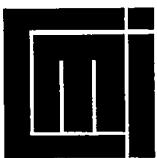


# **Human Rights as International Consensus**

The Making of the Universal Declaration of  
Human Rights 1945-1948

Åshild Samnøy

R 1993: 4  
May 1993



**Report**  
Chr. Michelsen Institute  
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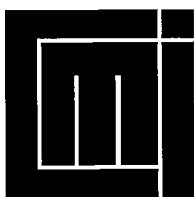
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## **Indexing terms**

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History

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# Preface

This report is a completely revised edition of a study originally written as a thesis for the Cand. Philol. Degree at the Department of History, University of Bergen. At that time, it was mainly based on UN documents. In order to broaden the perspective and shed light over other parts of the history of the Universal Declaration of Human Rights, I have conducted archival research in the records of the British Foreign Office in Public Record Office (PRO), London and in the records of the US State Department in National Archives in Washington D.C. Some information has also been found in the archives of the Norwegian Ministry of Foreign Affairs.

I would like to thank the following people for commenting on drafts of the study and/or for practical help: Bård-Anders Andreassen, Inger A. Nygaard, Helge Pharo, Lise Rakner, Tor Skålnes, Astri Suhrke and Arne Tostensen.

I am grateful to the Norwegian Research Council for Humanities (NAVF) and the Norwegian Ministry of Foreign Affairs for financial support.

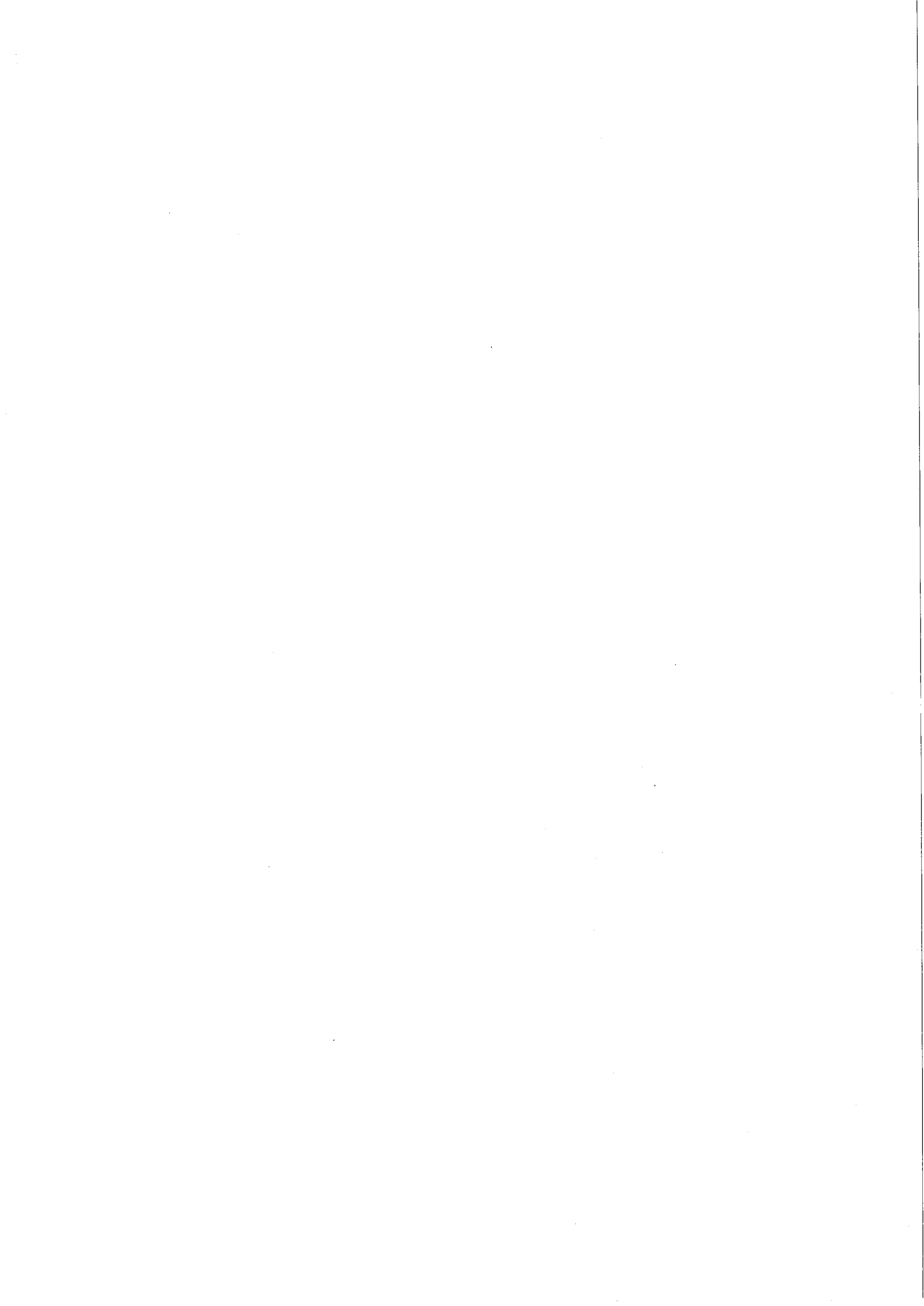
Bergen, June 1993

# Abbreviations

A	United Nations Document, General Assembly
CHR	Commission on Human Rights
CO	Colonial Office, United Kingdom
CSCE	The Conference of Security and Co-operation in Europe
E	United Nations Document, ECOSOC
E/CN.4/	United Nations Document, Commission on Human Rights
ECOSOC	The Economic and Social Council
FO	Foreign Office, United Kingdom
FRUS	Foreign Relations of the United States, annual volumes
GAOR 1/1	Official Records of the First Part of the First Session of the General Assembly, Plenary Meetings
GAOR-TC 1/1	Official Records of the First Part of the First Session of the General Assembly, Third Committee
GAOR-TC 2/1	Official Records of the Second Part of the First Session of the General Assembly, Third Committee
GAOR 3	Official Records of the Third Session of the General Assembly, Plenary Meetings
GAOR-TC 3	Official Records of the Third Session of the General Assembly, Part I, Third Committee
IGOs	International Governmental Organizations
ILO	International Labour Organization
IRO	International Refugee Organization
NARA	National Archives and Records Administration, Washington, D.C.
NGOs	Non-Governmental Organizations
OR-ECOSOC 1/1	Official Records, Economic and Social Council, First Session, First Year
OR-ECOSOC 2/1	Official Records, Economic and Social Council, Second Session, First Year
OR-ECOSOC 4/2	Official Records, Economic and Social Council, Fourth Session, Second Year



OR-ECOSOC 5/2	Official Records, Economic and Social Council, Fifth Session, Second Year
OR-ECOSOC 7/3	Official Records, Economic and Social Council, Seventh Session, Third Year
PRO	Public Record Office, Kew Garden, London
RG	Record Group (in the National Archives, Washington, D.C.)
SD	State Department (of the United States)
SR	United Nations Document, Summary Records
UD	Archives of the Norwegian Ministry of Foreign Affairs
UK	United Kingdom
UN	United Nations
US	United States
USSR	Union of Soviet Socialist Republics
UDHR	Universal Declaration of Human Rights
UNESCO	United Nations Educational, Scientific and Cultural Organization
WHO	World Health Organization
/C.	United Nations Document, committee
/CN.	United Nations Document, commission



# 1. Introduction

The Universal Declaration of Human Rights was adopted by the United Nations (UN) on 10 December 1948. For the first time in history a global organization adopted a document consisting of norms which claimed to have universal authority and validity. The following decades have shown the importance of this document as a fundamental frame of reference in international legal and political discourse. Human rights — as defined, or not defined, in the Declaration — have also become a repository of slogans and verbal ammunition in the political and ideological struggles among nations. But the Declaration has not only been a political weapon. It has been a source of inspiration for peoples in their struggle for better conditions and to attain more civilized politics.

This study examines the historical origins of the Declaration. It focuses on the decision-making process and the historical-political context in which it unfolded. This is an important subject of research because of the Declaration's uniqueness at the time of adoption as well as its later position. The United Nations had fifty-eight members at the time the Declaration was framed, most parts of the world were represented, although not equally.<sup>1</sup> Most of the participating nations supported the final text of the Declaration and none of them voted against it. The fifty-eight governments represented different political systems, ideologies, religions, cultures and various patterns of social and economic development. The Universal Declaration of Human Rights was concerned with all these matters. The question then arises how the adoption of the Declaration was possible in spite of all these differences? Why was the drafting process successful?

This study will attempt to answer these questions by examining the decision-making process involved in the drafting in a historical perspective. Procedural factors such as time schedule, changing participants, the agenda and the terms of reference all greatly influenced the final outcome and contributed in an essential way to the adoption of the Universal Declaration on Human Rights. The decisive underlying factor was, however, the *historical timing*. The creation of the United Nations as well as the

<sup>1</sup> Major parts of Africa and Asia were still colonized and the losers of World War II were excluded from membership in the United Nations.

organization's activity in the field of human rights were products of the tragic experiences of World War II. The early post-war political climate also promoted the successful drafting of the Universal Declaration of Human Rights.

The theme of *Chapter 2* is the political struggle to secure human rights a central position on the UN agenda and also the value of World War II as a precondition. Once it was decided to draft an international human rights document, other decisions had a powerful impact on the selection of main actors in the drafting process. This competition for influence is examined in *Chapter 3*. The binding character of the planned human rights document, i.e. whether to prepare a legally "strong" convention or a legally "weak" declaration, caused lengthy discussion and also affected substantial matters. *Chapter 4* deals with this debate and shows how the participants interpreted the decisions in different ways. Five facilitating strategies for the deliberations on substance are presented in *Chapter 5*, which also describes the common ground for negotiations. These strategies and the common point of departure were important to overcome the obstacles represented by different ideologies, religions and cultures. *Chapter 6* focuses on the significance of a speedy drafting process and the importance of its historical timing. The final and concluding chapter sketches the aftermath of the adoption of the Universal Declaration of Human Rights and discusses its importance.

## **Note on literature and sources**

The broad interest in and acceptance of the concept of human rights is reflected in the numerous works published on this topic. Many volumes deal with different aspects of human rights and the Declaration itself. Thus, they include issues in philosophy, law and social science. Virtually lacking in this literature, however, is a distinct historical approach, separate from philosophical history or history of law.<sup>2</sup>

Some historical material is covered in various, mainly unpublished dissertations in the United States. None of them has a coherent historical approach such as the present study employs. Some parts of this literature are relevant though. Most of these dissertations deal with the entire Bill of Human Rights, also with different aspects of the Declaration. They tend to concentrate on the legal aspects of the covenants. Among these dissertations — all unpublished — the study of Bernard Patrick Meighen represents an

<sup>2</sup> Stokke, "Bibliografisk essay."

exception. The purpose of his analysis, a Ph.D. dissertation written in 1953, was "to learn as much as possible of the deliberative, interspersive process of discussion in terms of which a significant agreement on the Declaration was reached. The hope has been that anything so observed might have important bearing more generally upon the conduct of interspersive discussion and might serve to extend man's control over this means of building needed community." Meighen's study is based on a thorough and useful examination of the primary sources, although the complete absence of the historical perspective reduces the value.<sup>3</sup>

A number of published studies dealing with aspects of the Declaration has been consulted and they vary greatly both in scope and approach. In addition many reports on the history of the Declaration are available. Their summary character and superficiality makes it difficult to label these reports as research. The many studies of human rights that use a legal approach tend to give priority to the covenants and undervalue the Declaration. There is a tendency within international law, however, to lay more emphasis on the Declaration.<sup>4</sup>

<sup>3</sup> Meighen, *The Universal Declaration of Human Rights and Democratic Representative*, 1. The other unpublished dissertations are Funston, *Definition of International Bill of Human Rights*; Grammatico, *United Nations and Development of Human Rights*; Moser, *Human Rights Program of United Nations*; Lee, *Legislative Development of Economic and Social Rights in United Nations*; Fareed, *United Nations Commission on Human Rights*. Among the broad literature on the covenants, see e.g. Henkin, *Covenant on Civil and Political Rights*.

<sup>4</sup> See e.g. Pratt, *Influence of Domestic Controversy on American Participation in the United Nations Commission on Human Rights*, a study which are based on a wide range of primary sources. Albert Verdoodt has given a chronological account of the drafting of each article from the first outline via the discussions to the adoption and includes his own interpretation of the final text in *Naissance et signification de la Déclaration universelle des droits de l'homme*. Tolley Jr. presents a thematic history of the first forty years of the Commission on Human Rights in *The U.N. Commission on Human Rights*. The main objective of Robinson's *Universal Declaration on Human Rights: Its Origin, Significance and Interpretation*, seems to be to make the Declaration "a powerful weapon in the service of human rights" (p. 6), and most of the study is devoted to the aspects of significance and interpretation of the Declaration. The approach of Kanger in *Human Rights in the U.N. Declaration* is to compare the final text with its earlier versions with the intention to "discern what sort of rights the drafters had in mind when drawing up the articles" (p. 21).

In *The United Nations and Human Rights* by James Frederick Green, thirteen pages are dedicated to the history of the Declaration. Of course, this allows a very general review only. The United Nations itself has also published the history of the Declaration in several editions. One of them is *These Rights and Freedoms*, which gives a brief report of the drafting process and presents the chronological development of each article,

Although valuable information on the Declaration is included in the literature noted above, the extensive historical material from the United Nations and different archives are used only a little. Due to its scope and historical approach, this study draws heavily on these primary sources, of which United Nations documents have been most important. These documents have been complemented by material from American and British diplomatic archives, in particular dealing with the human rights work in the United Nations. Some Norwegian archive material has also been analysed.<sup>5</sup>

The detailed nature of the United Nations' summary records can be illustrated by the fact that a two hours meeting produced on average minutes of twelve to thirteen type-written pages. These records also include information about the attending participants at the actual meeting, and identify every speaker as well as give the opening time and the closing time of the meetings. The summary records have high standards of accuracy and reliability. The verbatim records from the drafting process of the declaration exist mainly from the first session of the Commission on Human Rights. Bernard P. Meighen has compared the verbatim and summary records and found the summary records to be accurate. There usually was on every cover page of the summary records an instruction to submit possible corrections to the Record Office within twenty-four hours. When such a correction was made, it was enclosed in the relevant minutes. In addition, the entire record of a session also had to be approved at the end of the session.<sup>6</sup>

though not much in detail. It is mainly a compilation of the different drafts at the different stages in the process.

The voluminous study of Hersch Lauterpacht, *International Law and Human Rights*, is an exemplify the tendency to undervalue the Declaration. The mere publication of *The Universal Declaration of Human Rights. A Commentary*, edited by Asbjørn Eide et.al. (1992) may be an indication on a new tendency. However, the book clearly shows the author's ambivalence about the legal status of the Declaration.

<sup>5</sup> The UN documentation relevant for this study mainly consists of four parts: summary records, official records, annexes and working papers. Summary and official records are very detailed minutes of the deliberations of the different organs. Summary records have been available from the meetings of the Commission on Human Rights, its Drafting Committee and its Working Groups. Official records of the plenary General Assembly, the Third Committee (in the General Assembly) and the Economic and Social Council were also consulted. The Annexes contain different background material, e.g. reports from committees and Sub-Commissions.

<sup>6</sup> The General Assembly laid restrictions on the use of verbatim records. See E/CN.4/AC.1/SR.20: 5-6. The reason of this decision has most likely been the expenses. Meighen, *Universal Declaration on Human Rights and Democratic Representative*, 41. See e.g. E/CN.4/AC.1/SR.25, 1; E/CN.4/AC.1/SR.43/Corr.1; E/CN.4/2/Corr.1;

The United Nations documentation and the archive material have been supplemented by several autobiographical and biographical sources. Several of the participants in the drafting process of the Declaration have given their own versions of events. The most important one is the autobiography of John Humphrey, the Director of the United Nations' Division of Human Rights. He was the first director and held that position from 1 August 1946 until he retired twenty years later. He began to keep a diary in July or August of 1948, so his memoirs are probably more detailed and exact from that point of time. He also based his memoirs on UN documentation, which the many quotations in his book clearly show. His autobiography, even though filled with descriptions of a great many cocktail-parties and gossip of leading personalities, is highly informative about the drafting the Universal Declaration of Human Rights and its adoption by the General Assembly in 1948, so Philip Alston, the noted international lawyer, noticed when reviewing it.<sup>7</sup>

Other autobiographical sources concerning the drafting process are three important members of the Commission of Human Rights, Eleanor Roosevelt, Charles Malik and René Cassin. The essay written in 1949 by O. Frederick Nolde, *Freedom's Charter*, deserves also to be mentioned. Nolde was one of the observers from the non-governmental organizations during the drafting process, and, according to Mrs. Roosevelt, he attended as regularly as the delegates did. Nolde represented the Commission of the Churches on International Affairs, and he also attended the San Francisco Conference as one of the consultants to the United States delegation. He gives a vivid description of the drafting process of the Declaration.<sup>8</sup>

A/C.3/232/Corr.1; A/C.3/266/Corr.1; E/CN.4/SR.80, 10-11.

<sup>7</sup> Humphrey, *Great Adventure*. Alston, Review of *Great Adventure*, 224-25. Humphrey has also contributed with numerous essays on the history of the Declaration, see "Human Rights," "Magna Charta of Mankind," "Universal Declaration of Human Rights: History, Impact and Juridical Character," "Universal Declaration of Human Rights" and "United Nations Charter and Universal Declaration of Human Rights."

<sup>8</sup> Roosevelt, Eleanor: "The Struggle for Human Rights;" "General Assembly Adopts the Universal Declaration of Human Rights;" "The Promise of Human Rights;" "Human Rights" and *The Autobiography of Eleanor Roosevelt*.

Malik, Charles: "Economic and Social Council;" "International Bill of Human Rights;" "Human Rights in the United Nations;" and *Human Rights in United Nations*.

Cassin, René: "La Déclaration universelle et la mise en oeuvre des droits de l'homme;" "Twenty Years After the Universal Declaration of Human Rights: Freedom and Equality" and "Hvorledes verdenserklæringen om menneskerettighetene ble til."

Nolde, *Freedom's Charter*. See also E/600; E/800 and Roosevelt, "Introduction," 3.

## **The historical predecessors to the Declaration**

When adopted the Universal Declaration of Human Rights was unique in its scope and in its universality. The document had, however, its predecessors. The frequent use of the concept "the international bill of human rights" in the Declaration's drafting process, clearly shows the inspiration by the eighteenth century declarations.

The French Declaration of the Rights of Man and Citizen (1789), the American Declaration on Independence (1776) and the Bill of Rights (1789 and 1791) all represented constitutional victories for human rights on a national level. The ideas of all these documents became normative standards in modern civilization. Several of the constitutions made in the following years also included lists of rights after the American and French model. The protection of human rights continued to be an issue governed by domestic legislation.

There had been before efforts for international measures to protect human rights. At the end of the eighteenth century, slavery was generally recognized as legal all over the world. Slavery was first abolished in England in 1772 and later it became internationally suppressed. The International Convention on the Abolition of Slavery and Slave Trade was concluded under the auspices of the League of Nations in 1926. Its objective was the complete suppression of slavery and slave trade everywhere.

