10th ed. (New York: Department of Public Information, United Nations, 1986) App.

⁹³ See T. Buerghenthal, *International human rights in a nutshell* (St. Paul, Minn.: West, 1988) 19-20.

⁹⁴ See Robertson & Merrills, *supra* note 25 at 259.

⁹⁵ Art. 23(3).

⁹⁶ Art. 25(1).

Though the *Universal Declaration* is not a treaty, it received binding status over the years.⁹⁷ Unfortunately, however, it suffers from serious semantic problems. As Professor Dinstein describes, its language is cryptic, impolitic, and laconic.⁹⁸ Although the language of the *Declaration* is general, it is quite clear that consumer protection was not intended to be part of the *Declaration*. On the other hand, since one of the aims of consumer protection is to assist people in reaching an adequate standard of living, the phrases "just and favourable remuneration" and "an adequate standard of living" can serve as a basis for consumer protection in a broad sense. Some workers' unions accordingly established departments of consumer protection to promote an adequate standard of living by minimizing excessive prices resulting from the purchase of defective or overpriced products.⁹⁹ Article 25(1) of the *Declaration* states the right of the individual to "a standard of living adequate for the health and well-being of himself and of his family." Consumer protection is concerned with the protection of the consumer's health and, as such, is intended to enhance the standard of living and the well-being of the individual as consumer. In summary, although the *Declaration* does not directly deal with consumer protection, its goals and objectives are synonymous to those underlying the basic right of consumer protection.

C. 1966 International Covenant of Economic, Social and Cultural Rights

In order to give legal power to human rights and to flesh out the skeleton of the rules accepted in the *Universal Declaration*, the international covenants were drafted.¹⁰⁰ The *International Covenant of Economic, Social and Cultural Rights* was adopted by the United Nations

⁹⁷ See Sohn, *supra* note 91 at 16-17; and Robertson & Merrills, *supra* note 25 at 27.

⁹⁸ *Supra* note 31 at 14.

⁹⁹ One convincing example is the Israeli case. In 1969, the Israeli Labour Federation (ILF) established the Consumer Protection Authority, which has subsequently received statutory powers after being officially acknowledged in five Israeli laws. For instance, section 16(1) of the *Standard Contracts Law, 5743-1982, 1982, 37 L.S.I. 6* states, "The Attorney-General ... any customers' organisation ... may apply to the Tribunal." Under sections 3 and 4 of *Standard Contracts Regulations, 1983, Kovetz Ha-Takanot 1518* [in Hebrew], the Consumer Protection Authority of the Histadrut is authorized to appear in the Tribunal. The ILF represents more than 80 per cent of Israeli workers and has statutory powers in labour disputes. Around the world, however, there are only a few consumer organizations that have been established by trade unions.

¹⁰⁰ See Robertson & Merrills, *supra* note 25 at 231, regarding economic, social, and cultural rights. See also Buergethal, *supra* note 93 at 30.

General Assembly and was ready for ratification by December 1966. Ten years later, the *ICESCR* came into effect after ratification by thirty-five countries. To date, it has been approved by 104 countries.¹⁰¹

There is a negative attitude in the United States towards the *ICESCR*. The United States remains the only industrialized democracy that has not approved it.¹⁰² Even in the 1990s, after the approval of the *ICCPR*, there is no readiness to ratify the *ICESCR*.¹⁰³ This objection is a cornerstone in the foreign policy of the United States, as published in various documents.¹⁰⁴ The United States' position is that human rights include only civil liberties and political rights.¹⁰⁵ This stance refuses to acknowledge economic rights as human rights.¹⁰⁶ Such an approach is critical to the question of whether consumer rights can be recognized as human rights. Consumer rights deal with economic relations between consumers and dealers, and between consumers and the authorities. Thus, they would be appropriately categorized as a species of economic rights. Nevertheless, according to United States policy, the chances of admitting consumer rights as human rights are not realistic.

The United States' view on economic rights is not, however, shared by most countries, and the United States' standpoint on the *ICESCR* has been often criticized. Some critics¹⁰⁷ reject the claim that ratifying the *ICESCR* would be inconsistent with United States domestic policy. They contend that the non-ratification might have an adverse effect on human rights in the United States. In a recent article, Professor Stark suggests the United States should reconsider its attitude to economic rights after the collapse of the Soviet bloc.¹⁰⁸ Additional reasons justify a new approach to this subject, such as the April 1992 ratification of the *ICCPR*,¹⁰⁹ the importance of economic rights to Americans who are poor,¹¹⁰ and the similarity of the *ICESCR* to

¹⁰¹ See Stark, *supra* note 54. The *ICESCR* was signed by Israel but not confirmed until 1991.

¹⁰² *Ibid.*

¹⁰³ See Alston, *supra* note 41.

¹⁰⁴ See *ibid.* at 372.

¹⁰⁵ Cranston, *supra* note 53 at 50-53.

¹⁰⁶ Alston, *supra* note 41 at 372 and at 375.

¹⁰⁷ *Ibid.* at 382-84.

¹⁰⁸ *Supra* note 54 at 84.

¹⁰⁹ *Ibid.* at 80 and 86.

¹¹⁰ *Ibid.* at 85.

domestic state constitutions.¹¹¹ State courts have in fact recognized economic rights as constitutional rights in many areas.¹¹² These reasons and others¹¹³ justify the ratification of the *ICESCR* by the United States. If accepted, this new approach would enhance the possibility of recognizing consumer rights as human rights in the United States. In any case, the theme of this paper is based not on the existing views in the United States, but rather on the approach of the international and European community.

