

# Introduction to International Law Governing the Freedom of Association

## **Basic Principles of Civil Society Law**

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# International Law Governing the Freedom of Association

- UN Declarations and Treaties:
  - Universal Declaration of Human Rights
  - Declaration on Human Rights Defenders
  - International Covenant on Civil and Political Rights
  - International Covenant on Economic, Social, and Cultural Rights
  - International Labor Organization Convention 87
  - Convention on Elimination of All Forms of Racial Discrimination
  - Convention on the Elimination of All Forms of Discrimination Against Women
  - Convention on the Rights of the Child
- Regional Treaties:
  - African (Banjul) Charter
  - Arab Charter

# Sources of International Law

- The *Universal Declaration of Human Rights*
  - Adopted 10 December 1948 by vote of the General Assembly of the United Nations
  - A “declaration,” not a treaty
  - Not “Western” human rights but truly universal:
    - 56 Nations voted – of these, 20 were from Latin America, 4 were from Africa, and 14 were Asian
    - **Arab nations that voted to approve included Egypt, Iraq, Lebanon, North Yemen, Saudi Arabia, Syria**
    - One of the primary drafters was the famous Lebanese diplomat Charles Malik



# The *Universal Declaration* on Freedom of Association

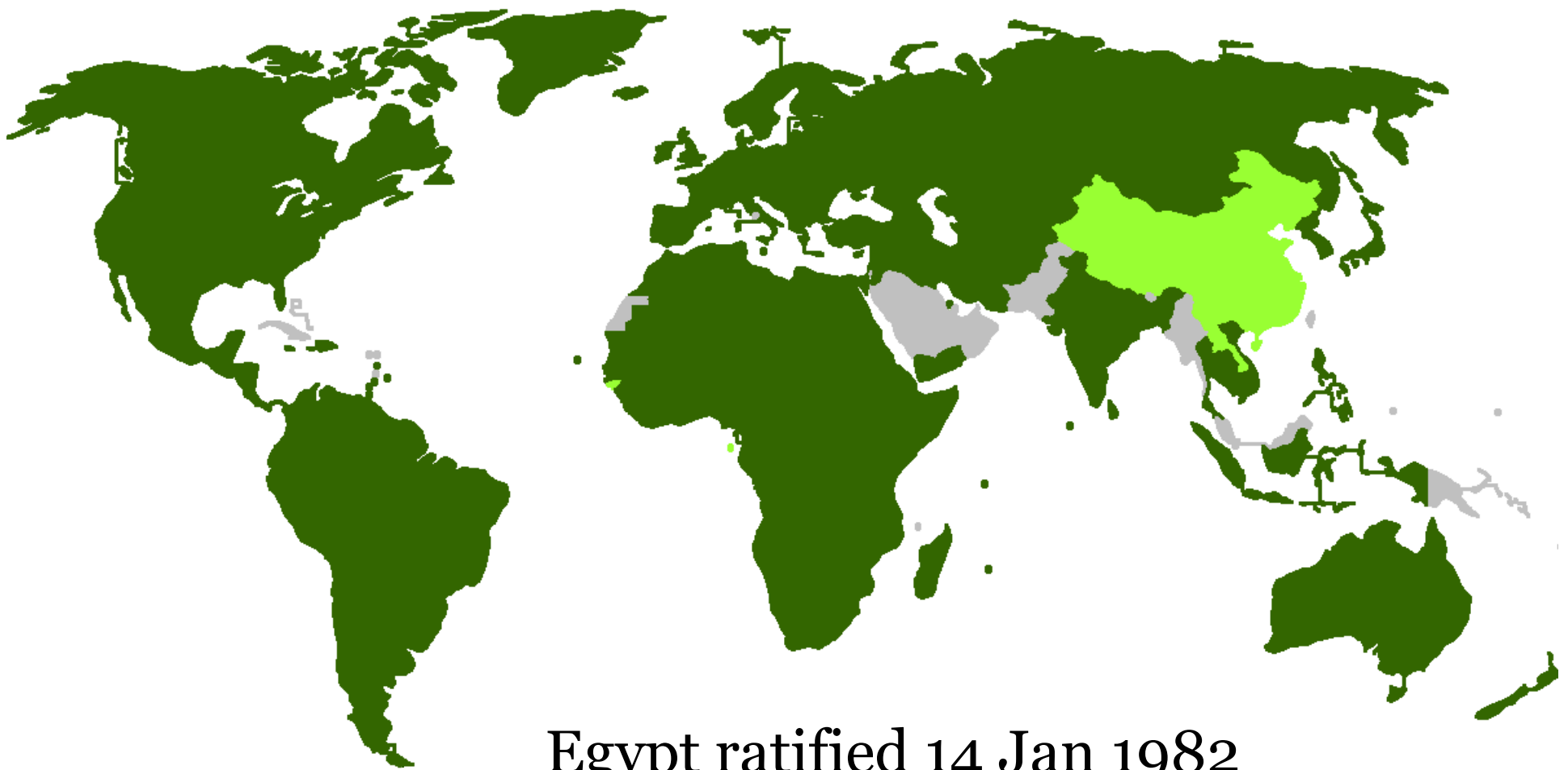
- Article 20
  1. Everyone has the right to freedom of peaceful assembly and association.
  2. No one may be compelled to belong to an association.
- Article 29