The evolution of *humanitarian law* is mainly linked to the history of the International Red Cross. The founder of this organization, Henri Dunant, took the initiative to transform into positive law the growing support of humanitarian treatment of wounded enemy troops. The Geneva Convention of 1864 laid down a permanent system of humanitarian relief whenever and wherever its services might be required. The Convention also took care of prisoners of war. After the terrible experiences of World War I, the system was improved by a new Geneva Convention of 1929. In the framework of the Hague Peace Conference of 1899 and 1907, a similar system of protection of the sick and the wounded in naval warfare was established.

A more recent and relevant experience for the drafters of the International Bill of Human Rights, was the international protection of minorities as a result of the new borders drawn up after World War I. Treaties concerning minorities were forced on the new and partly new states in Eastern Europe. There was also included in the peace treaties of the former enemy-states clauses concerning minorities. Certain states made declarations on the protection of minorities a condition for the admission of the new states to the League of Nations. This form of minority protection had one particularly bad outcome. Protection of minorities served



as a legal pretext for Hitler and Nazi Germany to invade and fight wars. During the human rights discussion in the early years of the United Nations, several states had as their clear policy that this kind of protection should not be repeated. Only selected groups of minorities were given this limited international protection, which suggested that the protection of minorities had little value.<sup>9</sup>

Other elements of international law also indicate an emerging international concern for human rights. The concept of *humanitarian intervention* covered a limited number of cases when intervention in the internal affairs of a state was permitted because of inhuman treatment of its own subjects, (although the actual reason for such interventions might have been mixed). Such a (self-proclaimed) humanitarian intervention was exercised, e.g. in 1827 by the United Kingdom, France and Russia on behalf of the Greeks against the Turkish supremacy. The *diplomatic protection of citizens abroad* was also a kind of international protection of human rights. The Hague Codification Conference in 1930 tried to safeguard the rights of aliens, and drew attention to forty-seven different types of "denials of justice". However, these safeguards were not particularly effective, and it depended strongly on the ability of the different states to enforce the rights of their nationals abroad. Another element which might have had an effect on the protection of human rights, the *mandate system*, begun after 1919. Mandates were used primarily to settle rival political claims.<sup>10</sup>

The breakdown of the League of Nations and its disability to protect minorities created scepticism about the international protection of human rights. The atrocities of World War II led to its renaissance. The Nuremberg Trials represented this increased emphasis on the international protection of human rights when former Nazi-leaders were indicted and

<sup>9</sup> Robertson, *Human Rights in the World*, 20. "Possible Modes of Dealing with Minorities," 14 October 1943, Box 3, Alger Hiss Files, National Archives and Records Administration (NARA); Working Party on Human Rights, 15 May 1947, Public Record Office (PRO), Foreign Office (FO) 371/67 604/UNE 414.

<sup>10</sup> See Borchard, "Historical Background of International Protection of Human Rights," 113. A thorough analysis of the concept, and some cases, of humanitarian intervention will be found in Sohn and Buergenthal, *International Protection of Human Rights*, 137-211. Rappard, director of the Mandates Section of the League of Nations 1920-25 and member of the permanent Mandates Commission 1925-45, argued that this system also had an effect on the protection of human rights. His problems with finding facts to support his view indicates that the mandate system had no considerable effect on the protection of human rights. See Rappard, "Human Rights in Mandated Territories," 118-23.

tried as war criminals by the International Military Tribunal organised by the victorious allied powers. Eyewitnesses, escaped from Auschwitz in 1944, set off the chain of events that led to these trials, and the Americans were particularly active in the preparatory process. The offenses of the accused had no particular geographical location, but can be subdivided into three categories: violations of the laws of war, crimes against peace, and crimes against humanity (exterminations, deportations and genocide). The main principle of these trials was that crimes of international law were committed by individual men. Therefore, the only way to enforce the provisions of international law was to punish individuals who committed such crimes.<sup>11</sup>

While the last part of the nineteenth century saw an increasing codification of international law, the two world wars were in a sense steps back. An international law professor represented such a view when right after World War II he declared that international law had been immeasurably weakened by the two world wars, and that the legal limitations on warfare by several hundred years of practice seemed abolished. At the same time, these wars caused renewed interest in the field of international law, manifested by the creation of global multipurpose organisations; the League of Nations and the United Nations respectively. These organisations can be considered as organised superstructures of international customary law. As a result of this rapid growth of international organisation and of the renewed interest of international law, the Universal Declaration of Human Rights was adopted in 1948. Its adoption implied that for the first time the individual could become a subject to international law. This was perhaps the greatest novelty in the 1948 adoption of the Declaration.<sup>12</sup>

<sup>11</sup> Conot, *Justice at Nuremberg*, 3.

<sup>12</sup> Borchart, "International Protection of Human Rights," 115.

## 2. Human rights on the UN agenda: The impact of the war

The predecessor of the United Nations (UN), i.e. the League of Nations, did not have any special provisions for the protection of human rights. During the drafting of the UN Charter, made during the Dumbarton Oaks conversations of the Great Powers in the autumn of 1944, only a vague reference to human rights was included. Yet, the final Charter contained seven references to human rights. Promotion of human rights was made as one of the main tasks of the organization, and the establishment of a commission on human rights was explicitly mentioned in the Charter. This was in fact one of the most significant differences between these two documents. *Why and how* were the human rights placed on the United Nations agenda? *Who* supported and who opposed it? *What* had happened between October 1944 and June 1945 to make such a difference between the Dumbarton Oaks Proposals and the UN Charter?<sup>1</sup>

By the end of World War I, the President of the United States, Woodrow Wilson, took the initiative to create a world organization designed to prevent another destructive world conflict. The League of Nations was established in 1919 as a part of the Versailles treaty. While the League was weakened by the absence of the USSR and more importantly, by the United States, the organization had some success in the twenties. After the world economic crisis in the early thirties, its decline was obvious. The Japanese conquest of Manchuria (1931), the Italian attack on Ethiopia (1935-36) and Hitler's repudiation of the Versailles treaty (1935) represented crucial challenges to the collective security mechanism which the League failed to meet. The League was unable or unwilling to resist aggression by a powerful and well-armed state. The requirement of unanimity paralysed the organization. By the outbreak of World War II the League was moribund. Soon there was another initiative.

Already by the end of 1939, even before the US was formally involved in the war, the United States had established a committee to consider post-war problems. Work quickened and increased after Pearl Harbour. One of the reasons for the failure of the League of Nations had been the absence

<sup>1</sup> All the references to human rights in the UN Charter will be found in Appendix 2.

of the United States. This mistake, it was now argued, should not be repeated. During 1943, under the support of public opinion in the United States to participate in an international security organization, the United States government took the initiative in creating the United Nations, as it had in establishing the League of Nations.<sup>2</sup>

The Atlantic Charter (14 August 1941) as well as the Declaration by the United Nations (1 January 1942) explicitly referred to some kind of post-war peace and security organization. The Charter focused on “a peace which will afford to all nations the means of dwelling in safety within their own boundaries” and for the “establishment of a wider and permanent system of general security.”<sup>3</sup>

The Foreign Ministers of the United States, the United Kingdom and the Soviet Union met in Moscow (1943) and proclaimed the decision to continue after the war their close cooperation, and work together for the creation of an international peace and security organization. In spite of its absence, China was also a party to this declaration, which was further confirmed and strengthened later that autumn in Cairo and Teheran. The four Great Powers then proceeded to prepare concrete proposals and by midsummer 1944 they exchanged drafts. These documents constituted the basis of the conversations in Dumbarton Oaks, Washington, from 21 August to 7 October 1944. The resulting *Dumbarton Oaks Proposals* became the basis of the United Nations founding conference during the early summer of 1945.<sup>4</sup>

The creation of this new international organization was not only dependent on the agreement of the Great Powers, the approval by the US Senate was just as important (as the history of the League of Nations showed). The veto of the Great Powers in the Security Council helped quiet concerns in the Senate. It was also a precondition for Soviet participation in the United Nations.

<sup>2</sup> Public opinion polls during the war show an increasing and overwhelming public support for the participation of the United States in an organization similar to the League of Nations after the war. Scott and Withey, *United States and United Nations. Public View*, 9-15. Russell, *History of United Nations Charter*, 323-29.

<sup>3</sup> On 14 August 1941, the President of the United States and the Prime Minister of Great Britain gave a joint declaration, known as the Atlantic Charter. On 1 January 1942, this declaration was endorsed by the Allies, the twenty-six countries then at war with the Axis. The document — known as the Declaration by United Nations — was later adhered to by forty-seven nations in total. United States Department of State, *Report to the President*, 21.

<sup>4</sup> The official name of the conference, which took place in San Francisco from 25 April to 26 June 1945, was “The United Nations Conference on International Organization.”

## **“Complete victory . . . to preserve human rights”**

From the very beginning, World War II was described as a war over ideas and ideals, in particular by the leaders of the United States. Of course the reality was more complex, but ideas were an extremely important part of the American governments' justification for the war. In January 1941 the President, Franklin Delano Roosevelt, gave his famous address to the Congress:

In the future days, which we seek to make secure, we look forward to a world founded upon four essential freedoms.

The first is the freedom of speech and expression everywhere in the world.

The second is freedom of every person to worship God in his own way everywhere in the world.

The third is freedom from want which, translated into world terms, means economic understandings which will secure to every nation a healthy peacetime life for its inhabitants everywhere in the world.

The fourth is freedom from fear — which, translated into world terms, means a world-wide reduction of armaments to such a point and in such a thorough fashion that no nation will be in a position to commit an act of physical aggression against any neighbour — anywhere in the world.

. . . Freedom means the supremacy of human rights everywhere. Our support goes to those who struggle to gain those rights or keep them. Our strength is our unity of purpose.

To that high concept there can be no end save victory.<sup>5</sup>

The emphasis on freedom was repeated on 14 August 1941 in the Atlantic Charter. The joint declaration by the President of the United States and the Prime Minister of Great Britain expressed that “after the final destruction of the Nazi Tyranny, they hope to see established a peace which will afford to all nations the means of dwelling in safety within their own boundaries, and which will afford assurance that all the men in all the lands may live

<sup>5</sup> In 1943 Senator Joseph H. Ball declared that for “the overwhelming majority of the Americans . . . this is a war between democracy and tyranny, between freedom and slavery for the individual,” Ball, *Collective Security*, 9. Roosevelt, “Four Human Freedoms,” 384-85.

out their lives in freedom from fear and want.” The human rights aspect was even clearer when the Allies endorsed the Atlantic Charter. On 1 January 1942, in the Declaration by United Nations, the signatory Governments stated “that complete victory over their enemies is essential to defend life, liberty, independence and religious freedom, and to preserve human rights and justice in their own lands as well as in other lands. . . .”<sup>6</sup>

The conviction was constantly spreading. There could be no peace without human rights. It could be said that the war was carried on with the intention of creating a political and economic order which permitted protection of human rights. The special character of World War II as a war about ideas was not mere rhetoric. The experiences of the war and in particular the behaviour of the Nazis gave new force to the ideas and ideals of human rights. It was generally believed that the war was a struggle for human rights and fundamental freedoms. The acts of the Nazis were very important reasons for the growing interest in human rights during the war and throughout the post-war period.

Against this background, it is not surprising that the Dumbarton Oaks Proposals contained a reference to human rights. In the section dealing with arrangements for international economic and social cooperation, one of the tasks of the planned organization was to “promote respect for human rights and fundamental freedoms.” The task was linked to the principal aim of the organization: “With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations . . . .” Having in mind the many human rights references made by President Roosevelt during the war, it is not surprising that the issue was raised by the American negotiator, the Under Secretary of State, Edward R. Stettinius. But even this vague reference to human rights caused some dispute among the Great Powers. The strongest opposition to a reference to human rights and fundamental freedom was expressed by the British delegate, Sir Alexander Cadogan. He argued that “such a provision would give rise to the possibility that the organization might engage in criticism of the internal organization of member states.” The British reluctance was obviously related to the colonial issue. They were exceedingly vulnerable to criticism on this point. The Soviet representative, Ambassador Andrej Gromyko, seemed more indifferent, but voiced his “personal” opinion that human rights were not relevant to the main task of the planned security organization. The Soviet group turned later out to be willing to accept the human rights reference, “provided it was coupled with a provision that

<sup>6</sup> Pharo and Nordahl, *Internasjonal politikk 1941-1955*, 13. United Nations, *United Nations Action in Field of Human Rights*, 5.

Fascist or fascist-type states could not be members of the organization.” Both the British and the Soviet representatives agreed, however, to raise the issue with their governments.<sup>7</sup>

The original demand of the United States was to incorporate human rights as one of the principles of the future organization. In order to reach a compromise with the other big powers, the Americans lowered their demands and requested the Soviet and British to inform their government about the hope of the United States “that this point [human rights] can be included briefly *somewhere* in the document.” [Italics added.] When the Under Secretary of State, Stettinius, met with the President the next day, the Under Secretary said he “mentioned to the President how disappointed we were that we had not yet succeeded in getting the human rights and fundamental freedoms statement in the document but that we had and would continue to press the matter as hard as we know how.” Stettinius also maintained that the President was gratified by the fact that the Soviet and British representatives had promised to raise the human rights matter with their governments.<sup>8</sup>

Some days later, Ambassador Gromyko received his final instructions from Moscow and could inform the British and American delegations “that his Government had . . . agreed to the insertion of the provision relating to the promotion of human rights and fundamental freedoms at the end of the first sentence under Chapter IX which concerns economic and social arrangements.” This proposal became the final decision at Dumbarton Oaks. When this agreement was referred to President Roosevelt, he “seemed gratified . . . and felt the inclusion of the human rights sentence was extremely vital.”<sup>9</sup>

The President’s remarks, not made public at the time, indicate a deep concern about human rights. His many references to human rights and

<sup>7</sup> Robinson, *Human Rights in the Charter*, 117. Eighteenth day of the conversations. Memorandum by the Under Secretary of the State, Edward R. Stettinius, to the Secretary of State, 9 September 1944, Foreign Relations of the United States (FRUS): 1944, I, 789. Memorandum by the Under Secretary of the State, Stettinius, to the Secretary of State, 19 September 1944, FRUS: 1944, I, 825.

<sup>8</sup> Memorandum by the Under Secretary of the State, Stettinius, to the Secretary of State, 20 September 1944, FRUS: 1944, I, 829. Extract from the Personal Diary of the Under Secretary of State, Stettinius, twenty-ninth day of the Conversations, 21 September 1944, FRUS: 1944, I, 834.

<sup>9</sup> Memorandum by the Under Secretary of State, Stettinius, to President Roosevelt, Progress Report on Dumbarton Oaks Conversations, 27 September 1944, FRUS: 1944, I, 838. Extract from the Personal Diary of the Under Secretary of State, Stettinius, 27 September 1944, FRUS: 1944, I, 842.

freedoms during the war may have contained an element of rhetoric, but Roosevelt seems to have had a sincere interest in the issue and pushed it through the American delegation. His “ghost writer”, Samuel I. Rosenman, testifies to this, claiming that the 1941 declaration was a result of a Presidential initiative and dictation. At the same time, Roosevelt also represented the interests of American human rights activists. The reference may have been a concession to them.<sup>10</sup>

In the period between the Dumbarton Oaks conversations and the San Francisco Conference, the proposals of the Great Powers were open to scrutiny and criticism by public opinion. Recalling the fate of the League of Nations, the US State Department started a formidable campaign to sell the plan to the Congress and the public and distributed about 1.9 million copies of the text. The impressive public response is illustrated by the fact that letters to the US State Department relating to the Dumbarton Oaks Proposals reached a weekly peak of about 20,000 by April 1945, some of them were also dealing with human rights issues. As a result of this response, forty-two non-governmental American organizations were invited to send representatives to the San Francisco Conference to serve as consultants to the US delegation. The participation of these consultants seems to have had some impact on the UN Charter, as will be shown later. Some non-American NGOs also attended the Conference, but their contribution to the process is uncertain.<sup>11</sup>

Despite the fact that the preparatory work at Dumbarton Oaks was done only by the Great Powers, their clear assumption was that the planned international organization should be open to “all peace-loving states”, irrespective of size. Although the Big Four played a major role in preparing the new organization, many states and non-governmental organizations were actively engaged as well. First and foremost, this applied to the Allied Powers, which were invited to the San Francisco Conference. A great many

<sup>10</sup> Rosenman, *Working with Roosevelt*, 262-263.

<sup>11</sup> Campbell and Herring, ed., *The Diaries of Edward R. Stettinius*, 153-154. United States Department of State, *Report to the President*, 27. See also Riggs, “Overselling the UN Charter.” A great number of private organizations had requested the State Department to be represented at the San Francisco Conference. The opinion of the Department was somewhat ambiguous; on the one hand “there were good reasons why many of them should be there,” on the other hand “it was felt to be unfortunate to overload the official Delegation with such representatives.” As a compromise, forty-two organizations got consultative status, which implied that “a full system of liaison would be set up to keep them closely in touch with the progress of the work” and they “would be consulted from time to time as appropriate.” See Minutes of the Second Session of the United States Delegation, 23 March 1945, FRUS: 1945, I, 149.



of them presented their own amendments to the text produced by the Great Powers, and not a few concerned human rights. The strongest of these human rights campaigns was led by the Latin Americans.<sup>12</sup>

### **Latin American activism for a bill of human rights**

The creation of the new world organization was one of the issues discussed by the Latin American states at the Inter American Conference on War and Peace Problems in Chapultepec, Mexico, during the spring of 1945. In one of the resolutions, the Conference declared that the responsibility of the United Nations to provide international protection of the basic rights of man had to be put into practice by means of *a catalogue of the rights and the duties of every individual in a declaration adopted by states in the form of a convention*. This was an indication of the coming International Bill of Human Rights. The idea of making an international human rights document was not new. The novelty of the Latin American proposal was its broad governmental support combined with its connection to the creation of the United Nations. The Chapultepec resolution showed that the making of such a document within the framework of the United Nations had some political support at that point in time. A drafting work on a regional human rights document was also initiated at this conference, and this work went on to parallel the coming drafting work on the UN Declaration.<sup>13</sup>

The Latin American initiative for a “catalogue of rights” paralleled a shelved American plan. Among the tentative proposals for the coming United Nations set forth by the United States administration, an international bill of rights was suggested as part of the basic constitutional

<sup>12</sup> “All peace-loving states” meant primarily all those fighting on the Allied side during the war. “Amendments to Dumbarton Oaks Proposals,” United States Delegation Undistributed Numbered Documents (US Doc Und) 5b 1/1 (San Francisco Conf.), US Mission to the United Nations, Box 10, 84, NARA.