There is another argument against the position that only civil and political rights are human rights. "Though it is obvious that the right to life is superior to the right to paid vacations, this is not an excuse to reduce human rights to very basic rights only."¹¹⁴ Certain economic rights, such as the right to subsistence, are as important as the right to security. Within each group of rights are rights of varying degrees of importance. The distinction is not merely between groups, but is also between various rights within each group.¹¹⁵ Another important distinction is between values within different societies. The freedom from hunger is of great import in underdeveloped societies, where it is of more importance than certain civil liberties. A similar hierarchy also applies to consumer rights. The right to safe drinking water and to product safety are afforded greater weight than the right to a fair contract. This proves that seemingly less significant rights, in context, can be identified as human rights. Both economic rights and consumer rights, therefore, can arguably be recognized as human rights.

It should be noted that although the *ICESCR* was approved by the United Nations at the same time as the *ICCPR*, there is a substantial difference between these two covenants. While the obligations assumed by the contracting parties in the *ICCPR* were intended for immediate application, the obligations described in the *ICESCR* were intended to be implemented in the future.¹¹⁶ The *ICESCR* includes a list of standards, which the members of the United Nations undertook to promote, and which they pledged to secure progressively with regard to their resources. They were not intended to be immediately implemented

¹¹¹ *Ibid.* at 99-103.

¹¹² *Ibid.*

¹¹³ Such as the fact that economic rights recognized in international documents are indirectly influential, but not legally binding. *Ibid.* at 101 and at 105.

¹¹⁴ Vincent, *supra* note 29 at 12.

¹¹⁵ See Vincent, *ibid.*

¹¹⁶ See Robertson & Merrills, *supra* note 25 at 229-30; and Buergenthal, *supra* note 93 at 37.

because of the great expense involved in implementing economic rights, an expense that many developing countries could not and cannot afford.

Confronted by objections on both socialist¹¹⁷ and capitalist ideological grounds, most economic rights have been neither substantially progressed nor implemented.¹¹⁸ Another reason for the lack of realization and implementation of human rights is that countries are not willing to restrict their authority. Human rights can only become part of the legal system in response to legal pressure both at home and abroad.¹¹⁹ Despite its deficiencies, the *ICESCR* is a binding international treaty.

The *ICESCR* and its detailed list of economic rights can serve as a basis for acknowledging consumer rights. The right to an adequate standard of living briefly stated in the *Universal Declaration*, for instance, was elaborated upon in article 11 of the *ICESCR* of 1966. Article 11(1) refers to "adequate food, clothing and housing, and to the continuous improvement of living conditions." Consumer protection can be considered an implementation of these rights and a means to achieve these goals. Adequate food includes quality of food, which is achieved through consumer protection legislation. Adequate housing contains two elements: the ability to obtain housing and the adequate quality and safety of the housing. The first is an issue of public policy and public expense. The second is based upon consumer protection legislation and is regulated by various legal means.¹²⁰ Thus, although consumer protection was not mentioned in the *ICESCR*, it is a method by which the above goals can be achieved.

¹¹⁷ See Dinstein, *supra* note 31 at 23ff. See also Alston, *supra* note 41 at 366.

¹¹⁸ Dinstein, *ibid.* at 23, discusses the Socialist bloc objection to the right to property. Today, after the collapse of the Communist bloc, this right has been acknowledged in most countries of Eastern Europe. The right to freedom from hunger and the right to an adequate standard of living have not substantially progressed due to opposition by capitalist or Marxist economic philosophies. See also Stark, *supra* note 54 at 81-84.

¹¹⁹ See Dinstein, *ibid.* at 28.

¹²⁰ For instance, in Israel, legislation on housing safety and quality is based upon several laws: *Standards Law, 5713-1953*, 1953, 7 L.S.I. 24; *Sale (Housing) Law, 5733-1973*, 1973, 27 L.S.I. 213; and *Sale (Housing) (Amendment No. 3) 5750-1990*, Sefer Ha-Chukkim of 1990, 184. See generally, E. Zamir, *The Conformity Rule in the Performance of Contracts* (Jerusalem: Harry Sacher Institute for Legislative Research and Comparative Law, Hebrew University of Jerusalem, 1990) [in Hebrew]. See also *Sale (Apartments) (Assurance of Investments of Persons Acquiring Apartments) Law, 5735-1974*, 1974, 29 L.S.I. 18. The need to protect consumers' rights to housing was acknowledged in several decisions of the Israeli Supreme Court. See, for example, C.A. 148/77 *Rot v. Yeshoofo Bnia BeAm* (1980), 33(1) P.D. 617 at 625; C.A. 449/85 *A.G. v. Gad Construction Co.* (1989), 43(1) P.D. 183.

An analysis of several other provisions of the *ICESCR* proves that they too can serve as a basis for declaring consumer rights as human rights. The preamble to the *ICESCR* does not include any operative provisions, but it does lay the foundation for the *ICESCR*. It declares that its principles “derive from the inherent dignity of the human person.” As previously explained, the dignity of the individual is also a basis for consumer protection.

Article 11, mentioned above, also includes provisions requiring the improvement of methods of food production and distribution.¹²¹ Improving the distribution of food includes improving not only methods of distribution but also methods of hygienic distribution,¹²² price control,¹²³ and other means of consumer protection. Contaminated and overpriced food certainly cannot be considered properly-distributed food. Accordingly, consumer protection is vital for implementing *ICESCR* principles.

The right to health, elaborated upon in article 12 of the *ICESCR*, is also closely associated with consumer protection. A basic consumer right is the “protection of consumers from hazards to their health and safety.”¹²⁴ Similarly, the *ICESCR* declares the right to environmental hygiene and to the prevention of disease. Although consumer protection is not mentioned in article 12, the goals of this article can be realized through improved implementation of consumer protection in the medical field.

The same is true with respect to the right to education, described in article 13 of the *ICESCR* and sections 31 to 37 of the *UNGCP*. These principles show that basic consumer rights are deeply rooted in accepted international human rights and that further recognition would merely be an extension of existing rights.

Consumer rights are not explicitly mentioned in the *ICESCR*; nonetheless, they are not new rights, but rather are a broadening of current rights. Since the basic principles of consumer protection are implied in the *ICESCR*, formal acknowledgement of these rights will not

¹²¹ *ICESCR*, art. 11(2).