... 2. In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by the law solely for the purpose of securing the due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order, and the general welfare **in a democratic society.**

# Sources of International Law

- The *International Covenant on Civil and Political Rights*
  - Took effect 23 March 1976
  - Is a **binding treaty** creating obligations for the countries which have ratified it
  - Has been signed by 165 of the 192 Member States of the United Nations, making it among the most widely-ratified treaties in existence.

# Ratification of the *International Covenant on Civil and Political Rights*



# The *ICCPR* on Freedom of Association

## ▫ Article 22

1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.
2. **No restrictions** shall be placed on the exercise of this right **other than those which are prescribed by law** and which are **necessary in a democratic society** in the interests of **national security or public safety, public order, the protection of public health or morals, or the protection of the rights and freedoms of others**. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and the police in their exercise of this right.

# The *ICCPR* Standard is Internationally Accepted

- Article 22 of the *ICCPR* appears in almost identical form in every major human rights treaty, including:
  1. The *European Convention for the Protection of Human Rights and Fundamental Freedoms* (Article 11)
  2. The *Arab Charter on Human Rights* (Article 24)
  3. The *American Convention on Human Rights* (Article 16)
  4. The *African (Banjul) Charter on Human and Peoples' Rights* (Article 10)



# The Arab Charter on Human Rights

## **Article 24**

Every citizen has the right:

- (1) To freely pursue a political activity...
- (5) To freely form and join associations with others.
- (6) To freedom of association and peaceful assembly.

No restrictions may be placed on the exercise of these rights other than those which are prescribed by law and which are necessary in a society that respects freedom and human rights, in the interests of national security or public safety, public health or morals or the protection of the rights and freedoms of others.

# The African (Banjul) Charter on Human and Peoples' Rights

## **Article 10**

1. Every individual shall have the right to free association provided that he abides by the law.
2. Subject to the obligation of solidarity provided for in Article 29 no one may be compelled to join an association.

# Applying the *ICCPR* standard

- Any limitation on the freedom of association is **impermissible** unless it meets all three of these conditions.
  1. It must be prescribed by law.
  2. It must be necessary in a democratic society.
  3. It must be in the interests of one or more of these justifications:
    - a. National security or public safety
    - b. Public order
    - c. The protection of health or morals
    - d. The protection of the rights and freedoms of others

## Applying the *ICCPR*: “Prescribed by law”

- Restriction must have a basis in written law
- It must be predictable and accessible
- It must be written in clear and unambiguous language

# Applying the *ICCPR*:

## “Necessary in a democratic society”

- The word “necessary” means that there must be a “pressing social need” for the limitation.
- The reasons given by the State to justify the limitation must be “relevant and sufficient;” the State should use the least restrictive means available and the limitation must be proportionate to the aim pursued.



# Bilateral Agreements

- **EU – Egypt Association Agreement (2001):**

Relations between the Parties, as well as all the provisions of the Agreement itself, shall be based on respect of democratic principles and fundamental human rights as set out in the Universal Declaration on Human Rights, which guides their internal and international policy and constitutes an essential element of this Agreement...

# UN Declaration on Human Rights Defenders

## **Article 1**

Everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels.

## **Article 5**

For the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels:

- To meet or assemble peacefully;
- To form, join and participate in non-governmental organizations, associations or groups;
- To communicate with non-governmental or intergovernmental organizations.