<sup>13</sup> Robinson, *Human Rights in the Charter*, 22-23. The resolution was approved on 7 March 1945. There existed already several draft international bill of human rights. When the Commission of Human Rights started its drafting work early in 1947, seven of the texts which were brought to its knowledge, were produced before 1945, the oldest one was from 1917. They were mainly produced by individuals. (See E/CN.4/W.16, p. 9-11.) The attempt closest to be an official launching of the idea of an international bill of human rights was made by the Czechoslovakian President Eduard Benes in November 1941. (See Holborn, *War and Peace Aims of United Nations*, 420.) This regional declaration was adopted in March 1948 by the Ninth International Conference of American States in Bogotá — and therefore often named “the Bogotá declaration”. E/CN.4/122. See forthcoming discussions in Chapters 3 and 5.

provisions of the new organization. The US intention with such a bill seems to have been to avoid demands for minority treaties similar to those adopted after World War I. However, the inclusion of any bill of rights was not part of the US recommendations to the Dumbarton Oaks meetings. The Americans felt perhaps that such a bill was too unrealistic. A meeting between a Mexican delegation and a representative of the American delegation just before the San Francisco Conference indicates such a feeling. The Mexican proposal was to incorporate in the Dumbarton Oaks Proposals a statement of basic rights and obligations of individuals and nations. The US representative tried to dampen the enthusiasm, arguing that it would be extremely difficult to do this. In the end, the Mexicans replied that they would be satisfied with a limited statement. It was a foreshadowing of what later occurred in San Francisco. The United States represented the "realist" support for human rights, the Latin Americans represented the "idealist" view.<sup>14</sup>

The Latin American activism moved to new grounds in San Francisco where several states proposed amendments designed to strengthen the safeguards of human rights. The most far-reaching proposals were set forth by Panama, Chile, Mexico, Uruguay and Cuba. Three of them wanted to include some kind of declaration of human rights in the UN Charter, and the others attempted to commit the General Assembly to adopt such a document shortly after the San Francisco Conference.<sup>15</sup>

Panama introduced the "Declaration of Essential Human Rights," proposing that the document become a part of the UN Charter, and declared that one of the goals of the organization was to maintain and observe these standards. This declaration was prepared by jurists from twenty-four countries between 1942 and 1944 under the auspice of the American Law Institute. One of them was Ricardo J. Alfaro, Panamanian jurist and later President of Panama. He was a delegate to the San Francisco Conference and on his initiative Panama introduced this draft to the conference. Later,

<sup>14</sup> Proposals for an international bill of rights," August 1944; "The Legal Sub-Committee," 22 September 1944 and "Bill of Rights," draft approved 3 December 1942, box 2, Human Rights, Alger Hiss Files, 1940-46, NARA. Russell, *History of United Nations Charter*, 323-29. The suggested content of this bill of rights included also economic and social freedoms. (Compare Chapter 5.) Memorandum of Conversation, by Mr. Leo Pasvolsky, 21 April 1945, FRUS: 1945, I, 355-360.

<sup>15</sup> It is remarkable that in spite of this conference, the Latin Americans had no joint proposal. A joint amendment suggested by Brazil, the Dominican Republic and Mexico was the only exception.

Alfaro participated in the drafting process of the Universal Declaration of Human Rights.<sup>16</sup>

The Chilean delegation proposed that the Charter should include the following paragraph: “[E]very state must guarantee to the individual full and complete protection of his freedom, and the right to live and to work; also the free exercise of religion, profession, science and art, . . . [and] that governments be bound to guarantee their people freedom of press and information.” Mexico also wanted to incorporate essential human rights in a “Declaration of International Rights and Duties of Man” in an annex to the United Nations Charter, but that delegation had no draft.<sup>17</sup>

Uruguay demanded that it be the declared purpose of the Organization “to promote the recognition of and guarantee respect for the essential human liberties and rights without distinction as to race, sex, belief or social status. Those liberties and rights are to be defined in a special charter.” This document, which was named “Charter of Mankind,” was to be submitted to the consideration of the General Assembly within six months. The Cuban proposal had some similarities with the Uruguayan one. The delegation of Cuba required that “the States which are members of the Organization shall conform their acts to the principles contained in . . . the “Declaration of the International Duties and Rights of the Individual” which the General Assembly shall adopt within the shortest possible time after it is constituted.” The delegation also presented a draft for such a Declaration, and this draft contained civil and political rights as well as social and economic rights.<sup>18</sup>

Despite their efforts, the flurry of proposals from the Latin American states concerning a bill of human rights were not accepted. There was insufficient time, others argued, to consider the proposals fully. Of course, it would have been impossible to draft any human rights document during a few weeks at an international conference which had so many difficult tasks to deal with and which had fifty states as participants. Bearing in mind the later discussions about the status of the human rights declaration,

<sup>16</sup> Robinson, *Human Rights in the Charter*, 23-24. E/CN.4/57, p. 3; Lewis and Ellingston, “Introduction” and Committee appointed by American Law Institute, “Statement of Essential Human Rights.” The cultures or countries represented were the American, Arabic, British, Canadian, Chinese, French, pre-Nazi German, Italian, Indian, Latin American, Polish, Soviet Russian and Spanish. American Law Institute was a judicial organization specialized on codification of law. It was not represented among the consultants to the US delegation in San Francisco. Houston, *Latin America in the United Nations*, foreword by Ricardo J. Alfaro. See also Table 2.

<sup>17</sup> Robinson, *Human Rights in the Charter*, 23-24.

<sup>18</sup> *Ibid.*, 24-25 and 154-161.

it is reasonable to assume that a great number of the participating states in San Francisco feared the possible binding nature of such a document. Human rights activists at the Conference were fully aware of the opposition, especially from the Great Powers, to accept any proposal which might justify interference in their internal affairs. The idea of Uruguay and Cuba to bind the signatory parties to a human rights declaration that was not yet drafted, was even more unrealistic. Another expressed argument for postponing the drafting of the bill was that the organization which was going to be formed, could "through a special commission, or by some other methods" deal more effectively with a possible bill of rights than the San Francisco Conference. The idea of a forthcoming drafting of a bill of human rights was received with sympathy at the San Francisco Conference.<sup>19</sup>

In addition to the proposals regarding a bill of human rights, many delegations suggested amendments designed to strengthen the safeguards of human rights. Haiti sought to include the protection of human rights in the requirements for membership in the new organization by an amendment stating that the basis of the organization was "the sovereign equality of all States that love peace and exclude from their relations any racial or religious discrimination." This initiative led nowhere, nor did the French proposal for including human rights in the activities of the Security Council.<sup>20</sup>

It is remarkable that except for the Great Powers the most ardent and numerous human rights proposals came from Latin America. Some of their engagement may have reflected a personal interest of individual representatives, as in the case of Panama's Ricardo J. Alfaro. Even more important the Latin American political tradition is very legal. It is deeply influenced by the Catholic ideas of natural law. The right to asylum is for example deeply respected in the region. This legal and religious tendency of politics is shown in some speeches held by Latin American presidents during World War II as well as by the later Latin American arguments in the drafting process of the Universal Declaration of Human Rights. Their

<sup>19</sup> *Jewish Telegraphic Agency*, 26 April 1945, quoted in American Jewish Committee, *World Charter for Human Rights*, 5. Robinson, *Human Rights in the Charter*, 38 and 89. (Doc. 944, I/1/34 (1), 13 June 1945.)

<sup>20</sup> Latin-American states which proposed stronger human rights provisions in the Charter: Panama, Chile, Cuba, Uruguay, Mexico, Brazil, the Dominican Republic, Colombia, and Haiti. The following states also suggested stronger or weaker amendments which referred to human rights, most of them only one single reference: The Union of South Africa, Egypt, India, France, Norway, New Zealand, Australia, and Canada. Robinson, *Human Rights in the Charter*, 19-30.

constitutions, moreover, were inspired by the ideas of the French revolution. In this light, human rights activism was an understandable reaction to the war despite the fact that Latin America had hardly been directly involved in the war.<sup>21</sup>

A British delegate took a cynical view. In a confidential report to his foreign office, he characterized the Latin American proposals as “pious platitudes which seem to place them in the vanguard of progress and yet involve no enforcement of inconvenient standards in their home towns.” This British description touches a crucial issue: It is obviously easier to support general statements on human rights than concrete measures of its implementation. For example, very few of the Latin American states could be called as “democracies” at the time.<sup>22</sup>

## **The Great Powers and human rights**

The four Great Powers which sponsored the Dumbarton Oaks Proposals had also agreed to consult with each other in San Francisco concerning amendments and changes in the original text. As a result, their joint amendments carried more weight than the others. How these powers decided to deal with the human rights issue was crucial therefore.<sup>23</sup>

The United States delegation repeated the original American proposal to include a reference to the development of respect for human rights and fundamental freedoms among the principles and purposes of the Organization. Human rights would thus be established as one of the main purposes of the organization. At Dumbarton Oaks, this proposed clause had been moved to a less prominent place, to the chapter dealing with social and economic issues. Now in San Francisco, the United States made another attempt to move it up. The delegation also suggested that to “foster the observance of human rights and fundamental freedoms” should be

<sup>21</sup> Having in mind the strong Latin American activity for human rights, it is an irony of history that these countries more than others were refuges for Nazi criminals. On the legal and religious tendency of politics, compare the philosophy of Francisco Suárez, see Stoetzer, *Scholastic Roots of Spanish American Revolution*. See also Houston, 254-55 and 286 and Jenks, “Human Rights in a World of Diverse Cultures in Lights of Spanish Tradition.” Speeches by the Mexican and Peruvian presidents in Holborn, *War and Peace Aims of United Nations*, 593 and 608. For the Latin American views with respect to issues such as God, family, marriage, abortion etc., see Chapter 5.

<sup>22</sup> Hadow to Foreign Office, 17 May 1945, PRO: FO 371/50716/U 4218.

<sup>23</sup> Minutes of the First Four-Power Consultative Meeting on Charter Proposals, 2 May 1945, FRUS: 1945, I, 548.

specified among the purposes of the General Assembly. Even within the San Francisco delegation there appeared to be ambivalence towards the inclusion of human rights references. American “realism” in estimating the political support of human rights resurfaced. It was argued that it was “important to avoid giving the impression that the Organization would deal with individuals.” Another delegate pointed out that the human rights issue had caused a great deal of difficulty at Dumbarton Oaks. A third emphasized that the main purpose of the San Francisco Conference was security — there were “enough problems involved in that without injecting other matters.” The social and economic field should be left to subsequent conferences. This ambivalence within the American delegation was known publicly at the time. A contemporary observer saw it as an expression of fear of human rights activity involving what was then called “the Negro problem”. This was a very sensitive issue in the US and also caused international criticism. It later directly influenced the American human rights policy.<sup>24</sup>

In light of the subsequent history of the UN and human rights, the fact that the Soviet amendments to the UN Charter included three references to human rights is far more surprising than the American support. Under the general purpose of the United Nations, the Soviets suggested that the organization should “achieve . . . encouragement of respect for human rights,” the General Assembly should “assist in the realization of human rights and basic freedoms” and, as a part of its arrangement for international economic and social cooperation, the United Nations should “promote respect for human rights.” In all three human rights references, the Soviet amendments also included a non-discrimination clause in the form of the statement “without distinction as to race, language, religion or sex.”<sup>25</sup>

<sup>24</sup> Minutes of the Fifth Meeting of the United States Delegation, 9 April 1945, FRUS: 1945, I, 220 and 223. Minutes of the Seventh Meeting of the United States Delegation, 11 April 1945, FRUS: 1945, I, 251-52. Memorandum by the Secretary of State to President Truman, 19 April 1945. FRUS: 1945, I, 354. Minutes of the Eighth Meetings of the US Delegation, 11 April 1945, FRUS: 1945, I, 262. *Jewish Telegraphic Agency*, 26 April 1945, quoted in American Jewish Committee, *World Charter for Human Rights*, 5. *The Jewish Daily Forward*, 20 May 1945, quoted in American Jewish Committee, *World Charter for Human Rights*, 10. Rose, *America Divided*, 307-315.

<sup>25</sup> “Amendments to Dumbarton Oaks Proposals as suggested by the Soviet delegation,” US Gen 39, 2 May 1945, US Mission to the United Nations, Box 6, RG 84, NARA. The non-discrimination categories were identical to those in the Soviet Constitution, Art. 122-124. See John N. Hazard, “The Soviet Union and a World Bill of Rights,” 1102.

It is surprising and has often been forgotten since that the US and the Soviet delegations combined their human rights proposals. These became the joint amendments of the Great Powers. The Americans accepted the Soviet clause of non-discrimination. These are the most explicit Soviet contribution to the human rights provisions in the Charter. The Soviets too had to make a concession in order to reach an agreement. Their human rights clauses mentioned in particular the right to work and the right to education. These provisions were not acceptable to the US delegations. The Soviets had no strong objection to the deletion of these references. It has been argued that at the San Francisco Conference there was a remarkable willingness from both the Soviet Union and the United States to make concessions to get agreement on the new organization. Their human rights cooperation can be seen in this light.<sup>26</sup>

Because of Soviet-American cooperation on human rights, the British even though reluctant to include human rights issues in the Charter, were overpowered. Human rights thus secured a rather strong position in the United Nations Charter. The human rights references were expressed in a general language. During the coming drafting process of the human rights bill, the same powers intensely resisted a binding document.

<sup>26</sup> Minutes of the First, Second and Third Four-Power Consultative Meetings on Charter Proposals, 2 and 3 May 1945, FRUS: 1945, I, 551-552, 569-570 and 584. "Consultation of the United States, United Kingdom, Soviet Union and China on their amendments to the Dumbarton Oaks Proposals" and "Amendments proposed by the governments of the United States, United Kingdom, Soviet Union and China," 3 and 4 May 1945, US Gen 58 and 70, The US Mission to the United Nations, box 6, RG 84, NARA. Minutes of the Second Four-Power Consultative Meeting on the Charter Proposals, 3 May 1945, FRUS: 1945, I, 570.

The explicit enumeration of rights caused much debate, particularly within the United States delegation. The American argument against the Soviet enumeration was that there existed so many other fundamental rights, e.g. the freedom of religion and the freedom of the press. (Their different "choice" of rights illustrates a real difference of opinion between the two states.) However, the Soviet delegate, Molotov, surprised the Americans by declaring that he had no objection against further enumeration. Then the US delegation promoted as their first choice that there should not be any enumeration at all. If this motion was rejected, they then would press for a reference to freedom of information. This strategy seems to have been chosen because they feared that the right to work, proposed by the USSR, was more likely to be accepted by the Conference than their counter-proposal. See Minutes of the First and Second Four-Power Consultative Meetings on Charter Proposals, 2 and 3 May 1945, FRUS: 1945, I, 551-552 and 570. Forty-second and Forty-third Meetings of the US Delegation, 16 and 17 May 1945, FRUS: 1945, I, 766, 774, 777-778. See also Russell, *History of United Nations Charter*, 782; about the "international devotion" to right to work/full employment. Fisher, *America and Russia in World Community*, 128.

The United Kingdom delegation had proposed inserting the word “international” before every reference to “human rights”, “otherwise there might be interference with internal affairs. They did not repeat this proposal later, perhaps because they were satisfied that the general non-interference clause of the Charter had been moved to a more prominent position in the document. The British objection to an inclusion of human rights provisions in the Charter rested on the principle of non-interference in internal matters. It is identical to the Soviet position in subsequent debates on human rights issues. At the time, British fear of interference was linked to the colonial question. Strong international criticism had made it a very sensitive issue. Concern for that issue was clear in the Foreign Office papers about the International Bill of Human Rights. Washington’s criticism, in particular, strained the relations between the two states.<sup>27</sup>

The striking difference between the British and the American attitude towards human rights may seem surprising in light of their common cultural and ideological heritage. The two states, however, represented different traditions of foreign policy. The foreign policy of the United States has been described as alternating between isolationism and intervention/ globalism/idealism. The American involvement in World War II and even more so the engagement in the establishment of the United Nations represented a powerful globalism. The American talk of freedom and human rights illustrates the idealist dimension. Thirty years later, in the Carter Administration, support for human rights rose again. On the other hand, British foreign policy has stereotypically been marked by pragmatism and an absence of ideology. The impact of public opinion upon the conduct of foreign policy has been even more important in the United States than in Britain. These differences became clearer as the relative strength of the two states changed during the war. The globalism of the United States was growing at the same time the nation grew stronger. The United Kingdom was a declining empire, with reduced and decreasing capability as well as weakened political will to preserve its former greatness in foreign policy.<sup>28</sup>

<sup>27</sup> Minutes of the Twenty-fifth Meeting of the US Delegation, 2 May 1945, FRUS: 1945, I, 523. “Amendments proposed by the governments of the United States, United Kingdom, Soviet Union and China,” US Gen 70, US Mission to the United Nations, Box 6, RG 84, NARA. The non-interference clause was moved from Chapter VIII, Arrangements for the Maintenance of International Peace and Security Including Prevention and Suppression of Aggression, to Chapter II, Principles. Hathaway, *Ambiguous Partnership. Britain and America*, 124 and 135.

<sup>28</sup> Hartz, *Liberal Tradition in America*, 286 ff., Morgenthau, *New Foreign Policy for United States*, 15-16 and Frankel, *British Foreign Policy*, 39.



The rather positive Soviet attitude towards human rights at this stage is interesting, particularly in light of the later Soviet position. Part of the explanation may be that the Dumbarton Oaks Conversations occurred before the emergence of the Cold War. Anti-Fascism seems to have been Moscow's most important objective (as it remained for years). It may also be argued that constitutions had a weak position in the Soviet during the Stalin-era. The Moscow processes occurred and the Gulag grew in spite of provisions in the Soviet constitution. It was no problem for Stalin to accept human rights provisions as long as they were not binding. It has also been argued that the Soviet Union only recognized those parts of international law which suited its interests. The proposed Soviet enumeration of rights, for example the right to work and the right to education, also suggest that the Soviets may have seen the human rights references as a potential instrument to criticize others.<sup>29</sup>

### **Successful lobbying for a commission on human rights**

Probably the most interesting change about human rights in the period from the Dumbarton Oaks Proposals to the San Francisco Conference was the inclusion of an explicit reference to a commission on human rights. This is the only commission expressly mentioned in the Charter. In preparing for a new world organization, initially the American administration was sceptical about the establishment of a human rights commission. A commission was created in spite of such scepticism.<sup>30</sup>

The role of the American non-governmental organizations was very significant. Forty-two such organizations had status as consultants to the American delegation. They were leading national organizations in the fields of labour, law, agriculture, business and education together with principal women's associations, church groups, veterans' associations and civic organizations in general. Within this group, the American Jewish Committee and also the Federal Council of Churches of Christ in America (FCCCA) in particular took the leadership.<sup>31</sup>

<sup>29</sup> Dallin, *Soviet Union at United Nations*, 8-9 and 11. See also Fisher, *America and Russia in World Community*, 122-131.

<sup>30</sup> Russell, *History of the United Nations Charter*, 328.

<sup>31</sup> See American Jewish Committee, *World Charter for Human Rights*. This is a collection of the day-to-day reports of numerous representatives of the American press and radio present at the San Francisco Conference. The leaders of American Jewish Committee and the FCCCA were Judge Proskauer and Dr. O. Frederick Nolde respectively. They are paid tribute from all quarters for their role under the San Francisco Conference.