¹²² *The Commodities and Services (Control) Law, 5718-1957, 1957*, 12 L.S.I. 24, ss. 4-16, empowers the authorities to regulate the production of certain products when such an act is necessary to ensure regular supplies or regular services. In Cr. App. 150/63 *A.-G. v. Ostericker* (1963), 17 P.D. 2088, the Israeli Supreme Court decided that clean and hygienic supply is part of regular orderly supply. In the same sense, improved methods of production and distribution of food should include hygienic methods of distribution.

¹²³ *Commodities and Services (Control) Law, ibid.* at ss. 20-29.

¹²⁴ See *UNGCP*, s. 3(1).

be a deviation from existing rules of human rights. In addition, a declaration of consumer rights as human rights will not create most of the problems involved in the acceptance of new human rights because consumer rights are already characterized as legal rules in domestic legislation in most countries. International recognition by the United Nations is all that is lacking. The process by which a specific right becomes part of international law is a lengthy one and includes various steps.¹²⁵ In my opinion, consumer rights are already on the track toward international incorporation as human rights. In the following section, a major step in the direction of recognizing consumer rights as international human rights, the *UNGCP*, unanimously adopted by the General Assembly in 1985, is reviewed.

D. 1985 United Nations Guidelines for Consumer Protection (*UNGCP*)

The *UNGCP* constitutes another step in the international recognition of consumer rights as human rights. Although not binding, it is the first and most important international document including consumer rights on an international scale.

The *UNGCP* was unanimously approved by the United Nations General Assembly on 9 April 1985.¹²⁶ Guidelines differ from treaties, since they are not binding on the parties who have consented to them. While a treaty binds all parties who have signed, ratified, or approved it, guidelines impose only moral and political obligations. Unanimous approval of the guidelines, however, may contribute to or be evidence of the formation of international customary law.¹²⁷

The International Organization of Consumer Unions (IOCU) initiated activities and extensive lobbying, which led to the adoption of the *UNGCP* by the United Nations. The IOCU encompasses more than

¹²⁵ See Bilder, *supra* note 33 at 173-74. The analysis by Bilder shows that consumer rights seemingly fulfil them. Those requirements, however, have no binding force and, therefore, will not be analyzed in detail. See also Alston, *supra* note 12 at 38 and at n. 89.

¹²⁶ *UNGCP*, *supra* note 28 at 2.

¹²⁷ There are, however, views that there are considerable difficulties in the way non-binding guidelines becoming binding as customary international law. See D. Harland, "International Agreements and Guidelines as a Means of Consumer Protection" (1992) 38 J. Behav. & Soc. Sci. 114 at 119 and sources therein; and R. Kanniah, *International Law and the Consumer Interest - A select annotated bibliography of international instruments relating to consumer protection* (Penang, Malaysia: International Organization of Consumer Unions, 1990).

170 leading consumer organizations from more than 60 countries.¹²⁸ The activities of IOCU to promote the adoption of the guidelines started in 1975 and lasted for 10 years until the resolution was finally adopted by the United Nations.

In 1975, at the IOCU World Congress in Australia, a resolution was passed urging that (1) the United Nations Secretary-General prepare and issue a report on consumer protection; (2) the United Nations ECOSOC appoint a group of experts to prepare a Model Code for Consumer Protection; and (3) the United Nations General Assembly consider and recommend the adoption of that Model Code by member states of the United Nations. In Autumn 1982, after the ECOSOC preparatory work, the first draft of the *UNGCP* was circulated to various governments for comment. IOCU took an active part in the ensuing negotiations and extensive discussions on subsequent drafts of the *UNGCP*, which led to the consensus resolution and the unanimous adoption of the *UNGCP* on 9 April 1985.¹²⁹

The seven objectives of the *UNGCP* are delineated in section 1 of the document.¹³⁰ In the preamble of this section, the resolution

¹²⁸ For a description of the IOCU and its activities towards the adoption and implementation of the *UNGCP*, see *Development and International Economic Cooperation. Consumer Protection. Report of the Secretary-General*, 29 May 1992, UN Doc. E/1992/48. The text is published in "Consumer Protection. Report of the Secretary-General of the United Nations" (1993) 16 J. Consumer Policy 97 [hereinafter 1992 United Nations Report] with N. Reich & G. Woodroffe, eds., "Editor's Note" (1993) 16 J. Consumer Policy 95.

¹²⁹ The activities that led to the adoption of the *UNGCP* are recorded in several articles. See D. Harland, "Implementing the Principles of the United Nations Guidelines for Consumer Protection" (1991) 33 J. Indian L. Inst. 189 at 189-90 [hereinafter Harland, (1991)]. See also Harland, *supra* note 19; and D. Harland, "The United Nations Guidelines for Consumer Protection. Reply to the Comment by Wiedenbaum in JCP, 10, 1987/4" (1988) 11 J. Consumer Policy 111; and P. Merciai, "Consumer Protection and The United Nations" (1986) 20 J. World Trade L. 206. A major part in the preparation of the Guidelines was played by the ECOSOC of the United Nations. For an abbreviated official history of the United Nations actions leading to the adoption of the Guidelines, see 1992 United Nations Report, *ibid.* at 99.

¹³⁰ The seven objectives are:

- (a) To assist countries in achieving or maintaining adequate protection for their population as consumers;
- (b) To facilitate production and distribution patterns responsive to the needs and desires of consumers;
- (c) To encourage high levels of ethical conduct for those engaged in the production and distribution of goods and services to consumers;
- (d) To assist countries in curbing abusive business practices ...;
- (e) To facilitate the development of independent consumer groups;
- (f) To further international co-operation in the field of consumer protection;
- (g) To encourage the development of market conditions which provide consumers with great choice at lower prices.

emphasizes that "consumers should have the right of access to non-hazardous products, as well as the importance of promoting just, equitable and sustainable economic and social development." The *UNGCP* presents general principles and the governments are called upon to develop their consumer protection policies in line with these principles. Each government must set its own priorities according to the economic and social circumstances of its country and population. In this respect, the *UNGCP* resembles the *ICESCR*, which was not intended to be immediately implemented due to the expense involved in its enforcement. The fact that consumer protection is subject to the conditions of each country indicates that consumer protection is not a luxury for the industrialized countries, but is also intended for the developing countries,¹³¹ according to their ability and needs.