These organizations had been working on human rights for years. The American Jewish Committee had their own Committee on Peace Problems. In December 1944 this committee launched the idea of an International Bill of Rights in a Declaration and was supported by 1326 distinguished Americans. Several newspapers supported the idea. They also got approval from President Roosevelt shortly before his death. The Committee greatly influenced public opinion in the United States on this issue. This influence had an impact in San Francisco. The Committee on Peace Problems also distributed their views (translated into various languages) to every one of the delegates — from all fifty nations in San Francisco. One of their recommendations was that “a permanent commission should be set up at the earliest possible time by the United Nations Conference to formulate an International Bill of Rights . . . .”<sup>32</sup>

As soon as the San Francisco Conference opened, the American Jewish Committee intensified its campaign for an international bill of rights and urged that a commission on human rights should be established. Because they had realistic idea about the problems of the adoption of such a document in San Francisco, they directed their efforts towards establishing a commission on human rights. The explicit aim was to give this commission the task of making the international bill of rights as soon as possible. The delegates of the American Jewish Committee, Joseph M. Proskauer, the President of the American Jewish Committee and a former

FCCCA had — together with the Foreign Mission Conference of North America — established a Joint Committee on Religious Liberty, and this committee sent a letter to every member of the US delegation to the San Francisco conference urging for a special commission on human rights and fundamental freedoms to be provided for under the UN Charter. The initiative got the approval and support from the Executive Secretary C. Easton Rothwell in the US Department of State. (Letter from Mr. Nolde to Mr. Rothwell, 7 March 1945 and letter from Mr. Rothwell to Mr. Nolde, 16 March 1945, box 18, Alger Hiss Files, 1940-46, NARA.)

<sup>32</sup> American Jewish Committee, *World Charter for Human Rights*, 4. *To the Counsellors of Peace*. Recommendations of the American Jewish Committee, New York, March 1945. (Box 17, Alger Hiss Files, 1940-46, NARA.)

Another Jewish initiative for human rights was taken by the World Jewish Congress, the American Jewish Conference and the Board of Deputies of British Jews. These organization submitted a joint memorandum dealing with the problem of human rights and fundamental freedoms to the San Francisco Conference. (This document will be found in box 9, US Mission to the United Nations, RG 84, NARA.) American Jewish Conference had a consultative status in San Francisco, but did not play such an important role as the American Jewish Committee. The first organization represented the Zionists, a unity from which the American Jewish Committee had withdrawn. (See Laqueur, *A History of Zionism*, 552-553.)

New York Supreme Court Justice and Jacob Blaustein, led an active campaign in which they also enlisted the media. A few days after the opening of the San Francisco Conference Proskauer and Blaustein launched a "crusade" in a press statement which was widely reported. "The special plight of the Jewish victims of Nazi savagery" was their explicit and main motivation for this action, and they stated further:

We emphasize our profound belief that while the peace conference will ultimately give attention to the wrongs which have been especially inflicted on the stricken Jews of Europe by the holocaust of war and the bestiality of Hitler, the ultimately safety of the Jewish population of Europe will rest upon the international enforcement of justice and equality of treatment to all men of every race and creed.<sup>33</sup>

One morning, Proskauer relates, they were informed that the plan for a commission on human rights was in grave danger. Mobilizing other consultants in a last effort to "save" the commission, they drew up a memorandum and circulated it to the other American NGOs. They got twenty-five signatures. The memorandum insisted on a reference to a human rights commission and stated further:

The ultimate inclusion of the equivalent of an International Bill of Rights in the functioning of the Organization is deemed of the essence of what is necessary to preserve the peace of the world.

a) The dignity and inviolability of the individual must be the cornerstone of civilization. The assurance to every human being of the fundamental rights of life, liberty and the pursuit of happiness is essential not only to domestic but also to international peace.

b) The conscience of the world demands an end to persecution and Hitlerism has demonstrated that persecution by a barbarous nation throws upon the peace-loving nations the burden of relief and redress.

c) It is thus a matter of international concern to stamp out infractions of basic human rights.

<sup>33</sup> *New York Herald Tribune*, 28 April 1945, printed in American Jewish Committee, *World Charter for Human Rights*, 5-6.

. . . It would come as a grievous shock if the constitutional framework of the Organization would fail to make adequate provision for the ultimate achievement of human rights and fundamental freedoms.<sup>34</sup>

The document was handed to the Secretary of State, Edward R. Stettinius, who was also the leader of the American delegation. On 2 May 1945, Stettinius met the consultants at a meeting which may be seen as decisive. There are many reports about the meeting. According to the reporter of the *New York Post*; "The consultants made little effort to conceal their anger at this session. Some of them pounded the table and shouted their demands for official support of the civil rights force."<sup>35</sup>

Judge Proskauer was one of the spokesmen of the consultants. He held a speech which every report of the meeting describes as eloquent and decisive. "It may well prove to be the most important act of his distinguished career," one of the other consultants stated on Proskauer's speech. The meeting was over in half an hour, but the outcome was clear. Stettinius was convinced and promised the whole US delegation would support their demand for a human rights commission.<sup>36</sup>

Stettinius fulfilled his promise. The delegation decided without strong opposition to promote the establishment of a commission on human rights, but met some opposition at the Four-Powers consultation. The resistance came mainly from the United Kingdom delegation which did not want the Charter to specify particular bodies to be created. The question of commission was referred to a sub-committee, which supported the British point of view. Three of the Great Powers were opposed to spelling out a reference to any commission. But the US delegation continued to press for the inclusion of a human rights commission. At this time a more general language was proposed, which became the basis for a compromise. "The Economic and Social Council should set up commissions in the fields of economic activity, social activity, cultural activity, promotion of human rights and any other field within the competence of the Council." The final edition of the Charter gave the human rights commission an even more

<sup>34</sup> *National Broadcasting Company*, 24 May 1945, quoted in American Jewish Committee, *World Charter for Human Rights*, 11. "Proposals regarding human rights," US Gen 42, 2 May 1945, US Mission to the United Nations, Box 6, RG 84, NARA.

<sup>35</sup> Mr. Riesel, *New York Post*, 4 May 1945, quoted in American Jewish Committee, *World Charter for Human Rights*, 6-7. This description of the events corresponds with the minutes of the United States delegation of and from that day. Minutes of the Twenty-sixth Meeting of the US Delegation, 2 May 1945. In FRUS: 1945, Vol. I, 528-540.

<sup>36</sup> David A. Simmons, President of the American Bar Association. Quoted in American Jewish Committee, *World Charter for Human Rights*, 13.

unique position: “. . . commissions in the economic and social fields and for the promotion of human rights and such other commissions as may be required . . .” (Article 56).<sup>37</sup>

During the consultations, the United Kingdom, the USSR and China suggested that the reference to a human rights commission be dropped and replaced by a paragraph concerning human rights and fundamental freedoms under the Economic and Social Council. This paragraph was adopted in addition to the compromise on the human rights commission. At the end of their discussions the Great Powers amendments included five references to human rights. Their disagreement on this issue led to more, not fewer, human rights clauses.

Before the final adoption of the Charter, the total number of human rights references was expanded to seven. The draft preamble, produced ironically by Jan Smuts of South Africa, was chosen as basis, and his expression;

to re-establish faith in human rights, in the sanctity and ultimate value of human personality, in the equal rights of man and women of nations large and small, and to promote social progress and better standards of life in larger freedom,

was adopted with slight changes. The last reference to human rights in the Charter emerged in the chapter relating to the International Trusteeship System. This issue was decided later at the San Francisco Conference, after the human rights discussion were ended. There is no indication of any discussion on this particular human rights reference and its wording for the most part follows the pattern of the other human rights clauses in the Charter.<sup>38</sup>

While the American consultants wanted a human rights commission that would create an international bill of rights, this was not the unanimous interpretation of the Great Powers. In the middle of May, the US Secretary of State, Stettinius, advocated — through a press statement — making such a bill:

<sup>37</sup> Minutes of the Second and Third Four-Power Consultative Meeting on Charter Proposals, 3 May 1945. FRUS: 1945, I, 570, 581 and 584. “Amendments proposed by the governments of the United States, United Kingdom, Soviet Union and China,” US Gen 70, US Delegation to the United Nations, Box 6, RG 84, NARA. Appendix 2.

<sup>38</sup> Preamble to the Charter of the United Nations, by Smuts, South Africa, PRO, FO 371/50711/U 3735; “Progress report of work in Commissions and Committees,” 28 and 29 May 1945, US Gen 197, US Mission to the United Nations, RG 84, NARA and Robinson, *Human Rights in the Charter*, 20. Goodrich and Hambro, *Charter of United Nations*, 232-233 and 328-330. Appendix 2.

The four sponsoring governments agreed that an enumeration of individual and collective human rights and fundamental freedoms in the charter could not be attempted at this conference. It would take much too long to obtain agreement upon such an enumeration among more than two score nations of differing social systems, environments, and traditions. I believe that when the organization is established the economic and social council, through the commission on human rights, should promptly undertake to prepare an international bill of rights which can be accepted by all the member nations as an integral part of their own systems of law, just as our bill of rights has been an integral part of our system of law.<sup>39</sup>

This “sudden statement” caused some concern at the British side. The United Kingdom delegation at the Conference immediately reported home to their Foreign Office the above quoted passage. Next day they followed up with an explanation:

The reason for Mr. Stettinius’s sudden statement to the Press with regard to an International Bill of Rights will — according to information given me confidentially in the U.S. Delegation — I fancy, be found to be a desire to compensate, to certain Latin American Governments, for countervailing concessions on the part of the latter with regard to regional autonomy in the Act of Chapultepec.<sup>40</sup>

The British interpretation reflected the fact that the United States and the Latin Americans held different views on the scope and strength of the inter-American system, and in particular on its adjustment within the UN framework. Whether or not this disagreement was the reason for Stettinius’ statement is hard to determine. With the Latin American pressure for an international bill of rights in mind, the British explanation may provide part of the reason. On the other hand, the Americans also faced a strong domestic pressure for such a bill, and Stettinius himself seems to have been devoted to this task. Whatever the reasons, Stettinius’ statement obviously strengthened the idea of drafting an international bill of human rights. The

<sup>39</sup> “Statement by the honourable Edward R. Stettinius Jr., Secretary of State and chairman of the United States Delegation,” 15 May 1945, PRO, FO 371/50714/U 4044.

<sup>40</sup> Telegram from United Kingdom delegation in San Francisco to Foreign Office, 16 May, 1945, PRO, FO 371/50711/U 3758 and report from R.H. Hadow to the Foreign Office, 17 May 1945, PRO, FO 371/50716/U 4218. See also FO 372/50712/U 3818.

The Latin American states were reluctant to give too much authority in security questions to the United Nations at the expense of the regional Inter-American system, while the United States gave the priority to the United Nations in security matters. See Alfaro, “Foreword,” x-xi. See also Finch, “United Nations Charter,” 543-44.

President of the United States, Harry S. Truman, later gave renewed force to the proposal in his closing address to the San Francisco Conference:

Under this document we have good reason to expect the framing of an International Bill of Rights, acceptable to all the nations involved. That Bill of Rights will be as much a part of international life as our own Bill of Rights is a part of our own Constitution. The Charter is dedicated to the achievement and observance of human rights and fundamental freedoms. Unless we can obtain those objectives for all men and women everywhere — without regard to race, language or religion — we cannot have permanent peace and security.

Truman's address created the general impression that the commission of human rights would draw up an international bill of rights. This understanding was the point of departure when the commission later started its work.<sup>41</sup>

<sup>41</sup> Russell, *History of United Nations Charter*, 559-566. Truman, *Years of Decision*, 292. Humphrey, *Great Adventure*, 13.

### **3. Vying for influence**

In the end, the San Francisco Conference decided to establish a special human rights commission. Although it was not declared explicitly, it was generally understood that the first task of this commission was to draft an international bill of human rights. The decision-structure was open and the main actors were still unknown.

#### **The establishment of the Commission on Human Rights**

The organizational structure also had bearings on the distribution of influence in the decision-making process. The Charter of the United Nations established the overall structure and procedures of the organization. The Charter gave, however, no answer to the question how to make an international bill of human rights. In terms of modern decision-making theory, the new organization lacked standard operating procedures, i.e. routines developed on the basis of previous behaviour in similar instances. The United Nations had to establish from scratch its own procedures, such as how to conduct the drafting of an international bill of human rights. To meet these needs, the signing powers set up a Preparatory Commission which recommended that the Economic and Social Council (ECOSOC) establish a Commission of Human Rights, in full accordance with the UN Charter, article 68. At its first session, in resolution 1/5 of 16 February 1946, ECOSOC established the "nuclear" Commission of Human Rights. The nine appointed members were supposed to serve in their individual capacity, not as representatives of governments. The Nuclear Commission was to make recommendations on the definitive composition of the Commission and on the terms of reference to the second session of the ECOSOC taking place in May and June the same year. The Nuclear Commission on Human Rights met from 29 April to 20 May 1946 at Hunter College in New York. Only six of the nine nominees attended; Dusan Brkish (Yugoslavia), René Cassin (France), C.L. Hsia (China), Nicolai Kriukov (USSR), K.C. Neogi (India) and Eleanor Roosevelt (the United States). These six persons delivered their report to the ECOSOC, which in resolution 2/9 of 21 June 1946 established the full Commission of Human Rights. The terms of reference were expanded. The number of members were doubled and the type of membership had changed. These



differences would have a significant impact on the future work of the Commission of Human Rights, but the changes also indicated some disagreement within the commission and within the ECOSOC.<sup>1</sup>

Drafting an international bill of rights was at the top of a four-point list which spelled out the main terms of reference of the Commission. The other items included consideration of international declarations or conventions on civil liberties, the status of women, freedom of information and similar matters; appropriate protection of minorities; and the prevention of discrimination on the grounds of race, sex, language or religion. To give the commission these tasks seems to be rather uncontroversial. The Preparatory Commission, which initially wrote the terms of reference, had also suggested a fifth item: "any matter within the field of human rights considered likely to impair the general welfare or friendly relations among nations."<sup>2</sup> This broad mandate was rejected at the first session of ECOSOC. When the Nuclear Commission made its recommendations, the attitude was expansive. Among their proposals was a commission composed of individual experts and a rather open-ended mandate. As the suggested individual experts-representation was turned down at the second session of ECOSOC, a broader mandate was approved as a compromise, identical to the recommendations of the Preparatory Commission. When the terms of reference caused very little debate in the Nuclear Commission as well as in the ECOSOC, this was a sign of the broad acceptance of the mandate of the Commission. The broad terms covered a lot of coming controversies.

### **Individual experts or governmental representatives?**

A question which immediately caused conflict was which *type of membership* the commission should have. The choice was between governmental representatives or "uninstructed" experts. The United Nations was a governmental organization, but the Nuclear Commission on Human Rights was composed of individual experts. There was then a model for each proposed solution.

<sup>1</sup> The full Preparatory Commission made its recommendation on the Commission on Human Rights 23 December 1945 and the decision was approved by the General Assembly on 10 January 1946. OR-ECOSOC 1/1, pp. 163-164 and E/27. E/HR/6, p. 1. Paal Berg (Norway), Fernand Dehousse (Belgium), and Victor Raul Haya de la Torre (Peru) were unable to attend the Nuclear Commission, and they had no alternates.

<sup>2</sup> OR-ECOSOC 1/1, pp. 163-164 and E/27. E/38/Rev.1, p. 2. Alston, *United Nations and Human Rights*, 127-128.

The Nuclear Commission discussed three possible kinds of membership of the full Commission: a) only governmental representatives; b) individual experts; c) mixed representation (which included both individual experts and governmental representatives). Originally, Kriukov (USSR) and Brkish (Yugoslavia) supported mixed membership, and Hsia (China) suggested individual experts, a view which the other representatives also supported. Neogi (India) pointed out that the ECOSOC as well as the General Assembly represented governments, and that the Commission on Human Rights should not again consist of representatives of governments. He was supported by Cassin (France).<sup>3</sup>

The United States government was in favour of nonofficial membership. That is, the expert was not completely without reference to the government from which the individual expert would be elected. The main argument was that the prestige of the commission would diminish if the representatives were bound by the political interests of participating member states. This solution would, moreover, result in a manageable size of the commission and it would be easier to obtain highly qualified experts.<sup>4</sup>

Eleanor Roosevelt (US) maintained that the peoples of the world looked upon the members of the Commission as their representatives. Therefore, she requested the members to advocate opinions which might be difficult for their own government to accept. In other words, she recommended them to act independently of their own government and argued:

[I]f one believes it is right, I think one should advocate it, hoping that if it would be good for the world, it would therefore, in the end, be good for one's own government and one's own people, too.<sup>5</sup>

Cassin, on the other hand, pointed out the disadvantages of non-governmental membership in the Commission:

[I]n the past, Commissions consisting of individuals often reached lofty conclusions which were never observed, while commissions consisting of governmental representatives came to less ambitious but more effective conclusions. It might therefore be argued that our Commission would reach better results, if composed of governmental representatives.<sup>6</sup>

<sup>3</sup> E/HR/10, pp. 3-4.

<sup>4</sup> FRUS 1946, vol.1, p. 195-196.

<sup>5</sup> E/HR/10, p. 1.

<sup>6</sup> E/HR/10, p. 4.

In spite of this argument, the Nuclear Commission unanimously agreed to recommend that the full Commission should consist of eighteen qualified members, who should serve in their individual capacity as experts. In the end this was not, however, an unanimous decision. When the last third of the session of the Nuclear Commission remained, Alexander Borisov (USSR) arrived. He insisted that he was the representative of the USSR, and that Kriukov was only an observer. US comment on this case was that it demonstrated the need for detailed rules of the procedure on the part of the full Commission. The disagreement, moreover, illustrates the dominating role of the states within the UN system, even in the case where the participants were formally acting in their individual capacity. Borisov took exception to certain agreements that had been reached, and one of them was the question of the type of membership. He advocated governmental representatives, and argued that non-governmental representatives would not be able to operate effectively, because they did not act under direct authority from their governments.<sup>7</sup>

At its second session the Economic and Social Council discussed the report of the Nuclear Commission. The Council opposed the idea of independent expert representation. The representative of the USSR, now Nicolai I. Feonov, argued that governmental representatives would be more effective in finding practical solutions than individual experts. The underlying fear was to be bound by any expert decision which they had not had any influence on. The Norwegian delegate, Ole Colbjørnsen, voiced his support for this point of view, and argued that governmental representatives would be in a better position to get decisions accepted by their respective governments. The representative of Yugoslavia, Leo Mattes, shared their view. The representatives of Belgium, Lebanon, the United Kingdom and the United States spoke in favour of non-governmental individuals as members of the Commission on Human Rights. The Council left the report to a drafting committee. The drafting committee recommended that the full Commission should consist of eighteen governmental representatives. It was also decided that the members should be confirmed by the Council.<sup>8</sup>

In Resolution 2/9 of 21 June 1946, the ECOSOC decided:

<sup>7</sup> E/HR/19, p. 7. Kriukov was present from 29 April to 13 May, and Borisov replaced him from 15 May until the end of the session, 20 May 1946. "Comments and recommendations on report," 22 May 1946, US-SD/E/CN.4/W.1, box 45, Position papers, Bureau of International Organization Affairs and its Predecessors, RG 59, NARA. E/HR/19, p. 1; E/HR/26, p. 1; E/HR/29/Rev.1, p. 1; E/38/Rev.1, p. 1 and E/HR.26/Rev.1.

<sup>8</sup> OR-ECOSOC 2/1, pp. 36-44.