The *UNGCP* states six main needs:

(a) The protection of consumers from hazards to their health and safety; (b) The promotion and protection of the economic interests of consumers; (c) Access of consumers to adequate information ...; (d) Consumer education; (e) Availability of effective consumer redress; [and] (f) Freedom to form consumer ... organizations."¹³²

Governments were called to implement these policies.¹³³ These principles are elaborated upon in seven chapters of the *UNGCP*. The first deals with physical safety;¹³⁴ the second concerns promotion and protection of consumers' economic interests;¹³⁵ the third requires the formulation of safety and quality standards of consumer goods and services;¹³⁶ the fourth demands the establishment of distribution facilities for essential consumer goods and services;¹³⁷ the fifth delineates measures enabling consumers to obtain redress;¹³⁸ the sixth obliges governments to establish education and information

¹³¹ See Harland, *supra* note 19 at 250.

¹³² *UNGCP*, s. 3.

¹³³ *UNGCP*, s. 4. For a discussion of the *UNGCP*, see Harland, *supra* note 19 at 249-50, indicating that the objectives are "essentially a restatement of basic rights declared by President Kennedy to the U.S. Congress in March 1962." See also Harland, (1991), *supra* note 129, dealing with the implementation of the *UNGCP*.

¹³⁴ *UNGCP*, ss. 9-12.

¹³⁵ *UNGCP*, ss. 13-23.

¹³⁶ *UNGCP*, ss. 24-26.

¹³⁷ *UNGCP*, s. 27.

¹³⁸ *UNGCP*, ss. 28-30.

programmes;¹³⁹ and the seventh presents measures relating to specific areas, such as food, water, and pharmaceuticals.¹⁴⁰

A close analysis of the *UNGCP* reveals that it can be viewed as an implementation of the *ICESCR* and the *Universal Declaration*. The two most relevant provisions that deal with the requirement of an adequate standard of living are article 25 of the *Declaration* and article 11 of the *ICESCR*.¹⁴¹ This demand can be satisfied *inter alia* by an adequate system of consumer protection. The first group of rights under the *UNGCP* dealing with physical safety is an expansion of the right to health described in article 12 of the *ICESCR*.¹⁴² Promotion of economic interests of consumers is also a realization of basic rights in the *ICESCR*. Section 13 of the *UNGCP* states that government policies should enable consumers to obtain optimal benefit from their economic resources and the first section of the *UNGCP* emphasizes the government's role in promoting "just, equitable, economic and social development." This requirement is an extension of the requirement for an adequate standard of living and reasonable remuneration, which appears in the *ICESCR*.

Article 55 of the United Nations *Charter* declares that the United Nations shall promote "higher standards of living ... and conditions of economic ... progress and development." The *UNGCP*, which intends to promote these goals, deals with the basic foundation of human rights.¹⁴³

The adoption of the *UNGCP* by the United Nations led to three types of reactions. For the purpose of simplification, these attitudes will be associated with three scholars who published their views on this subject: Professor Wiedenbaum,¹⁴⁴ who reacted negatively, Ms.

¹³⁹ *UNGCP*, ss. 31-37.

¹⁴⁰ *UNGCP*, ss. 38-42.

¹⁴¹ Sections 13-27 and 39-42 of the *UNGCP* are an implementation or concretization of these rights.

¹⁴² *ICESCR*, art. 12, recognizes the right of physical health. *UNGCP*, ss. 9-12, protects physical safety.

¹⁴³ *Charter*, *supra* note 92. See D. Harland, *supra* note 127 at 115.

¹⁴⁴ Professor Murray Wiedenbaum is Mallinekrodt Distinguished University Professor and Director of the Center for the Study of American Business at Washington University. He is a former Chairman of the United States Council of Economic Advisers and served as Chairman of the Economic Policy Committee of the OECD. M. Wiedenbaum, "The Case Against the United Nations Guidelines for Consumer Protection" (1987) 10 *J. Consumer Policy* 425 at 432.

Peterson,¹⁴⁵ who responded enthusiastically, and Professor Harland,¹⁴⁶ who reacted positively. The latter is representative of the common attitude to the *UNGCP*.

In two articles, Professor Wiedenbaum presented a case against the *UNGCP*. One article preceded the adoption of the *UNGCP*¹⁴⁷ and the other appeared after its adoption.¹⁴⁸ In the first article, Wiedenbaum argued that the United Nations should focus on its basic role as peacekeeper, that the *UNGCP* would establish a supranational authority of international regulation, and that the United Nations would become the international consumer regulator.¹⁴⁹

In Wiedenbaum's second article, he maintained that the *UNGCP* promotes interference with international agencies in domestic affairs.¹⁵⁰ Relying on influential economists, he expressed a view against government regulation of consumer affairs, arguing that regulation leads to inferior products at a higher price.¹⁵¹ Wiedenbaum claimed that the *UNGCP* would lead to a waste of economic resources and that these issues should not be subject to any government regulation.¹⁵² In his conclusion, he wrote that the United Nations should not be the global regulator of private economic activities.