- a) The Commission on Human Rights shall consist of one representative from each of eighteen members of the United Nations selected by the Council.
- b) With a view to securing a balanced representation in the various fields covered by the Commission, the Secretary-General shall consult with the Governments so selected before the representatives are finally nominated by these Governments and confirmed by the Council.<sup>9</sup>

This implied that the members of the Commission would act as governmental representatives. The confirmation of the governmental representation by the ECOSOC, which was meant as a moderating provision, seemed to be perfunctory and formal. The Council always confirmed the nominees. Altering representatives and the extensive use of alternates (who did not have to be confirmed by the Council), strengthens the impression that the member states were rather decisive in the selections of delegates. Some representatives also met in the Commission before the ECOSOC had confirmed their nomination.<sup>10</sup>

It seems likely that the governmental representation on the Commission on Human Rights was of great importance when it came to adopt the Universal Declaration of Human Rights. The Commission acquired more political weight. The governmental representatives had to take into account the views of their own government and this probably increased the character of the text as a compromise product. It even made the text easier to pass. As Cassin put it: "[I]n the past, governmental representatives came to less ambitious but more effective conclusions." Governmental participation in the Commission also had the effect of increasing the expectations and prestige of the enterprise. World public opinion expected results of the work. These expectations might have restrained those who would like to refuse any declaration.<sup>11</sup>

Governmental representation did not hinder the exercise of personal influence by the individual representatives. Personal relations and informal discussions have generally been more important in the United Nations than formal exchanges and public debate. According to the Director of the Division of Human Rights, John Humphrey, their degree of instructions varied: "Some [representatives] were more independent than their

<sup>9</sup> OR-ECOSOC 2/1, p. 400.

<sup>10</sup> Humphrey, *Great Adventure*, 17. Humphrey writes about one nominee who he had a good reason to believe had been a Nazi sympathizer during the war. Humphrey could not object to the confirmation of this representative, because he was not able to prove his suspicion. E/CN.4/9.

<sup>11</sup> E/HR/10, p. 4. The pressure of expectations will be further examined in Chapter 6.

colleagues and some operated without precise or any instructions from their governments; (and these were not the least useful representatives).” They acted as individual experts and also had the authority of their government. At the first session of the Commission on Human Rights, a British official, the future delegate for the United Kingdom to the Commission on Human Rights, Geoffrey Wilson, “expressed his astonishment over the fact that the members from various countries had come with virtually no instructions,” an impression which also the United States shared. At an earlier stage, an American delegate had observed that “[t]he personalities of particular delegates may have exercised an overriding influence on the position taken by their delegations.” Studies of American and British diplomatic archives reveal precise instructions, and this seems to have been the case for the Soviet representative as well. Eleanor Roosevelt, the chairman of the Commission during its first years, said in an interview:<sup>12</sup>

Many’s the time Professor Pavlov, the Soviet delegate, has come to me and said: “Mrs. Roosevelt, would you mind postponing the meeting? I haven’t received my orders from Moscow yet.”

René Cassin representing France might have had some degree of independence. Internal British information suggests that he did not always represent the views of the French government.

On human rights questions Professor Cassin is apparently between the devil and the deep sea. On the one hand he has got himself in the position of appearing to be the champion of all the enthusiastic organisations for

<sup>12</sup> Hadwen and Kaufmann, *How United Nations Decisions Are Made*, 14 and 34-36. Humphrey, *Great Adventure*, 17. Memorandum by James P. Hendrick, 13 February 1947, US Mission to the United States, Box 103, IO:ECOSOC:HR, RG 84, NARA. “Political attitudes of members of UNO,” E. R. Stettinius about the working of the UN Preparatory Commission, box 25, E. R. Stettinius memorandums, Alger Hiss Files, 1940-46, NARA.

See for example W. Beckett, Foreign Office to Lord Dukeston, 29 May 1947, PRO, FO 371/67 605/ UNE 456; “Brief for the United Kingdom delegation to the third session of the General Assembly,” PRO, FO 371/72811/UNE 3939 and “Draft International Declaration of Human Rights,” SD/A/C.3/65, Position papers, Bureau of International Organization Affairs and its Predecessors, RG 59, NARA. See also Johnson, “Contribution of Eleanor and Franklin Roosevelt,” 32; and Mower, Jr., *United States, United Nations and Human Rights*, 46-48. *Newsweek*, 22 August 1949, p. 22. Quoted in Berger, *Eleanor Roosevelt and American Foreign Policy*, 80.

human rights in France, and on the other hand he knows that there is a French Foreign Office which has much more sober views.<sup>13</sup>

Generally, it appears, however, that the big powers gave more detailed instructions than smaller states. The indifference on part of the smaller states may be because they had less power. It also reflects a general trend as usually small states have worked to develop binding international organisations and international law. These institutions are seen as protection from the more powerful states.

### **The main actors singled out**

The Charter of the United Nations was signed on 26 June 1945 by the representatives of fifty countries, and the United Nations officially came into existence on 24 October 1945, when the Charter had been ratified by the Great Powers (China, France, the Soviet Union, the United Kingdom and the United States) and by a majority of the other signatories. In 1948, when the Universal Declaration of Human Rights was adopted, the number of the members had grown to fifty-eight. The different parts of the world were not equally represented. Because of the war the defeated powers were not accepted as UN members and most of Africa was still part of colonial empires. Africa was only represented by four nations, and one of them was the Union of South Africa. The others were Egypt, Ethiopia and Liberia. While the United Nations formally consisted of 58 equal governments, the important influence in designing the international bill of rights depended on several factors, and one important factor was the membership on the Commission on Human Rights.<sup>14</sup>

The distribution of seats in the Commission was subject of a tug of war in which the Great Powers played a leading role. Regular procedures for distribution of seats in UN commissions were not yet established. Hence the decision was expected to set a precedent. The membership of the eight ECOSOC Commissions (of which the Commission on Human Rights was one) were considered as a whole, and tough negotiations unfolded. The five big powers automatically got a seat on each Commission. The rest of the seats were distributed according to regional as well as ideological considerations. Block-thinking favoured the smaller states of Eastern Europe, the Latin American group in particular lost influence by this

<sup>13</sup> Memorandum by Beckett, 6 August 1948, PRO, FO 371/72810/UNE 3183.

<sup>14</sup> The Union of South Africa has been the Republic of South Africa since 31 May, 1961.

practice. This distribution was also reflected in the composition of the Commission on Human Rights. The five smaller Eastern Europe states and the group of twenty Latin American states both got three representatives each. The decision seems to have been for the most part a result of an agreement between the United States and the Soviets, and the outcome was far more favourable to the Soviets than the initial American proposals indicated. For instance, Norway was replaced with Byelorussia in the Human Rights Commission although Norway, which had been a member of the Nuclear Commission on Human Rights, was very eager to secure a position in the Commission. The American concession to the Soviets reflect the increasing tendency to consider the Soviets and its allies as a minority block within the United Nations.<sup>15</sup>

#### Representation on ECOSOC Commission

Group	Number of seats	Number of seats on eight Commissions
Big Five	5	40
India	1	6
Smaller Eastern Europe	5	19
Latin America	20	19
British Dominions	4	13
Smaller Western Europe	5	12
Near East-Africa	10	10
Far East	1	1
Total	51	120

Source: Selection of ECOSOC Commissions, 9 October 1946, FRUS: 1946, I, 207.

<sup>15</sup> Selection of ECOSOC Commissions, 9 October, 1946, FRUS, 1946: I, 206-210. See also Eleanor Roosevelt, *Autobiography*, 315. In addition to China, the United Kingdom, the United States and the USSR which cooperated at the San Francisco Conference, France was now included among the big powers. FRUS 1946: I, p. 210, 9 October 1946 and Letter from the Norwegian delegation to the United Nations (Colbjørnsen) to the Norwegian Ministry of Foreign Affairs, UD 30.5/7.2.

As a result of the agreement of the big powers, the third session of ECOSOC, on 2 October 1946, selected the following states as the first members of the full Commission on Human Rights:

For two years: Byelorussia, China, Lebanon, Panama, the United Kingdom, Uruguay.

For three years: Egypt, France, India, Iran, the Ukraine, the USSR.

For four years: Australia, Belgium, Chile, the Philippine Republic, the United States, Yugoslavia.<sup>16</sup>

The variation in length of term was an exception for the initial period. An ordinary term of office was to be three years. The period of representation was supposed to start in 1947, and the Universal Declaration was adopted in December 1948. Thus, there was no change of member states during the preparation of the Declaration. During the three sessions of the Commission on Human Rights, when the main item on the agenda was the Universal Declaration of Human Rights, these 18 governments had a unique position of influence.<sup>17</sup>

The Nuclear Commission on Human Rights had discussed whether or not it had the right to draft an international bill of rights. Although it soon acknowledged that "while it was within its competence to draft a bill of human rights, it was not as yet in a position to do so." It left the task to the full Commission, and when the first ordinary session of the Commission on Human Rights took place in Lake Success, New York, on 27 January to 10 February 1947, the discussion focused on the critical question of who should write the first draft. The general and loosely organized discussion demonstrated that a smaller body would be better able to produce the first draft, and there seemed to be a general agreement about the forming of a drafting committee. The next crucial question was who should be the members of this committee. Here opinion was divided, the extremes being represented by Australia and the USSR. The Australian delegate, William Hodgson, argued that "no concrete results could be achieved by a drafting

<sup>16</sup> United Nations, *Yearbook 1946/47*, 524.

<sup>17</sup> Membership in any body has worth only with presence. On two occasions one of the member states of the Commission on Human Rights did not attend a session: The representative of the Ukraine did not attend the first session and the representative of Iran did not attend the third session. (E/257, p. 1 and E/800, p. 1.)

Another factor that reduced the influence of some of the members of the Commission on Human Rights, was the extensive use of alternates. Those governments which frequently replaced their representatives, were less influential in the drafting process than those which sent the same person during the whole process.



committee composed of government representatives expressing different points of view.” He suggested that the Secretariat was the most competent body to draft an international bill of rights, and got modified support from the representatives of the United Kingdom and the United States in particular. The representative of the USSR preferred a committee composed of members of the Commission and was against giving unlimited power to the Secretariat or outside experts for drafting purposes. His reluctance was shared by the representatives of France, Lebanon and Belgium. The French and the Lebanese representatives also put forward proposals which intended to secure the influence of the Commission in the drafting process. The French delegate, René Cassin, referred to the Commission’s mandate from the ECOSOC, and argued that if the Secretariat did the drafting, this implied a derogation of the Commission’s mandate. During the discussion a majority of the representatives stressed that the responsibility had to be vested in the Commission, and if the Secretariat was to do the drafting, it should receive instructions from the Commission or alternatively work under supervision of its Chairman.<sup>18</sup>

France, Yugoslavia and Lebanon then proposed a compromise, which formed the basis of the final solution, stating “[t]hat the Chairman, together with the Vice-Chairman and the Rapporteur, undertake, with the *assistance* of the Secretariat, the task of formulating a preliminary draft international bill of human rights, in accordance with the instructions and decisions of the Commissions at its first session, to be submitted to the Commission at its second session for thorough examination. [*Italics added.*]” This committee might enlist the cooperation of any member of the Commission on Human Rights, consult experts chosen with the consent of their governments and any person or document it thought relevant to its work.<sup>19</sup>

The three-members drafting committee set up by the Commission on Human Rights met on 16 February 1947. The task of drafting the document was given to the Commission’s officers, assisted by the Secretariat, and the Chairman, Eleanor Roosevelt (the United States) gathered Chang (China), Malik (Lebanon) and Humphrey (the Secretariat) in less than a week. Humphrey portrays this meeting in his autobiography and dwells upon the controversies between Chang and Malik, who “were too apart in their philosophical approaches to be able to work together on a text.” They concluded the meeting with the decision that Humphrey should prepare a

<sup>18</sup> E/38/Rev.1, pp. 3-4. E/CN.4/SR.10, pp. 3-4. E/CN.4/SR.11, p. 4.

<sup>19</sup> E/259, p. 2.

preliminary draft although this decision in fact was contrary to the ruling of the Commission itself.<sup>20</sup>

Before Humphrey had begun the drafting process, however, the ECOSOC intervened. The question of who should write the first draft was again on the agenda. The delegate of the USSR, Alexandr P. Morozov, did not agree with the recommendation of the drafting group, nor with the decision to give the drafting-task to a small group of experts. He pointed out that the group proposed by the Commission of Human Rights, was too small and did not include any European representatives; therefore, he wanted to enlarge it from three to five members. The delegate of Czechoslovakia supported this suggestion.<sup>21</sup>

The ECOSOC then transferred the report of the Commission to the Committee of the Whole on Social Affairs of the Council, which proposed the establishment of a temporary Sub-Committee consisting of eight of the members of the Commission. The eight were the following states: Australia, Chile, China, France, Lebanon, the Union of Soviet Socialist Republics, the United Kingdom and the United States of America. The basis for their preparation of the bill was to be documentation supplied by the Secretariat.<sup>22</sup>

In order to avoid a decision which might have indicated lack of confidence in the Commission on Human Rights, a special procedure was applied. The leader of the Commission, Eleanor Roosevelt, wrote a letter in which she recommended the strategy already *de facto* decided on by the Council. In the letter she stressed that it was not her intention to exclude any one of the members of the Commission on Human Rights from the drafting work. Subsequently, she appointed a Drafting Committee composed of the eight members of the Commission, in agreement with the suggestion of the Committee of the Whole Social Affairs of the Council.<sup>23</sup>

<sup>20</sup> Humphrey, *Great Adventure*, 29. Malik confirmed Humphrey's information on the controversies, see GAOR-TC 3, p. 858. Eleanor Roosevelt also mentions "a heated discussion," but she describes the conversations as so "lofty" that she could not follow them and was only "entertained by the talk of these learned gentlemen." See Eleanor Roosevelt, *Autobiography*, 317.

<sup>21</sup> At its fourth session, from 28 February to 29 March 1947, the Council discussed the report of the Commission on Human Rights at its sixty-eighth and sixty-ninth plenary meetings.

See OR-ECOSOC 4/2, pp. 103-113; E/CN.4/AC.1/2; United Nations, *Yearbook 1946/47*, 524-525; Humphrey, *Great Adventure*, 29-30; and E/259.

<sup>22</sup> The Committee of the Whole on Social Affairs was and still is one of the sessional committees of the ECOSOC.

<sup>23</sup> E/383. Norwegian Ministry of Foreign Affairs, *Stortingsmelding nr. 12 (1948)*, 13.

On 28 March 1947 the Council adopted Eleanor Roosevelt's suggestions which in fact were its own ruling. In resolution 46/4, the ECOSOC requested the Secretariat to prepare a documented outline concerning an International Bill of Human Rights. With an explicit reference to the letter from Eleanor Roosevelt, the Council approved the Drafting Committee consisting of the eight members as mentioned above. These representatives were among the most active participants in the Commission, and the selection did not seem controversial. But the final establishment of the Drafting Committee was in accordance with the original preference of the USSR delegation. A Soviet idea put forward by the representative of the United States suggests the common effort towards an agreement, which was a useful basis for the Drafting Committee. Perhaps more telling, it also shows that the two Great Powers had something in common as super powers, namely, to exercise national control over the drafting process and reduce the influence of the Secretariat and independent experts.

The creation of a drafting committee of eight members gave these eight governments a distinctive advantage compared to the other UN members. All of them did not, however, play an equally important role, and the differences seem to a considerable degree to have been a question of personality. The key personalities behind the Universal Declaration of Human Rights were the members of the Drafting Committee: Eleanor Roosevelt (United States), Charles Malik (Lebanon), René Cassin (France), Peng Chun Chang (China), Hernan Santa Cruz (Chile) and Alexandre Bogomolov/Alexei P. Pavlov (Soviet Union), Lord Dukeston/Geoffrey Wilson (United Kingdom) and William Hodgson (Australia). Besides the eight members of "the inner circle", the drafting committee, the head of the UN Division on Human Rights, John Humphrey, also played an important role.

In a category by herself was *Eleanor Roosevelt*. She chaired the Human Rights Commission from the nuclear session and during the entire process of drafting the Universal Declaration. Her leadership was unchallenged. After the adoption of the Declaration, a particular tribute was given to her: "The delegates . . . rose as one to give her a standing ovation." Her international prestige, in particular in the early post-war period, brought a lot of attention to the work of the Human Rights Commission. John Humphrey maintains that "her great prestige was one of the chief assets of the Human Rights Commission in the early years." In particular, Eleanor Roosevelt's prestige with the Russians was enormous in the early years, and this was an important factor in the drafting process. She also had the useful habit of having lunch with other nations' representatives in the Commission

on Human Rights. The words of praise for her professional as well as personal qualifications are numerous. Humphrey chose this description:<sup>24</sup>

. . . Simplicity and the knack of giving other people confidence often go with greatness. Mrs. Roosevelt had both. . . .

Mrs. Roosevelt was one of the greatest personalities ever to be associated with the United Nations.

A British diplomat, however, was less complimentary and once bitterly reported back to London that he found her too preoccupied with her own views to serve her position properly. Nevertheless, this seemed to be an exception. Her personality seems to have been very well suited for the chairmanship. An old-line American State Department diplomat is said to have described her in this way: “[N]ever in all my years of diplomacy have I seen naivete and cunning so gracefully blended,” and this characteristic seems to grasp some essential features. She did not know much about the work in the United Nations in advance but got an intensive education. Although the US policy in the Commission on Human Rights was formulated by an inter-departmental committee, Eleanor Roosevelt was very influential. Moreover, James P. Hendrick, her adviser in human rights matters, seems to have been “her man” in the human rights committee: “I tried to be watchful that nothing went into the instructions that she would not go for.” Eleanor Roosevelt had considerable authority and advocated her opinions at the internal American level — as will be shown below (Chapter 4), but she admitted that as a government official she in a way had less freedom than when her husband was president: “Now I am obliged to carry out the policy of the Government. When my husband was

<sup>24</sup> See Mower, *United States, United Nations and Human Rights*, 53-71; Berger, *Eleanor Roosevelt and American Foreign Policy*, 67-74 and Johnson, “Contribution of Eleanor and Franklin Roosevelt,” 27-48. Both Mower, Berger and Johnson give interesting descriptions of Eleanor Roosevelt’s contribution to the drafting of the Declaration, but all of them tend to over-emphasize her role and they seem to forget the other participants in the process. Evatt, *Task of Nations*, 8. Gurewitsch, *Eleanor Roosevelt*, 13 and GAOR 3, p. 934. Eleanor Roosevelt, *Autobiography*, 305. Eleanor Roosevelt had been the First Lady of the United States for more than twelve years — and during a war in which large parts of the world had put their faith in the United States and in which the US President had become a symbol. Humphrey, *Great Adventure*, 4-5. Humphrey describes how grateful the Russian representative was when he on one occasion was invited to have lunch with Mrs. Roosevelt. It was a great honour.

President, although I was the White House hostess, I was, after all, a private citizen. . . .”<sup>25</sup>

Eleanor Roosevelt also possessed an exceptional capacity for work. She organized her time well and she ruled over the Commission with impatience and energy. Humphrey’s report is characteristic:

[She] drove the members very hard, [. . . while] most of the delegates, and even more the Secretariat, suffered from loss of sleep, Mrs. Roosevelt remained as alert as she had been when she opened the session.