Professor Wiedenbaum's criticism is based upon two premises, an objection to government regulation in the area of consumer protection and an objection to international regulation of economic activities. The view opposing government regulation to protect consumers is the common attitude of proponents of the "economic

¹⁴⁵ Esther Peterson is currently a representative of the International Organization of Consumer Unions (IOCU) before ECOSOC at the United Nations. She served under two United States Presidents as Special Assistant to the President for Consumer Affairs and as Chairman of the President's Committee on Consumer Interests. From 1970 to 1977, Ms. Peterson was Vice President of Consumer Programs and Consumer Adviser to the President at Giant Food Corporation. E. Peterson, "The Case Against 'The United Nations Guidelines for Consumer Protection'" (1987) 10 J. Consumer Policy 433 at 439.

¹⁴⁶ Professor David Harland is Professor of Law in the University of Sydney Law School. Professor Harland is a leading international scholar in consumer law and has published several papers on the *UNGCP*. Harland, *supra* note 19 at 266.

¹⁴⁷ M.L. Wiedenbaum, *Is the U.N. becoming a global nanny? The case of consumer protection guidelines* (St. Louis: Center for the Study of American Business, Washington University, 1983).

¹⁴⁸ *Supra* note 144.

¹⁴⁹ *Supra* note 147.

¹⁵⁰ *Supra* note 144 at 425.

¹⁵¹ *Ibid.* at 428, citing from R. Coase, "Economists and Public Policy" in J.F. Weston, ed., *Large Corporations in a Changing Society* (New York University Press, 1975) 170 at 183-84.

¹⁵² *Ibid.* at 429.

approach to law."¹⁵³ This approach is, however, not the majority view among legal scholars. The majority view asserts that market principles cannot serve as the sole means of consumer protection. Market efficiency alone should not be the ultimate justification for uncontrolled contractual power.¹⁵⁴ Thus, the economic approach to law was rejected as a major factor in shaping the law of consumer protection.¹⁵⁵

Wiedenbaum's opposition to United Nations involvement in economic affairs is not limited to consumer protection. It also represents the American approach to economic rights, reviewed above. This approach is not shared by the international community; the United States is the only democratic industrialized country that has not yet ratified the *ICESCR*.¹⁵⁶ This minority view should not hinder recognition of consumer rights on an international level.

One point of Professor Wiedenbaum's writing does, however, support the thesis of this section. Wiedenbaum claimed that the *UNGCP* is not really voluntary. Citing various sources, he concluded that it "is hardly the language or attitude of the true voluntarism."¹⁵⁷ He further concluded that the next step in international regulation of consumer protection would transform the *UNGCP* into international regulations, treaties, and directives.¹⁵⁸ In this respect, I agree with his conclusion. Although the *UNGCP* is not a mandatory international document, it is not fully voluntary and it does have an effect on national and international consumer protection law. Wiedenbaum's conclusion is

¹⁵³ See M.J. Trebilcock & D.N. Dewees, "Judicial control of standard form contracts" in P. Burrows & C.G. Veljanovski, eds., *The Economic Approach to Law* (London: Butterworths, 1981) 93; R.A. Posner, *Economic Analysis of Law*, 4th ed. (Boston: Little, Brown and Company, 1992) 21-28; R. Parish, "Consumer Protection and the Ideology of Consumer Protectionists" in A.J. Duggan & L.W. Darvall, eds., *Consumer Protection Law and Theory* (Sydney: Law Book Company, 1980) 229 at 236-42; and W.Z. Hirsh, *Law and economics: an introductory analysis* (New York: Academic Press, 1979) at 117-20.

¹⁵⁴ See B.J. Reiter, "The Control of Contract Power" (1981) 1 *Oxford J. Legal Stud.* 347 at 348-53; I. England, "The Economics of Justice" (1982) 95 *Harv. L. Rev.* 1162; and M. Cranston, "Consumer Protection and Economic Theory" in Duggan & Darvall, eds., *ibid.* at 246-48. See also Duggan, *supra* note 66.

¹⁵⁵ The economic approach to law was explicitly rejected in a leading decision of the Israeli Supreme Court. See F.H. 20/82 *Adres Homrei Benyan Ltd. v. Harlow and Jones G.M.B.H.* (1990), 42(1) P.D. 221 at 235-37 and 277-79, rejecting the doctrine of the "efficient breach."

¹⁵⁶ See Stark, *supra* note 54; and Alston, *supra* note 41. In addition, it should be noted that article 1(3) of the United Nations *Charter*, *supra* note 92, set out the role of the United Nations to "achieve international co-operation in solving problems of an economic, social, cultural or humanitarian character."

¹⁵⁷ Wiedenbaum, *supra* note 144 at 426.

¹⁵⁸ *Ibid.* at 430.

based on the responses of numerous committees and organizations to the *UNGCP*. For instance, the Australian National Consumer Affairs Advisory Council has noted that the *UNGCP* has delineated internationally-recognized minimum standards that every consumer can expect to be applied.¹⁵⁹

The enthusiastic response of Esther Peterson to the *UNGCP* presents a view that expressly recognizes consumer rights as human rights. In an article published shortly after the adoption of the *UNGCP*, she wrote:

International guidelines can serve as a *Charter of Human Rights* in the consumer area. That does not mean that every nation would scrupulously obey and implement those principles. Many may not. But the existence of a UN-sponsored *Charter of Consumer Rights* can simply not be ignored by any nation which wishes to be considered civilized.

These guidelines are, at most, expressions of support for the kind of consumer protection which have been in effect in the US, and for consumers in most other industrial nations as well.¹⁶⁰

This statement is probably the first to expressly acknowledge consumer rights as human rights. Although this statement lacks any legal status, it paves the way for acknowledgement in the future. In a later article, in response to Professor Wiedenbaum's criticism, Ms. Peterson explained that the *UNGCP* cannot impose any duty on any nation "except to the extent that civilized nations and civilized people elect to adopt or adapt them to their own needs."¹⁶¹ But this argument and others¹⁶² came as an answer to the criticism of the *UNGCP* and do not change her basic attitude that the *UNGCP* is a step toward admitting consumer rights as human rights.

The common attitude to the *UNGCP* is presented by Professor Harland, who considers them international soft law.¹⁶³ He noted the increasing recognition of the international characteristics of consumer

¹⁵⁹ *Australia and the United Nations Guidelines for Consumer Protection* (Canberra: Attorney-General's Department, 1986). See discussion below regarding the effect of the *UNGCP*.

¹⁶⁰ E. Peterson, "The United Nations and Consumer Guidelines" in T. Wheelwright, ed., *Consumers, Transnational Corporations and Development* (Sydney: Transnational Corporations Research Project, University of Sydney, 1986) 343 at 347 [emphasis added].

¹⁶¹ Peterson, *supra* note 145 at 436.

¹⁶² See *ibid.* at 438, suggesting that there is a case for regulation and "that legitimate business throughout the world needs the kind of consumer protections" detailed in the *UNGCP*.

¹⁶³ Harland, *supra* note 19 at 251. Regarding the value of 'soft law' in the area of consumer protection, see *supra* note 19. See also, Reich & Smith, *supra* note 19.

protection.¹⁶⁴ In concluding remarks, he explained that the principal significance of the *UNGCP* is that it represents international agreement toward the minimal principles that consumer protection should contain¹⁶⁵ and that its unanimous adoption is a significant development in international recognition of the principles of consumer protection.¹⁶⁶

Harland's emphasis is on the international nature of consumer rights rather than the value of consumer rights as basic rights or as human rights. But, as already indicated above,¹⁶⁷ part of the formal requirements for acknowledging a right as a human right is its international recognition. Accordingly, the international status of consumer rights is a meaningful step in that direction.

The years that have passed since the adoption of the *UNGCP* are insufficient to assess its influence on consumer protection in the world.¹⁶⁸ There are several examples, however, of action taken by countries following the *UNGCP*. In a lengthy article, Professor Harland¹⁶⁹ details actions, subsequent to the adoption of the *UNGCP*, taken in several countries including Uruguay, Ecuador, Australia, Korea, Malaysia, Brazil, Argentina, Chile, Peru, and the Philippines.¹⁷⁰ These activities, although less drastic than some opponents of the *UNGCP* had anticipated, indicate that the *UNGCP*, even without binding power, has substantial influence on consumer protection in many countries. Similarly, in 1992, the Secretary-General of the United Nations published a report on consumer protection,¹⁷¹ elaborating on the record

¹⁶⁴ Harland, *ibid.* at 259, emphasizing the activities of the Organization of Economic Cooperation and Development.

¹⁶⁵ *Ibid.* at 262.

¹⁶⁶ *Ibid.* at 263. See also, Harland, (1988), *supra* note 129.

¹⁶⁷ See section IV.A, above.

¹⁶⁸ In July 1988, the ECOSOC passed a resolution urging all governments to implement the *UNGCP* (*Consumer Protection*, ESC Res. 1988/61, UN ESCOR, 2d Reg. Sess., Supp. No. 1A, UN Doc. E/1988/88/Add.1 (1988) 15). In 1990, the ECOSOC passed a resolution requesting the Secretary-General to develop a programme of action and to review the action on the tenth anniversary of its adoption in 1995 (*Consumer Protection*, ESC Res. 1990/85, UN ESCOR, 2d Reg. Sess., 37th Plen. Mtg., Supp. No. 1A, UN Doc. E/1990/90/Add.1 (1990) 27). See Harland, (1991), *supra* note 129 at 190.

¹⁶⁹ Harland, (1991), *ibid.* at 244-45, deals with the possible impact of the *UNGCP* on various means of consumer protection. Over 50 pages (189-245) of this article address this subject.

¹⁷⁰ *Ibid.* at 197-201, Harland describes the actions taken by those countries, such as legislation and establishment of consumer protection departments. He also details the extensive action taken by consumer organizations throughout the world, with special emphasis on cooperation in South Pacific and Asian countries.

¹⁷¹ 1992 United Nations Report, *supra* note 128.

of implementation of the *UNGCP* in the seven years that had passed since adoption. The report detailed the influence of the *UNGCP* on the domestic and international activities of several countries.¹⁷²

E. *Significance of International Recognition*

The *UNGCP* is part of a trend in recent years to adopt international agreements as a means of consumer protection.¹⁷³ The importance of the international dimension of consumer protection was emphasized in the remarks of the Secretary-General of the United Nations.¹⁷⁴ Recently, a list of seventy-nine international agreements, protocols, guidelines, recommendations, resolutions, and declarations relating to consumer protection were published.¹⁷⁵ Not all of the documents directly relate to consumer protection and most of them deal with areas closely associated with consumer protection such as hazardous technologies, infant feeding, marketing and advertising, pharmaceuticals, product liability, and product safety. Some are documents of the United Nations and others are of the European Economic Community or the Organization for Economic Cooperation and Development, both of which have considerably fewer members than the United Nations.

Despite the numerous international documents on consumer protection, they do not constitute binding international law. Professor Harland states that "it is possible that some recent activities will in time lead to such a development."¹⁷⁶ He questions whether this development will occur in the near future regarding the *UNGCP*, but it might occur in more restricted areas such as hazardous waste or product liability.¹⁷⁷ Although the consumer protection documents can at best be considered international soft law,¹⁷⁸ this does not diminish their international value.

¹⁷² *Ibid.* at 103-06. The list of countries includes New Zealand, the Netherlands, Finland, Poland, Malaysia, Uruguay, Brazil, Argentina, Chile, Peru, and Mexico.

¹⁷³ Harland, *supra* note 127.

¹⁷⁴ *International Co-Operation and Co-Ordination Within The United Nations System. Consumer Protection*, 27 May 1983, 2d Sess., UN Doc. E/1983/71.

¹⁷⁵ See Kanniah, *supra* note 127.

¹⁷⁶ Harland, *supra* note 127 at 119.

¹⁷⁷ *Ibid.* at 120-21.