Because of her energy the Declaration was drafted quickly. Her greatest contribution to the drafting of the Universal Declaration of Human Rights lay in her effectiveness and speed in directing its affairs.<sup>26</sup>

During the first years of the Commission on Human Rights, *Charles Malik*, representing Lebanon, served as a rapporteur. In this important post he was in a position to interpret the decisions of the Commission. In addition, he was an eager debater who seldom chose the line of least resistance. Humphrey saw him as “a Thomist and believed in natural law” and “an energetic defender of liberalism and traditional values.” His views, particularly his energetic defence of individualism, strongly opposed the Soviet opinions, and this caused some controversies in the drafting process between him and the Soviet representatives. Yet, he was also an impatient defender of human rights and one of those who pushed the Declaration through. He acted as chairman at the third session of the Third Committee, and his familiarity with the draft Declaration was an advantage in the struggle against time. Malik seems to have acted quite independently of his government. Humphrey describes him in this way: “[H]e was one of the most independent people ever to sit on the commission and he was dedicated to human rights.” In 1952, when Eleanor Roosevelt left the Commission on Human Rights, Malik became its next chairman.<sup>27</sup>

<sup>25</sup> UK Delegation to the United Nations to Richard Heppel, United Nations Department, Foreign Office, 7 May 1948, PRO, FO 371/72806/UNE 1929. Gardner, “Eleanor Roosevelt and Universal Declaration,” 15. Eleanor Roosevelt, *Autobiography*, 300-303 and 314. Lash, 62-63 and 67.

<sup>26</sup> Humphrey, *Great Adventure*, 48, 290 and 314. The representative of the Dominican Republic, Minerva Bernardino, paid tribute to Mrs. Roosevelt for her contribution to the speedy acceptance of many suggestions. See GAOR-TC 3, p. 40.

<sup>27</sup> Humphrey, *Great Adventure*, 23; see also 17, 25 and 63. Eleanor Roosevelt too mentions Malik’s support to the philosophy of Thomas Aquinas, see Eleanor Roosevelt, *Autobiography*, 317. E/CN:4/AC.1/SR.21, p. 3 and 6. “Memorandum on miscellaneous ECOSOC matters,” 28 January 1947, US Mission to the United Nations, Box 103, IO:

The doyen of the Commission *René Cassin* (France) in many instances took lead in the discussions. He had many years of experience from the League of Nations, had been in exile in London with de Gaulle during the war and was now the head of the French Constitutional Council. Humphrey portrays him as “a dynamic personality and a sharp and quick mind; . . . one of the best public speakers I have ever heard.”<sup>28</sup>

Importantly, René Cassin formulated the first official draft declaration. At the first session of the Drafting Committee, the representatives had before them a huge pile of various human rights documentation supplied by the Secretariat, which also had compiled a draft outline. In addition, the United Kingdom and the United States presented their own drafts. The Committee decided to use the Secretariat outline as their basic working paper, and compared it to the UK and the US alternatives. The Soviet delegate suggested the creation of a smaller working group within the Committee in order to collect the various opinions expressed by the committee members and prepare appropriate drafts. After some fruitless debate, the Drafting Committee established a temporary working group, which proposed a “logical” rearrangement of the articles of the secretariat outline, and a redrafting of them in the light of the discussion in the Committee. In compliance with the USSR proposal, the working group was composed of the representatives of France, Lebanon and the United Kingdom — with Eleanor Roosevelt as an ex officio member. The working group decided after a general discussion to delegate its task to René Cassin. A basic draft written by one single person was held to be the easiest and quickest solution. Thus, Cassin became “the father” of the first official draft of the human rights declaration.<sup>29</sup>

*Peng Chun Chang*, the Chinese (Kuomintang/Chiang Kai-shek) representative, served as the vice-chairman of the Commission. He was a

ECOSOC: Human Rights, RG 84, NARA.

<sup>28</sup> Humphrey, *Great Adventure*, 24.

<sup>29</sup> The UK and the US proposals can be found in E/CN.4/21/Annex B and Annex C respectively. The US proposal was a revision of the so-called Secretariat Outline. E/CN.4/AC.1/SR.6, p. 2 and 5. E/CN.4/21, p. 4. Cassin was assisted by Emilie Giraud, a distinguished international lawyer from France and an officer in the Division of Human Rights. He had also assisted Humphrey in the preparation of the Secretariat Outline. Cassin and Giraud’s draft was partly revised by the working group and then considered in detail article by article by the whole Drafting Committee. Cassin was requested to rewrite the draft declaration on the basis of this discussion. His second draft was examined by the Committee and further revised. The result of this examination was submitted to the Commission on Human Rights as a working paper for a preliminary draft of an international declaration on human rights (E/CN.4/21, Annex F).

scholarly diplomat and seemed to have had personal qualities which eased the work in the Commission. Humphrey held him and Cassin to be those who intellectually dominated the Commission, and Eleanor Roosevelt found Chang to be “a great joy to all of us because of his sense of humour, his philosophical observations, and his ability to quote some apt Chinese proverbs to fit almost any occasion.” But his diplomatic skills may have been more important. As “a master of the art of compromise,” “a pragmatist” and “nearly always ready with a practical solution,” he several times found a solution when the deliberations had reached a deadlock.<sup>30</sup>

*Hernan Santa Cruz*, the Chilean representative, was one of the strongest defenders of inclusion of economic and social rights in the Declaration. Humphrey portrays him in this way:

No one has been more continuously or for a longer period of time associated with the human rights program.

Politically left of center, he had considerably influence with delegations representing the economically developing countries, whose cases he sometimes argued with great energy — a practice which often brought him into conflict with the Western industrial powers.<sup>31</sup>

*Alexei P. Pavlov* functioned as the Soviet representative for a longer time than *Alexandre Bogomolov*. The change of Soviet representative in the Commission clearly demonstrate the impact of personality, even though there was a strict governmental framework. Ambassador Bogomolov participated in the second session of the Commission on Human Rights, and according to Humphrey “the Soviet Union, in the person of Ambassador Bogomolov, began to take an active part in the drafting, . . . [t]he Commission never had a more cooperative Soviet spokesman than Bogomolov.” His expressed admiration of Eleanor Roosevelt may partly have given this impression. At the UN Conference on Freedom and Information in Geneva in March/April 1948, Bogomolov was the head of the Soviet delegation. Western delegates interpreted Bogomolov’s election as an indication that the Russian delegation was instructed to exercise moderation. It was a marked shift when the Soviet Union during the last part of the drafting process was represented by Alexei P. Pavlov. He had a different attitude, during the deliberations he was frequently criticizing

<sup>30</sup> Lash, *The Years Alone*, p. 61. Humphrey, *Great Adventure*, 23 and 26. Eleanor Roosevelt, *Autobiography*, 317.

<sup>31</sup> Humphrey, *Great Adventure*, 37.

internal conditions of the United Kingdom and the United States in particular. Eleanor Roosevelt particularly mentioned her controversies with Pavlov, and Humphrey describes his style as follows:

Some of the many interventions of A. P. Pavlov — who was now becoming the principal Russian spokesman in human rights matters — lasted for over an hour. [. . . Pavlov was] one of the most loquacious speakers I have ever listened to and the most difficult of all the Russians who worked on the Declaration. Some people said that his bourgeois background — he was the nephew of the great Pavlov — made him vulnerable to criticism back home and that this accounted for the show he never failed to provide.<sup>32</sup>

The difference between Bogomolov and Pavlov can to some extent be explained with reference to the increasing international tension at that time, but apparently it was also a question of personalities. While Bogomolov was particularly cooperative, Pavlov was particular non-cooperative and less willing to find compromises.

*Charles Dukes*, later Lord Dukeston, represented the United Kingdom at the first and second session of the Commission on Human Rights, while *Geoffrey Wilson* was the British representative in the Drafting Committee and in the third session of the Commission. Lord Dukeston was old and in bad health during this period. He died before the drafting process was brought to an end. More important, he was a trade unionist and was not very familiar with human rights issues. He played a rather anonymous role in the drafting process. Officials in the British Foreign Office did not find his performance at the first session of the Commission on Human Rights satisfying.<sup>33</sup>

Lord Dukeston showed at the first meeting of the Commission how absolutely alien all this stuff was to him. So far from being able to take the lead and run the Commission as it is clear that any good British representative could have done, he played practically no part at all and I think showed that this is not the sort of stuff that he ever really would be able to handle successfully. My view is that this is really too serious and too difficult a matter for the U.K. to be represented by somebody who is not suited to the job.

<sup>32</sup> Humphrey, *Great Adventure*, 49 and 56.

<sup>33</sup> Beckett to Lord Dukeston, 29 May 1947, PRO, FO 371/67605/UNE 456. Beckett to Gladwyn, 16 April 1947, PRO, FO 371/67601/UNE 143. It has to be added that the British official who did not approve Dukeston's performance, he did neither find the other members of the Commission of Human Rights competent to deal with their task.



Wilson was, on the other hand, a Cabinet Office-servant who was well informed on human rights matters as he had been involved in the inter-departmental working group on human rights. During sessions, he reported frequently and detailed back to the Foreign Office, and he seems to have been active behind the scene. In the Commission he was, however, more anonymous. Both he himself and other officials in the Foreign Office found it somewhat embarrassing that the United Kingdom was represented by a low-ranking servant compared to most other delegations. With good reason, they saw it as a sign of low priority accorded to human rights matters by the British government.<sup>34</sup>

The Australian representative, *William Hodgson*, appeared to be an anxious supporter of a strong, legally binding convention on human rights. He also launched the idea of an international court of human rights. Although Australia tried to act more independently of the Commonwealth in this period, Hodgson's views in substantial matters quite often corresponded with those of the British. But as the Cold War tension increased, Australia was more consciously "trying to reconciling conflicting points of view" than the United Kingdom which held a more offensive position.<sup>35</sup>

The Secretariat of the Division of Human Rights under its director, *John P. Humphrey*, was the bureaucratic actor in the drafting process. Humphrey, a Canadian law professor, entered the Secretariat on 1 August 1946 and retired more than twenty years later. He was recruited to the United Nations by a friend. The friend was Henri Laughier, who was the French Assistant Secretary-General of the United Nations in charge of Social Affairs during the "declaration period". Humphrey does not disguise his efforts to take an active part in the drafting work. In his autobiography, Humphrey attacks "the myth that Cassin was the father of the Declaration" and argued that this "myth" was created by the fact that "Cassin's revision of my draft, written out in longhand, was displayed, at the request of the French government, at United Nations Headquarters on the tenth anniversary of the adoption of the Universal Declaration of Human Rights; and photographic reproductions of the same manuscript are reproduced in a collection of some of Cassin's articles and speeches . . . ." In his review of Humphrey's autobiography Philip Alston correctly points out that Humphrey is preoccupied with denying "the myth" about Cassin, ". . . especially in so

<sup>34</sup> Memorandum by Heppel, 27 April, 1948, PRO, FO 371/72804/ UNE 1780 and G. Wilson to Sir N. Brook, Cabinet Office, 7 May, 1948, PRO, FO 371/72805/UNE 1882.

<sup>35</sup> Sawyer, "United Nations," 97. Vincent to Benton, 21 April 1948, Records relating to the UN Conference on Freedom of Information, Geneva, 1948, Box 4, RG 43, NARA.

far as that myth obscures Humphrey's own very important contribution to the drafting of the instrument." Humphrey is right when he points out the many contributions and states that it is this very anonymity which gives the Declaration some of its great prestige and authority. This statement is totally overshadowed by a repeated over-estimation of his own role. As Alston notes: "The strong impression with which the reader is left is that Humphrey is implicitly saying: 'no individual can really claim paternity, and certainly not Cassin. In fact, if anyone was the original author, it was I.'" Alston also argues that Humphrey puts up a straw-man when he attacks the myth that Cassin was the father of the Declaration, because Cassin has described his own role very cautiously in his many writings on the subject. A motive behind Humphrey's attack on "the myth" about Cassin may be the fact that René Cassin in 1968 got the Nobel Peace Prize because of his activity in the drafting work of the Declaration and the Covenants. The conclusion is that Humphrey and Cassin were important actors in the drafting process of the Universal Declaration. They shared this honour with many other persons, and none of them deserve any paternal title.<sup>36</sup>

Humphrey prepared the draft outline with assistance from Emilie Giraud, a distinguished international lawyer from France and an officer in the Division of Human Rights. It is striking that Humphrey barely mentioned his fellow worker, who could be a significant contributor in the drafting work. "I was no Thomas Jefferson and . . . I had practically no experience drafting documents," Humphrey admits, and he had many models to use for this work.<sup>37</sup>

### **Other possibilities of influence**

In spite of the organizational advantage in the drafting process of the representatives already mentioned, there were several possibilities for other actors of the United Nations to influence the draft. One group which deserves particularly attention is the Latin American states. They displayed much fervour during the entire drafting process — as already noted — especially in the first stage at the San Francisco Conference. The Organisation of American States (OAS) organised a drafting work on a regional human rights document parallel to the drafting work on the UN Declaration. This regional declaration was adopted in March 1948 by the Ninth International Conference of American States in Bogotá (therefore it

<sup>36</sup> Humphrey, *Great Adventure*, 42-43. Alston, "Review of *Great Adventure*," 225-26.

<sup>37</sup> Humphrey, *Great Adventure*, 30.

is often named “the Bogotá declaration”). This declaration was in part based on an early draft of the Universal Declaration, which again was influenced by the Bogotá document. The link between these two parallel processes suggests itself in the many amendments submitted by these states. A great many of them referred explicitly to the Bogotá document. It seems to be the goal of some of the Latin American delegates to make the UN document a replica of the Bogotá Declaration. The latter declaration was very different from the UN by its emphasis on duties. While the UN Declaration only focused on the human *rights*, the Bogotá document placed *rights* and *duties* on a par. A number of proposals stressing duties in the Declaration therefore suggests the influence of the Latin American presence in the parallel UN process.<sup>38</sup>

However, the Latin American effort did not always represent what was feasible to include in an universal human rights document nor did it always approach the proper channels. The human rights efforts of the Panamanian representative, Ricardo J. Alfaro, clearly illustrates this fact. In 1946, he resigned from his post as Minister of Foreign Affairs in Panama and went to New York to the second part of the first session of the UN General Assembly in order to push through the human rights declaration text proposed by Panama. He did not seem to be aware of the existence or purpose of the Commission of Human Rights or the procedure adopted by the United Nations about the human rights document. Instead, he directed strong efforts towards an immediate adoption of a declaration. All further reference of the matter to commissions, he regarded as “a useless avoidance of the issue and waste of time.” Although Alfaro struggled for the declaration in the General Assembly and lobbied for his view in the US delegation, he did not achieve his objective. Most delegations shared the US view that making a human rights document was “a matter which requires major and detailed consideration by the Commission on Human Rights.” Alfaro was very disappointed and annoyed when the proposed text of the declaration was transferred from the General Assembly to the ECOSOC and the Human Rights Commission. This incident characterizes the Latin American human rights activism. Sometimes they enthusiastically introduced a human rights issue without considering whether or not the actual proposal had a realistic chance of being adopted. Sometimes their

<sup>38</sup> Houston, p. 258. E/CN.4/AC.1/SR.36, p. 6; GAOR-TC 3, pp. 27, 28, 37, 38, 49, 433, 665 and GAOR 3, p. 877. E/CN.4/AC.1/SR.8, p. 2; GAOR-TC 3, pp. 35, 56, 77, 88, 597, 665.

energetic defense of rare views irritated some of their colleagues. Thus, their enthusiastic participation became a double-edged sword.<sup>39</sup>

The members of the United Nations which were not members of the Commission on Human Rights had several possibilities to participate in the drafting process. They had a chance to deliver their own draft to the Commission or other UN organs. The Commission also sent the draft documents to the different governments for comments. The final detailed consideration of the draft took place in the Third Committee of the General Assembly, where every UN member was represented. Some national and international organizations also had possibilities of exerting influence in their capacity as consultative members of the Commission of Human Rights. Indeed, a few of them had produced draft declarations which were included in the material of the Commission.<sup>40</sup>

Before the first session of the Commission, the Secretariat had prepared a memorandum based on eighteen different draft international bill of rights written during World War II and shortly thereafter. Two were written in the United Kingdom, fifteen in the Western Hemisphere and one was adopted by the Institut de Droit International at its session of October 1929 in New York. But only four of these drafts were distributed among the members of the Commission in a textual comparison. It is hardly an accident that these drafts had a more official status than the others. Three of them were originated (Cuba) or sponsored (Panama and Chile) by the governments of UN member states. The fourth one came from the American Federation of Labor, one of the organizations which was granted consultative status by the Commission.<sup>41</sup>

<sup>39</sup> Panama submitted the draft prepared by the American Law Institute, see Chapter 2. Memorandum of conversation by B. Wells, 11 November 1946, US/A/C.3/41, US Mission to the United Nations, Box 44, RG 84, NARA; Sandifer to Hendrick, Maktos and Sanders, 12 November 1946, and Memorandum for State Department, 27 November 1946, US Mission to the United Nations, Box 89, Civil/Human Rights, 1946-49, RG 84, NARA; GAOR-TC 1/1, p. 18; GAOR-TC 2/1, p. 419-20; United Nations, *Yearbook 1946/47*, 177-78.

<sup>40</sup> The international organizations in "the UN family" got a special status and were allowed to participate without vote in the deliberations of the ECOSOC and its commissions. UNESCO, ILO, IRO and WHO took the opportunity and sent observers to the Commission on Human Rights. More than twenty different organizations participated in at least one of the sessions of the Commission. This group consisted in particular of women's, Jewish and Christian organizations. See Samnøy, *Human Rights as International Consensus*, (thesis) 74-75 and 80-84.

<sup>41</sup> E/CN.4/W.16 and W.8.

The Cuban delegation had also presented a human rights text in San Francisco. When the Assembly refused to include the Cuban proposal in the agenda, the Cuban delegation followed up by submitting a working document of concern to the Commission on Human Rights to the President of the ECOSOC. Panama reintroduced the same draft which its delegation had presented in San Francisco. The Government of Chile drew to the attention of the United Nations a human rights draft during the second part of the first session of the General Assembly prepared by the Inter-American Juridical Conference. Later in the drafting process, Ecuador introduced a draft relating to the rights and duties of the individual. The American Federation of Labor also submitted directly a draft declaration.<sup>42</sup>

In accordance with its mandate the Secretariat collected a "documented outline". This outline was a collection of, a) observations made by members of the Commission on Human Rights at its first session, b) draft international declarations or proposals submitted by governments to the Commission, (which included draft declarations from Chile, Cuba and Panama and proposals from India and the United States of America), c) national constitutions from everyone of the UN member states, which had any written provisions; and d) draft international declarations presented by non-governmental organizations, which included only the draft submitted by the American Federation of Labor.<sup>43</sup>

In the period between the second session of the Commission (December 1947) and the second session of the Drafting Committee (May 1948), the draft international bill of human rights was sent to the governments of the different UN members for comments. The hearing did not bring a great response. In the spring 1948, the United Nations had fifty-seven member states, but only a fourth, i.e. 15 had responded. Two of them, Pakistan and Canada, had no substantive comments.