¹⁷⁸ See *supra* note 19. For scholars who have approved the use of the term "international soft law," see Chinkin, *supra* note 19; and Wellens & Borchardt, *supra* note 19.

Due to lack of enforcement, the impact of international law is not necessarily based upon formal legal status.¹⁷⁹ As previously explained, the *UNGCP* has already had an effect on both domestic legislation and international cooperation.¹⁸⁰

It is clear, however, that major steps have been taken in the direction of granting international status to consumer protection in the past decade. The great majority of the international documents on consumer protection were approved during the 1980s and, while not formally binding, they are certainly a step toward creating mandatory norms of international law. This effect of the *UNGCP* and other international documents is vital in changing consumer protection rules from domestic rules to international law and, eventually, to international human rights.

Recently, the Secretary-General of the United Nations published a report on consumer protection.¹⁸¹ In the introduction to the report, the Secretary-General stated:

On 9 April 1985, in resolution 39/248, the General Assembly adopted by consensus the guidelines for consumer protection, a document which has been likened to an *international consumer bill of rights*. Indeed, in the intervening seven years, the guidelines have often been cited as a single most important set of principles for consumer protection in the world.¹⁸²

The report elaborates in great detail the background to the *UNGCP* and its implementation by governments, international cooperation, United Nation organizations, and non-governmental organizations.¹⁸³ This report, which precedes the full review anticipated by 1995, emphasizes the role of IOCU in promoting the implementation of the *UNGCP*.¹⁸⁴ The report concludes with the remark that "the moral force of this international consensus has given countries the impetus to introduce general laws and raise consumer policy to the *constitutional level*."¹⁸⁵ The *UNGCP* is a recognition by the international community that consumer protection is not merely an issue of domestic interest. This

¹⁷⁹ See Harland, *supra* note 127 at 121.

¹⁸⁰ See Harland, *ibid.* at 124-26, describing the developments in Asia, the Pacific, and South America. See also J.T.D. Wood, "Consumer Protection in the Asia-Pacific Region" (1991) 14 J. Consumer Policy 99.

¹⁸¹ 1992 United Nations Report, *supra* note 128.

¹⁸² *Ibid.* at 97 [emphasis added].

¹⁸³ *Ibid.* at 102-16.

¹⁸⁴ *Ibid.* at 101-02 and at 105-08; and above at section IV.D.

¹⁸⁵ 1992 United Nations Report, *ibid.* at 119 [emphasis added].

recognition has already led to an increase in consumer legislation—sometimes even in constitutional documents. The special importance of this report is that, in an official document of the United Nations endorsed by the Secretary-General, it was recognized that the *UNGCP* is a document comparable to an international consumer bill of rights and that it can serve as a basis to domestic constitutional legislation.

F. *Significance of Constitutional Recognition*

Another phase in the establishment of consumer rights as human rights is their inclusion in the constitutions of several countries. The constitutional provisions on consumer protection in Spain, Portugal, Brazil, and Switzerland will be briefly discussed.¹⁸⁶ These provisions reflect the apprehension of the fundamental responsibility of the state to protect consumers, not only for economic efficiency, but also as part of the quest for “social justice and *human rights*.”¹⁸⁷

Article 51 of the 1978 Spanish Constitution¹⁸⁸ can serve as an illustration of the acknowledgement of basic consumer rights as human rights. This Article relates to basic consumer rights, such as education, information, health, and analogous legitimate interests. The Constitution also requires the Government to promote information and education of consumers and to recognize the role of consumer

¹⁸⁶ There are also similar provisions in the Philippines and Japan. Japan's *Consumer Protection Fundamental Act* outlines general consumer policy, but does not include specific rights and duties. See Harland, (1991), *supra* note 129 at 209-10.

¹⁸⁷ *Ibid.* at 210 [emphasis added].

¹⁸⁸ The Spanish Constitution was “approved by a Joint Session of Parliament on October 10, 1978 and ratified by a referendum on December 6, 1978.” It was “enacted by the King on December 27, 1978.” The aim of the Constitution “is to defend all citizens in the exercise of their human rights.” See I. de Uriarte y de Bofarull, *Consumer Legislation in Spain*, trans. G.S. Hunter (Brussels: Story Scientia, 1987) at 10. See also A.P. Blaustein & G.H. Flanz, eds., *Constitutions of the countries of the world: a series of updated texts, constitutional chronologies and annotated bibliographies*, vol. 15 (Dobbs Ferry, N.Y.: Oceana Publications, 1979).

organizations.¹⁸⁹ Based upon the Constitution, the *General Law for the Defence of Consumers and Users* was published on 24 July 1984.¹⁹⁰ This law clearly acknowledged the Constitution as its legal foundation.

The enactment of these constitutional provisions reflects the belief that consumer rights are basic rights. Article 51 is part of Chapter III of the Constitution, which deals with "Guiding Principles of Economic and Social Policy." The sections preceding article 51 specify rights such as the right to social and economic progress, social security, health, education, culture, housing, and the specific rights of underprivileged groups.¹⁹¹ These rules are based on the 1966 *ICESCR*. The integration of consumer rights into these rights is a strong indication of their role as human rights.

Article 60 of the 1982 Portuguese Constitution¹⁹² declares consumer rights as constitutional rights. The article delineates consumer rights to health, safety, protection of economic interests, fair advertising, and the right of consumer associations to be heard. It is part of Section III of the Constitution, which is entitled "Economic, social and cultural rights and duties" and which uses terms similar to those of the 1966 *ICESCR*. The Section includes the right to social security, the right to health, the right to housing, the right to quality of life, the right to work, as well as rights of workers, rights of consumers, and rights of

¹⁸⁹ The text of article 51, in *Consumer Legislation in Spain, ibid.* at 10 is:

1. The government authorities shall provide for the education and information of consumers and users and shall defend, by effective measures, the integrity, health and legitimate interests thereof.
2. The government authorities shall promote the information and education of consumers and users, encouraging consumer and user organizations, and shall hear such organizations in matters which affect them as determined by law.
3. Within the scope of the preceding paragraphs, the laws shall regulate internal commerce and the regime for authorizing commercial products.