Among the thirteen states which had more or less substantive comments on the draft bill, six were members of the Commission on Human Rights and had already had their opportunity to present their views on the drafts. In addition to Australia, Egypt, France, India, the United Kingdom and the

<sup>42</sup> See Chapter 2. A/C.1/38; this draft — a first draft of the later Bogota-declaration — was worked out in accordance with Resolutions IX and XL of the Inter-American Conference on Problems of War and Peace held in Mexico City during the spring 1945. Memorandum by Mr. Power, 17 September 1947, box 89, Civil and Human Rights 1946-49, US Mission to the United Nations, RG 84, NARA and memorandum by Mr. Wells, 3 October 1947, US/A/C.3/89, box 44, US Mission to the United Nations, RG 84, NARA. E/CT.2/2 and E/CN.4/W.16.

<sup>43</sup> E/CN.4/AC.1/3/Add.1.

United States, Brazil, Mexico, the Netherlands, New Zealand, Norway, Sweden and the Union of South Africa delivered their reports.<sup>44</sup>

It is not clear why so few states responded. A hearing period of three months may not have been long enough. The fact that the thirteen substantive comments were delivered after the deadline suggests that time was a problem. Most of them perhaps chose to postpone their comments until the draft declaration came to the General Assembly. The active participation and the long debate in the Third Committee during the autumn of 1948 supports this explanation.

### **Influence for what?**

Since the story of the drafting process of the Declaration is a story about different actors struggling for influence, the question of their motives arises. One motive may be identified as an idealistic desire to obtain as clear and strong a human rights declaration as possible in order to prevent possible violations. There is no doubt that the Nazi-period caused a genuine reaction which generated a general commitment to human rights among many individuals in particular, but also by governments. Many of the participants in the drafting process of the Declaration appeared dedicated to human rights — as individuals. There were, however, different views on which human rights were most important. Individuals or states that advocated human rights which conformed with their own national legislation may have done this because they wanted others to have similar rights.

As for governments, although they might be genuinely dedicated to human rights, they also had other interests which might or might not correspond with human rights concerns. Thus, a particular policy on human rights might have been adopted mainly as a strategic means to obtain a superior goal. During the drafting process, some of the human rights concerns obviously served other political purposes. The extent of genuine concern for human rights is difficult to judge, but an important motive — in particular for the most powerful states — was the need to avoid criticism and, at the same time, to have an opportunity to criticize others. Human rights had become a weapon in the ideological warfare between the East and West led by the Great Powers. It therefore became increasingly important to ensure that the human rights documents conformed with national legislation and addressed the “weak points” of the ideological enemy as well. This double set of motives for the human rights activism

<sup>44</sup> All the reports are included in E/CN.4/85/Rev.1 and E/CN.4/82/Add.1-5 and 7-12.

was explicitly stated in the British governmental working group on human rights:

[T]he purpose of His Majesty's Government in pursuing this covenant [of human rights] had been two-fold: — in the first place they regarded it as a means of securing progress in the raising of standards of human rights, and in the second place it was a weapon of political warfare.<sup>45</sup>

The two motives were in no way inconsistent with each other. Thus, the UK draft covenant also “proposed to protect internationally . . . those rights and freedoms which are essential to the democratic way of life.” The aspiration of expanding the British system of rule could easily be combined with using this standard in criticizing the Soviet Union.<sup>46</sup>

Not only the effort of the United Kingdom, but also that of the USSR and the United States were apparently along these lines. As the Cold War intensified, the role of human rights as a political weapon became more important. The growing Great Power criticism against each other concerning human rights violation is a clear indication of this development. British and American archives reveal that the governments were fully aware of their weak points. The British were, in particular, concerned about colonial issues. For the Americans the situation of the Negroes was the burning issue. The British strategy was predominantly defensive for a long period. They tried to keep a low profile in order to provoke least possible criticism. Later they played a more active role and were disappointed with “other colonial powers — particularly . . . the Belgians and the French — [that have] adopted an entirely defeatist attitude . . . .” The Americans, on the other hand, took an offensive tack from the very beginning and prepared material on “weak points” in the Soviet society. In addition, they emphasized that the Declaration was not binding and that “the present treatment of Negroes in this country involves only issues which are matters ‘essentially within the domestic jurisdiction’ of the United States” — according to their interpretation of the UN Charter. But — just in case — the US delegation was also provided with material which illustrated “the steady improvement in conditions of Negroes in the United States.”<sup>47</sup>

<sup>45</sup> Record of a meeting of the Working Party on Human Rights, 22 January 1948, PRO, FO 371/72799/UNE 362.

<sup>46</sup> Brief for the debate on human rights in the House of Lords, May 1948, PRO, FO 371/72805/UNE 1869.

<sup>47</sup> Goodwin, *Britain and United Nations*, 256-68. Draft International Declaration on Human Rights: Colonial Office Circular, 30 July 1948, PRO, FO 371/72810/UNE 3183. “Discrimination against Negroes in the United States,” 30 August 1948,

When Yugoslavia introduced an article about the rights of the population in non-self-governing territories, the UK charged Yugoslavia was raising the issue of political motives as a mean to criticize Western powers, particularly Britain. The thought of revenge appeared immediately; "the Delegation might be instructed to loose off in the plenary debate some of the ammunition . . . about the abuses of human rights in Yugoslavia." While the US generally favoured greater freedom for the colonial people, the US stand on this issue took other interests into account. The American delegation kept a low profile in these matters in order not to embarrass their close ally, the United Kingdom. At the same time their main worry was that international communism would take advantage of the independence movement in the colonies.<sup>48</sup>

The extensive use of human rights as a weapon in the political warfare made it important for the governments to avoid including in the human rights declaration elements which did not conform with national laws or practice. The opposition against giving the text binding status also reflected this motivation. The United Kingdom feared pressure to treat the Declaration as an authoritative definition of what human rights was at the time. Their strategy was evident:

Presumably it would be difficult to resist the adoption of a definition, and it would merely remain for the United Kingdom to make certain that the definition did not contain anything at variance with the existing practice both in the United Kingdom and in the territories for which the United Kingdom is internationally responsible. But the risk makes it desirable, in our opinion, to be careful about what we agree to put into the draft Declaration in its early stages.<sup>49</sup>

The United States wanted to limit the debate and not reopen the substantial deliberations on the Declaration at the third session of the General Assembly because of the fear of "undesirable" amendments. The Soviet Union, on the other hand, was not satisfied with the content of several

SD/A/C.3/75 and 76, Position paper and comment paper, box 27, Position Papers, Bureau of International Organization Affairs and its Predecessors, RG 59, NARA.

<sup>48</sup> UK delegation to the United Nations to Foreign Office, 29 November 1948 and Foreign Office reply, 30 November 1948, PRO, FO 371/72812/UNE 4645. See also GAOR-TC 3, p. 744. "United States attitude toward foreign colonial policies," 27 May 1949, Research project 108, box 5, Research reports on the Foreign Policy Studies Branch, Division of Historical Policy Research, RG 59, NARA.

<sup>49</sup> Ormerod, Commonwealth Relations Office to Hebbelwaite, Foreign Office, 1 May 1948, PRO, FO 371/72805/UNE 1805.



articles and submitted numerous changes. The amendments seem partly to have been attempts to avoid confrontation with Soviet laws and practice, as the sentence "in accordance with the law" was suggested in many articles. Although very few of the amendments were adopted, the Soviet Union did not vote against the Declaration. The general impression is that the Soviet Union in this period was more concerned with using the Declaration as a means of criticizing others than preventing elements which did not conform with Soviet laws and practice. It has been argued that the USSR attitude towards international law during this period was that of recognizing only those parts which served the interests of the Soviet state. A selective use of international law may have made it less important to avoid clauses to which one might be opposed. The Soviet utilization of human rights as a political weapon was well-known and feared by its main opponents, and by the British in particular.<sup>50</sup>

It will be interesting to see what use Soviet propaganda will make of the Declaration of Human Rights now that it has been adopted. One is tempted to forecast that they will in no way be impeded from employing it as a stick with which to beat their opponents by the fact that they did not vote for it and abstained or voted against some of the most fundamental Articles. An obvious tactic would be to stimulate petitions from colonial territories charging that the metropolitan power was denying fundamental rights to the inhabitants.

While we shall undoubtedly be able to point out in reply that very few rights or freedoms are granted to the population of the USSR and the satellite states, some of the mud will stick unless we can show that we are doing our best to live up to the ideals of the Declaration in all territories under our control.

The realization of that "some of the mud will stick . . . unless we can show that we are doing our best to live up to the ideals of the Declaration" might have contributed to the improvement of human rights conditions although the main motivation for influencing the drafting of the Declaration was to engage in political warfare.

<sup>50</sup> "Comment paper, Draft International Declaration on Human Rights," 26 August 1948, SP/A/C.3/70, box 27, position papers, Bureau of International Organization Affairs and its Predecessors, RG 59, NARA. Meighen, *Universal Declaration of Human Rights and Democratic Representative*, 21. Dallin, *Soviet Union in United Nations*, 8-9 and 11; see also Tedin, "Soviet Attitude Towards Implementing Human Rights." Report on the plenary session: Note by the Foreign Office, 14 December 1948, PRO, FO 371/72812/UNE 4858.

The above discussion has concentrated on the motives of the Great Powers. Additional studies will be necessary to analyze the motives of the smaller states. It is, however, reasonable to argue that their motives also were mixed: a desire for higher human rights standards combined with respect for human rights as a political weapon. The second motive might, however, not be as important as for the Great Powers because smaller states are less active internationally focus and, to that extent, less vulnerable.

## **4. The form and status of the document: Only a moral force**

The Commission on Human Rights was designated by the ECOSOC to draft an International Bill of Human Rights, but the terms of reference did not say anything about the form or status of the planned document. The UN Charter said nothing either. There was a close relationship between the legal status of the human rights document and its substance. The decision on the question of form and the interpretations of its impact according to its legal status obviously affected attitudes on substantive questions. The point of view was also expressed in the Commission. The further the Declaration was considered to be legally binding, the greater the effort to restrict the scope of the Declaration.<sup>1</sup>

The many forms that were under consideration determined the legal status, but the forms could be interpreted in many different ways. The form was decided without an explicit decision on the legal status. Serious disagreements were covered up and the debate has continued. These disagreements directly relate to the questions of national sovereignty, interference in internal affairs and the controversial supranational role of the United Nations.

### **The form of the International Bill of Human Rights**

The Nuclear Commission on Human Rights left to the full Commission the determination of the form and the legal status of the Bill, as well as the determination of its content. The question of form was discussed at the first session of the Commission on Human Rights and the first session of the Drafting Committee. The final decision of the form was not made until the second session of the Commission. In its night meeting on 16 December 1947, the Commission on Human Rights decided to apply the term "International Bill of Human Rights" or, for brevity, "Bill of Rights", to the

<sup>1</sup> E/CN.4/SR.7, p. 3.

three documents in preparation, named "Declaration", "The Covenant of Human Rights" and "Measures of Implementation".<sup>2</sup>

Charles Malik, Rapporteur of the Commission, presents the deliberations and the decision in this way:

From the very beginning it became clear that our task was threefold.

First, we must elaborate a general Declaration of Human Rights defining in succinct terms the fundamental rights and freedoms of man which, according to Article 55 of the Charter, the United Nations *must* promote. This responsible setting forth of the fundamental rights will exert a potent doctrinal and moral and educational influence on the minds and ways of men. It will serve, in the words of the present Declaration, "as a common standard of achievement for all peoples."

Second, there was the insistent need of something more legally binding than a mere Declaration. Such a document can only be a convention, an international treaty, setting forth in precise legal terms the maximum area of agreement to which governments are willing to be legally bound in this domain. What the convention loses by reason of its more restricted subject-matter, it makes up for by the fact that those who sign it are willing to covenant themselves into the strict observance of its terms. Hence we have called it "the Covenant on Human Rights."

Finally, it was obvious we needed adequate machinery for making sure that human rights are observed and for dealing with cases of their infraction. We called this machinery "Measures of Implementation."<sup>3</sup>

Malik gave a precise description of the three parts of the Bill of Rights, but the agreement and discussion of the form and the status of the document(s) to be drafted, were not as uncomplicated as he portrayed it.

From the very beginning of their work, it was evident that the representatives had different aspirations. The mandate of the Commission was to draft an International Bill of Human Rights, but what exactly did the term "Bill" refer to? Some of the delegates interpreted it as "hard" international law as a contrast to a "soft" declaration, which they

<sup>2</sup> E/HR/29, p. 2. The discussion of the question of form is mainly found in these documents: E/CN.4/W.4, E/CN.4/SR.7-9 and 14-15, E/CN.4/4, E/CN.4/11, E/259, p. 3, OR-ECOSOC 4/2, p. 103, E/CN.4/AC.1/SR.2, 3, 5 and 7, E/CN.4/21, p. 3, E/CN.4/SR.25, 27-29 and 35, E/600, p. 3. E/600. The decision did not determine whether the measures to be proposed would form a part of the Covenant (as later decided) or not.

<sup>3</sup> Malik, "International Bill of Human Rights," 519.

interpreted as referring a "recommendation". This understanding was strongly opposed by others. Eleanor Roosevelt maintained that there was no existing concept of "bills" as such in international law, and consequently a Bill of Rights did not need to be cast in convention form. Most of them interpreted "treaty" and "convention" as binding instruments and "declaration" and "resolution" as having a more recommending character. This was in accordance with common international usage, but even this distinction caused some confusion. The representatives did not always mean the same thing by using the same words.<sup>4</sup>

The Commission on Human Rights worked with different draft *declarations*, but other solutions were also possible. In a working paper, the Secretariat considered three alternatives regarding the form of the International Bill of Human Rights: 1) a declaration adopted by the General Assembly as a resolution; 2) a binding convention, which had to be ratified by each state, or 3) an amendment to the UN Charter. These alternatives were presented at the first session of the Commission on Human Rights. In addition, the Indian representative suggested a Bill of Rights to be adopted by the UN Assembly as a General Act. The status of such an act did not seem quite clear, and the general opinion in the Commission was that the General Assembly had the power to pass resolutions, but not acts.<sup>5</sup>

"Bill of Rights" as an amendment to the Charter was obviously a solution nobody wanted. Nor was it realistic. Therefore, they had to choose between a declaration or a convention. Most of the delegates spoke in favour of a declaration, including most of the Great Powers. Others argued energetically for a more binding instrument. The dilemma was the desire for an effective implementation combined with a broad acceptance. The question went to the core of the issue of domestic jurisdiction.<sup>6</sup>

The first session of the Commission did not vote on the issue of form, but it reported to the ECOSOC as follows: "Concerning the form of the International Bill of Human Rights, the consensus of the Commission was that it should be submitted to the Commission by the drafting group as a

<sup>4</sup> E/CN.4/SR.25, p. 6; E/CN.4/SR.28, pp. 4-6; E/CN.4/SR.29, pp. 4 and 14.

<sup>5</sup> E/CN.4/W.4, pp. 10-11. E/CN.4/11 and E/CN.4/SR.9, pp. 3, 5 and 6.

<sup>6</sup> Article 108 and 109 in the Charter indicated two different ways to adopt amendments to the Charter. Both of them required adoption by two thirds of the United Nations members, including all the permanent members of the Security Council. Such a broad agreement was not easy to obtain. See also Eichelberger, "United Nations Charter," 103-104.

draft *resolution* for presentation and approval by the General Assembly. [Italics added.]”<sup>7</sup>

The first session of the Drafting Committee repeated the discussion on the form and the status. Some of the representatives favoured a declaration, others felt that it should be in the form of a convention. The supporters of a declaration, however, agreed that the document should be followed by one or several conventions on specific groups of rights. In the same way, those who favoured the convention form, assumed that the General Assembly in recommending such a convention to the member states, might adopt a more general declaration. The underlying views, which were related to the question of sovereignty, were not easily combined. Provisionally the Committee decided to prepare two drafts; a working paper in the form of a declaration and another in the form of a convention. The unanimous agreement in the drafting Committee was that the final decision on the form had to be made by the whole Commission. When the Commission convened its second session in December 1947, this caused a difficult debate lasting through four meetings.<sup>8</sup>

China, the USSR, the United States and Yugoslavia were the supporters of a human rights document in the form of a *declaration*. None of them opposed the convention-form openly, but wanted to postpone the discussion until the draft declaration was considered. Vladislav Ribnikar, the Yugoslavian representative, interpreted the instructions from the ECOSOC in favour of a declaration. Whether a covenant should be drawn up as well should rest with the General Assembly to decide.<sup>9</sup>

Originally, the United States had preferred to prepare a declaration first *and then* one or more conventions. But, according to Eleanor Roosevelt, United States’ position had been modified and priority was now given to the Declaration. “The Commission should not proceed to draw up [the convention] until it was sure that such Conventions could be accepted and applied in all good faith by the participating States.” This was in fact a very strong reservation.<sup>10</sup>

The USSR delegate favoured a postponement of a convention. At this stage, it was the common opinion in the West that the Soviet Union would

<sup>7</sup> E/259, p. 3.

<sup>8</sup> E/CN.4/AC.1/SR.2, p. 3, E/CN.4/AC.1/SR.7, pp. 3-4.

<sup>9</sup> E/CN.4/AC.1/SR.5, pp. 3-4; E/CN.4/SR.25, p. 10 and E/CN.4/SR.29, pp. 8-9; E/CN.4/SR.25, p. 10; and E/CN.4/SR.28, p. 10 respectively.

<sup>10</sup> “Legal form of an international bill of human rights,” 31 October 1946, SD/E/CN.4/W.10, box 45, position paper, Bureau of International Organization Affairs and its Predecessors, RG 59, NARA. E/CN.4/SR.25, p. 10; compare also E/CN.4/4.

never accept a binding convention, a view which was confirmed by off-the-record remarks from Russian diplomats.<sup>11</sup>

The opposite position was an impatient defence for a strong binding instrument in the form of a *convention*. Lord Dukeston, Hansa Metha and William Hodgson, the representatives of the United Kingdom, India and Australia respectively, were the most zealous fighters for a convention. This suggests a Commonwealth alliance, and the United Kingdom was the obvious leader. They obtained support from Belgium, Lebanon, Panama and the Philippines.<sup>12</sup>

The representative of Lebanon, Charles Malik, offered a perceptive explanation: "He gathered from the Commission's discussion that the issue of a 'Declaration' or a 'Convention' was a challenge between small and great Powers," the records explain. Given that the USSR and the United States were the primary Great Powers at that time, this is a reasonable assumption. This understanding of the small states as the strongest defenders of international law is in accordance with the general opinion. "When small states work so diligently for international conflict regulation through international law, it is not because they from the outset are better than others," as the Norwegian President of the Parliament (Storting), C. J. Hambro once said, "but rather because they have less power to do injustice [than larger states]."<sup>13</sup>

Malik "could understand the difficult position of some Great Powers, but he believed that if the medium and small Powers combined their efforts, they could invite the 'Big Powers' to follow their lead, in the same way as the small and medium Powers followed the Great Powers in their efforts to secure peace; they could by contrast speak more frankly and set more freely to promote general agreement. . . . He trusted that hopes of agreement would not be disappointed."<sup>14</sup>

Lord Dukeston (United Kingdom) said it seemed to him "dangerous to prepare a draft Declaration without a draft Convention. [. . . M]achinery for implementation could not be contemplated within the framework of a Declaration. The latter could not legally bind Governments as could a Convention." According to Dukeston a Declaration was nothing more than a document of propaganda. He later argued that "[h]istory showed that

<sup>11</sup> E/CN.4/SR.25, p. 2. Humphrey, *Great Adventure*, 41.