¹⁹⁰ Law 26/1984, Official State Gaz. 176, 19 July 1984. See *ibid.* at 241 for the text.

¹⁹¹ Articles 40-50 of the Constitution. See Blaustein & Flanz, *supra* note 188.

¹⁹² Article 60 of the Portuguese Constitution states:

1. Consumers shall have the right to goods and services of good quality, to training and information, to the protection of their health, safety and economic interests, as well as to compensation for damages.
2. Advertising shall be regulated by the law; all forms of hidden, indirect and fraudulent advertising shall be prohibited.
3. Consumer associations and consumer co-operatives shall be entitled, in accordance with the law, to the support of the State and to being heard on the questions concerning consumer protection.

See Blaustein & Flanz, *ibid.*, vol. 13.

private enterprises.¹⁹³ The placement of consumer rights in the Constitution in the same section with other economic rights ensures their status as part of economic human rights. These constitutional provisions were the basis for the 1981 *Consumer Protection Law of Portugal*.¹⁹⁴

In Brazil, the comprehensive 1990 code of consumer protection states that it is based on articles 5 XXXII and 170 V of the federal Constitution.¹⁹⁵ Article 5 is part of Title II - Fundamental Rights and Guarantees and is also part of Chapter I - Individual and Collective Rights and Duties. Article 170 delineates the general principles of economic activities. In each article, consumer rights are part of the basic human rights to life, liberty, equality, security, and property. The comprehensive code of consumer protection declares basic consumer rights¹⁹⁶ and is based on the principles and the rules of the *UNGCP* in both structure and content.

On 14 June 1981, following a referendum, which is obligatory for any changes in the Constitution, article 31sexies was added to the federal Constitution of Switzerland.¹⁹⁷ The confederate structure of Switzerland permits the general assembly to enact laws only when they are based on a specific provision in the Constitution.¹⁹⁸ It is clear,

¹⁹³ Arts. 58-66, *ibid.*

¹⁹⁴ The Constitution was approved in 1976.

¹⁹⁵ Law No. 8078, 11 September 1990 [unofficial translation by P. Neto]. See also Blaustein & Flanz, *supra* note 188.

¹⁹⁶ Articles 4, 5 and 6 of Law No. 8078, *ibid.* Article 5 XXXII of the Constitution declares: "The State shall promote the protection of the consumer, in such manner as the law may provide." Article 170 V of the Constitution states: "The purpose of the economic order ... is to assure each person a measure of dignity in his existence according to the dictates of social justice, the following principles being observed: ... V. Consumer protection." See Blaustein & Flanz, *ibid.*

¹⁹⁷ See B. Stauder, "Consumer Protection in the Swiss Federal Constitution" (1982) *BEUC Legal News* 2/1982 at 7. Article 31sexies declares:

1. While safeguarding the general interests of the Swiss economy, and the freedom of trade and commerce, the Confederation enacts measures for the protection of consumers.
2. Within the field of federal legislation concerning unfair competition, consumer organizations have the same rights as have professional trade and industry associations.
3. For settlement of disputes arising from contracts between consumers and suppliers up to a value to be determined by the Federal council, the cantons will make provision for arbitration or for rapid and simple legal procedures.

See also, Blaustein & Flanz, *supra* note 188, vol. 16, at art. 31sexies and at 4, "Chronological Update."

¹⁹⁸ Stauder, *ibid.*

however, that being a Swiss constitutional right is not an indication of status as a basic value. Proximate provisions deal with various issues such as hunting and fishing, railways, film production, subsidies, customs, price control, cooperation with economic institutions, and the requirement for reserves in case of economic crisis.¹⁹⁹ These are certainly not human rights. One point to be stressed is that this article was enacted with the intention to strike a balance between consumer rights and other economic rights, which had already been safeguarded in the Swiss Constitution.

To the enacting country, the constitutional provisions on consumer protection are of varied value and importance. The inclusion of a consumer protection clause in the Swiss Constitution is not necessarily indicative of its importance and status. On the other hand, its incorporation into the constitutions of Spain, Portugal, and Brazil mark a major step in the direction of recognizing consumer rights as human rights. The fact that several countries have enacted constitutional provisions on consumer protection may be regarded as another illustration of the importance of consumer protection and of the readiness to recognize consumer rights as part of human rights.

V. SUMMARY AND CONCLUSION

This paper proposes a novel thesis, which may be received with some skepticism by the reader. It suggests an initial acknowledgement of consumer rights as soft human rights, leading finally to full recognition as human rights. In order to forward this idea, the paper first examines the question of which rights are considered human rights. Although a definitive answer to this question can hardly be reached, there are arguably sufficiently agreed-upon features of human rights that can serve as criteria for defining consumer rights as human rights.

In the second section, it is argued that both substantive and procedural tests are required for recognizing a right as a human right. An examination of these tests in the next section reveals that human rights and consumer rights are considerably similar. This conclusion can be supported by some modern theories on human rights. One can, of course, argue that the inclusion of consumer rights as human rights is part of the international community's general tendency to acknowledge new rights, a trend that has been criticized by many scholars. The paper,

¹⁹⁹ Arts. 25-32, in Blaustein & Flanz, *supra* note 188.

however, maintains that any objection to the adoption of new human rights is essentially irrelevant to consumer rights.

The procedural basis for acknowledging consumer rights as human rights was elaborated upon in the fourth section. The international documents discussed in that part²⁰⁰ demonstrate the trend toward formal admission of consumer rights as human rights in international law. It is indeed due time, both in domestic and international law, for such a recognition.

²⁰⁰ See also, Harland, *supra* note 127 at 120-21, who refers to Hague conventions, European Community directives, and other documents.