<sup>12</sup> E/CN.4/SR.25, pp. 2, 5-7 and 11; E/CN.4/SR.28, pp. 6-10 and E/CN.4/SR. 29, p. 1. Secretary of State for Dominion Affairs to Canada, Australia, New Zealand and South Africa, 26 May 1947, PRO, FO 371/67604/UNE 443. (UK draft convention is attached.)

<sup>13</sup> E/CN.4/SR.28, p. 12. Bergesen and Østreng, *Internasjonal politikk*, 29.

<sup>14</sup> E/CN.4/SR.28, pp. 11-12.

Declarations imposing no juridical obligations had remained inoperative for centuries.”<sup>15</sup>

The British position as a strong defender of a binding convention needs to be explained. First, it is necessary to keep in mind what kind of a convention the United Kingdom supported. The UK draft convention was very much in accordance with the existing common law in their own country. The draft stressed individual rights and economic and social rights were not included. Thus, the British struggle for a strong, binding convention had less far-reaching implications than it might first appear. Moreover, the British enthusiasm for a legally binding convention did not last. The international climate changed and the human rights agenda included several issues which the United Kingdom found problematic. In June 1948 — although its former view was still the official policy — the UK attitude towards a binding human rights document was much more reluctant:<sup>16</sup>

During the last few weeks it has been necessary to obtain authority for the line to be pursued by the U.K. Delegation at the Human Rights Commission. This submission of important problems concerning Human Rights to higher authority has evoked an expression of considerable misgivings. The misgivings centred round the dangers which might flow from the coming into force of the covenant, despite any safeguards which it might be possible to have included in the Covenant. The Lord Chancellor, for instance, has stated that he regards the whole question with even greater apprehension. It is also in line with these views, which anticipate considerable political difficulties if the Covenant ever comes into force, that the Secretary of State decided to instruct the U.K. delegate to adopt Fabian tactics when the question of individual petitions comes up for discussion.

Viewed in the light of the political considerations mentioned in the immediately preceding telegram, therefore, there would be every advantage in delaying the coming into force of the Covenant and even greater advantage in postponing this event sine die. The present unsatisfactory state of international relations underlines even more the importance of such inclusion.

<sup>15</sup> E/CN.4/SR.25, p. 11. E/CN.4/SR.28, p. 7.

<sup>16</sup> UN/E/CN.4/21, Annex B; “Bill of Human Rights,” 11 June 1947, PRO, FO 371/67605/UNE 610; Secretary of State’s speech, draft by Beckett, 14 January 1948, PRO, FO 371/72801/UNE 997. Memorandum by Mr. Hebblethwaite, Foreign Office, 8 June 1948, PRO, FO 371/72808/UNE 2273.



In public, still, the United Kingdom's delegate was a strong defender of a binding convention. His Australian colleague, William Hodgson, went further. He "would like to know whether the Declaration . . . was to take the form of a recommendation of the General Assembly or whether it was a Declaration, to be ratified by States, in which case it would have binding force under both municipal and international law. Those who favoured a Declaration should explain what they meant; if it was merely to be a recommendation, the peoples of the whole world would be disappointed and the Commission would have made a hypocritical decision." Similarly, Panama argued that a declaration which avoided assuming responsibilities would be a legal monstrosity.<sup>17</sup>

None of the supporters of the convention completely opposed a declaration. They gave priority to the convention instead. Thus, the Belgian Fernand Dehousse considered "a Declaration on Human Rights . . . of little importance," but still, he did not completely oppose such a declaration. The representatives of Chile, Egypt, France and Uruguay took an *intermediate position*. They wanted to combine a declaration with a convention, and appreciated a declaration more than the most zealous supporters of a convention. They did not share the view that a convention was preferable to a declaration because the latter lacked value. Instead, they considered a convention as a way to deal with those details which would over-load a declaration. One of their arguments — as maintained by France — was that a declaration would be written immediately — as a first stage, and it "would immediately strike public opinion and serve as a guide to the future policies of States." Contrary to states that defended a declaration because they obviously did not want too strong provisions and feared interference in domestic affairs, their position was pragmatic. They did not oppose a binding convention, but considered a declaration to be more realistic at that time. The representative of Chile, Hernan Santa Cruz, emphasised this "practical aspect," and Juan J. Carbajal Victorica, who represented Uruguay, regarded it "easier to examine the Declaration first."<sup>18</sup>

The UK representative neither openly opposed a declaration, but emphasized the simultaneous adoption of the Convention and the Declaration. This was i.e. based on the fear that "[e]ven if the Declaration were drafted as a mere statement of ideals, . . . attempts will be made, if

<sup>17</sup> E/CN.4/SR/28, p. 6; this quotation illustrates also the confusion about the terminology. E/CN.4/SR.28, p. 9.

<sup>18</sup> E/CN.4/SR.25, pp. 6-7. E/CN.4/AC.1/SR.2, p. 3 and SR.5, p. 3; E/CN.4/SR.25, p. 5; E/CN.4/SR.23, p. 3; and E/CN.4/SR.35, p. 8 respectively. E/CN.4/AC.1/SR.5, p. 2. E/CN.4/AC.1/SR.5, p. 3 and E/CN.4/SR.35, p. 8.

there is no Covenant, to base accusations upon it and to distort it into a legally binding obligation.”<sup>19</sup>

The disagreement over form had an impact on the organization of the second session of the Commission. The Belgian representative tried to bridge the gap between the divergent points of view and submitted a compromise proposal which was ultimately adopted. By a vote of nine to five, the Commission decided to set up three working groups to deal with the Declaration, the Convention(s) and the Implementation respectively.<sup>20</sup>

## **The status of the Declaration**

Even though the Commission on Human Rights had decided upon the question of form, the agreement was only apparent. The Commission had decided to draft 1) a declaration, which was to be adopted as a General Assembly resolution; 2) a convention, which was legally binding upon the ratifying states; and 3) the measures of implementation — the machinery which should supervise adherence to both the letter and spirit of the convention. Formally, this decision solved the question of the legal status of the forthcoming bill of human rights. The decision was also ambiguous and open to interpretation. Conflicts over interpretation happened frequently. In spite of the adopted compromise, the members of the Commission maintained their different positions and repeatedly expressed them during the drafting process. The member states of the Commission as well as the other UN members expressed different points of view with respect to both the question of national sovereignty and the interpretation of the UN Charter. These views resulted in different evaluations of the legal status of the Declaration. Hence, the disagreement on the legal status affected the whole drafting process of the Declaration.

### *1) The question of national sovereignty*

The close connection between the question of the status of the Declaration and the question of national sovereignty was prominent. The USSR and the other East European states were the most determined and outspoken defenders of the principle of national sovereignty. In the general debates as well as in connection with special issues, they insisted that any interference

<sup>19</sup> “Human rights,” draft brief for the UK delegation to the third session of the General Assembly, PRO, FO 371/72811/UNE 3939.

<sup>20</sup> E/CN.4/SR.28, pp. 2-5.

in domestic affairs must be avoided. Such interference was against the Charter of the United Nations and might lead to international strife by transforming internal disputes into international disputes and thus endanger world peace. The representative of Yugoslavia, Vladislav Ribnikar, expressed it this way:<sup>21</sup>

[T]he principle of State sovereignty as independence both in internal affairs and in international relations with other states . . . was the oldest democratic principle in the fields of State relations, and . . . this principle was only opposed . . . by those people who had ideas of international domination and generally represented reaction.

The Russian representative, Alexei P. Pavlov, expressed a somewhat contradictory view. Again and again he attacked various human rights provisions which he considered violations of the principle of national sovereignty. This attitude was not consistent. On the other hand, one of the USSR objections against the draft declaration was its failure to ensure and guarantee the implementation of rights, especially the rights dealing with social, economic and cultural rights.<sup>22</sup>

In addition to the USSR and the East European states, El Salvador, represented by Hector David Castro, feared the possibility of intervention in domestic affairs although not with a specific reference to the International Bill of Human Rights, and argued that the United Nations was not a super-state. The Syrian delegate, Abdul Rahman Kayaly, was also concerned not to violate the principle of national sovereignty. Augusto Ramírez Moreno from Colombia pointed out that the drafters of the Declaration text did not intend to interfere in domestic matters. The Iranian member of the Commission, Ghassame Ghani, warned against any infringement of national sovereignty. The suggestion of creating a Court of Appeal to pass judgement on violations of human rights was interpreted by the Iranian government as an infringement of national sovereignty.<sup>23</sup>

<sup>21</sup> On the discussion of national sovereignty, see E/CN.4/AC.1/SR.3, p. 2; E/CN.4/AC.2/SR.5, p. 12; E/CN.4/AC.2/SR.9, p. 13; E/CN.4/AC.4/SR.7, p. 1; E/CN.4/SR.38, pp. 8 and 10; E/CN.4/AC.1/SR.21, p. 3; E/CN.4/SR.49, pp. 6-7; E/CN.4/SR.55, p. 7; E/CN.4/SR.59, p. 10; E/CN.4/SR.61, p. 5; E/CN.4/SR.81, p. 14; OR-ECOSOC 7/3, pp. 646, 658 and 699; GAOR-TC 3, p. 49; GAOR 3, p. 923. Cf. also Dallin, *Soviet Union in United Nations*, 45-50. GAOR-TC 3, p. 59. E/CN.4/SR.39, pp. 11-12.

<sup>22</sup> E/CN.4/AC.1/SR.21, p. 3; E/CN.4/SR.81, p. 14 and E/CN.4/SR.59, p. 10. Compare E/CN.4/SR.49, p. 11; E/CN.4/AC.1/SR.21, p. 3 and E/800, pp. 30-31.

<sup>23</sup> E/CN.4/SR.8, p. 3. See also GAOR-TC 3, pp. 44 and 705 and GAOR 3, p. 163.

The representatives of France and Chile, René Cassin and Hernan Santa Cruz respectively, were among those arguing most consistently in favour of the need of limits on national sovereignty, and they made specific references to the World War II experiences. The opinion of René Cassin is referred to in this way:

Experience had shown the tragic results of unlimited national sovereignty, and France, by its Constitution of 1946, was ready to *give up part of sovereignty*, provided such action was reciprocated. [Italics added.]<sup>24</sup>

Hernan Santa Cruz maintained that “[i]t had been recognized at San Francisco, when the horrors of war and totalitarianism were still fresh in the memory of the world, that if the causes of war were to be eliminated, *the sovereignty of States must be limited* by considerations of international solidarity and co-operation . . . . [Italics added.]”<sup>25</sup>

Peru, Bolivia, Guatemala, Denmark, and Ecuador voiced similar thoughts, though not as far-reaching as the ideas of Chile and France. The representative of Bolivia, Eduardo Anze Matienzo, maintained that national sovereignty would have to be subordinated to international requirements and regarded the Declaration as a new international constitution which would limit the rights of States in the interest of the rights of individuals. He also hoped that the Declaration would become an integral part of international law.<sup>26</sup>

Argentina, Liberia, and Mexico actually wanted to strengthen the supranational character of the UN, but Argentina did not consider the world advanced enough to abolish national sovereignty, and Mexico and Liberia complained that such a supranational body was contrary to the Charter.<sup>27</sup>

The point of view of the Philippine Republic, expressed by Charles Romulo, was also clear:

The Commission could . . . visualize the hypothesis of a world government from which the international bill of human rights would result and of which it would be the cornerstone.<sup>28</sup>

<sup>24</sup> E/CN.4/SR.73, pp. 2-3.

<sup>25</sup> E/CN.4/SR.50, p. 6.

<sup>26</sup> GAOR 3 p. 297; GAOR 3, p. 900 and GAOR-TC 3, p. 42; GAOR-TC 3, p. 402; GAOR 3, p. 891; and GAOR 3, p. 920 respectively.

<sup>27</sup> GAOR-TC 3, pp. 697 and 701; GAOR 3, p. 165.

<sup>28</sup> E/CN.4/SR.9, p. 2.

Romulo also refuted the allegation that the Declaration of human rights infringed on national sovereignty but generally, the Philippines tried to steer clear of a confrontation on such a difficult matter of principle. Mexico stated that the Declaration was not inconsistent with the principle of domestic jurisdiction. In fact, their position supported limited sovereignty.<sup>29</sup>

The Australian A. S. Watt argued that certain matters of domestic jurisdiction could be transferred to international jurisdiction, and it would not constitute a violation, but rather an exercise of sovereignty. The Belgian delegate, Fernand Dehousse, supported limitation on national sovereignty by re-defining the concept of national sovereignty:

First, there was the concept of absolute sovereignty, which excluded all international co-operation; but he considered that a State, if it possessed absolute sovereignty, had the power thereby to limit its sovereignty and power. In this case, the State would be based on the second concept of relative sovereignty, which was *sovereignty limited according to the practical interests of the country*. [Italics added.]<sup>30</sup>

He further referred to the German abuse of the notion of absolute sovereignty and considered any support of such a concept as reactionary.

## 2) *The interpretation of the UN Charter*

The discussion of national sovereignty was really a discussion on how to interpret the UN Charter, especially Article 2.7:

Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.<sup>31</sup>

Other relevant sections in the Charter were Article 1.3 which states as a part of the purposes of the United Nations “to achieve international cooperation in promoting and encouraging respect for human rights and

<sup>29</sup> GAOR 3, p. 868 (Philippines) and E/CN.4/82/Add.1, p. 2 (Mexico).

<sup>30</sup> E/CN.4/SR.39, p. 9 (Belgium) and GAOR-TC 3, p. 702 (Australia).

<sup>31</sup> Chapter VII concerns action with respect to threats to the peace, breaches of peace, and acts of aggression.

fundamental freedoms for all without distinction as to race, sex, language, or religion"; article 55 which repeats this as an objective for the Economic and Social Council and article 56 where all members pledge themselves to take joint and separate action in cooperation with the Organization for the achievement of this purpose.<sup>32</sup>

These provisions in the Charter were interpreted both to approve and to disapprove of dealing with violations on human rights. Only some of the UN members presented their points of view explicitly. Most were more circumspect. The two main interpretations may be classified as A) the absolute doctrine of non-interference, and B) human rights as international law.<sup>33</sup>

On the one hand, the USSR and its supporters emphasized the passage which said that the United Nations was not authorized to intervene in matters within domestic jurisdiction. One of the USSR representatives in the drafting work, Vladimir Koretsky, expressed the Soviet doctrine of non-interference forcefully:

[T]here did not exist such a thing as a world government. The Group was faced with the co-existence of sovereign states. The United Nations itself consisted of 50-odd states that had agreed to co-operate, but had not renounced any of their sovereignty. It would be improper . . . to establish the dependence of one country upon another. The United Nations Charter . . . does not allow interference in the domestic affairs of a state.<sup>34</sup>

The opinion emphasising human rights as international law, on the other hand, took at least three different forms.

A) "By subscribing to the Charter, States had accepted the incorporation of human rights into international law and had voluntarily abandoned part of their sovereignty," argued the Chilean representative, Hernan Santa Cruz. He thereby did not reject the principle of national sovereignty, but saw human rights as taking priority over notions of national sovereignty.<sup>35</sup>

B) A recurring argument held that human rights were not a matter of domestic jurisdiction, hence there was no conflict between actions in the human rights field and the provisions in the Charter related to non-intervention. Already during the opening of the first session of the Commission on Human Rights, the Assistant Secretary-General of the

<sup>32</sup> See Appendix 2.

<sup>33</sup> See Newman, "Interpreting Human Rights Clauses of United Nations Charter."

<sup>34</sup> E/CN.4/AC.4/SR.7, p. 1. See also GAOR-TC 3, p. 59.

<sup>35</sup> GAOR-TC 3, p. 702.

United Nations in charge of Social Affairs, Henri Laughier, declared that no violation of human rights should be covered up by the principle of national sovereignty.<sup>36</sup>

Charles Malik gave a fuller interpretation of the view that human rights was outside and beyond questions of national sovereignty. The Charter showed, he argued, that:<sup>37</sup>

*[F]irst*, that the promotion of respect for human rights was second only to the maintenance of peace and security. The violation of human rights was one of the causes of war, and, if the first aim of the United Nations was to be attained, the observance of human rights must be guaranteed. *Secondly*, the Commission on Human Rights was in the unique position of being the only Commission mentioned by name in the Charter. *Thirdly*, the function of the Commission was the promotion of human rights, and since it could not promote what was still vague and undefined, the first task of the Commission must be a precise definition of those rights. It could be said that the Commission was called upon to finish the work initiated by the Charter, in giving content and meaning to the phrase "the dignity and worth of the human person." In the *fourth* place, since it had been decided at the San Francisco Conference that an elaboration of human rights, which had been urged by many delegations, was too large a task to be attempted at that time, this Commission was virtually a prolongation of the San Francisco Conference and its work *a completion of the Charter itself*. Those facts should be borne in mind, since the Commission was apt to be regarded as just another organ of the United Nations. It was, in fact, more fundamental than any other body of the Economic and Social Council, and almost as fundamental as any of the principal organs of the United Nations. [Italics added.]

The statement was echoed by other energetic supporters of human rights. The representative of Brazil, Ramiro Saraiva Guerreiro, argued that human rights had been removed from the purely domestic jurisdiction of States and had become an international concern. In the Third Committee of the General Assembly, René Cassin (France) maintained that the provisions of the Charter relating to matters of domestic jurisdiction could not be used to circumscribe the UN's competence on human rights. The question of human rights was no longer purely domestic but of international concern. He pointed out the danger represented by excessive respect for national sovereignty in questions going beyond the domestic jurisdiction of States, and referred to the experiences with Hitler. Jorge Carrera Andrade from

<sup>36</sup> E/CN.4/SR.1, p. 2.

<sup>37</sup> E/CN.39, p. 7. E/CN.4/SR.50, pp. 4-5.

Ecuador followed up by stating that human rights did not stop at national frontiers. Panama's Antonio de León objected "to the oft-repeated sophistry that the UN was helpless to prevent violations of human rights because the Charter forbade interference in matters which were within domestic jurisdiction," as did the Norwegian representative, Frede Castberg.<sup>38</sup>

C) A third argument for considering human rights as international law was introduced by Ecuador's Jorge Carrera Andrade. He emphasized that interference with human rights endangered collective security. Because it was within the mandate of the United Nations to take actions towards everything which could be expected to endanger international peace and security. This argument supported concern over human rights. Similar opinions were also repeatedly expressed by other delegates, e.g. Mexico and Lebanon.<sup>39</sup>

### 3) *Was the Declaration legally binding?*

One of the principal questions during the drafting process was whether the Declaration could be considered legally binding or not. Two opposite points of view were represented: 1) The Declaration is not legally binding, but a moral standard only. 2) The Declaration is a continuation of the Charter and defines the human rights mentioned therein. This gives it an authoritative status which also implied a legal binding. There was also an intermediate position. Some representatives were not willing to give the Declaration any legal status, but warned against what they called an under-estimation of its value. This point of view can also be considered as a variation of the opinion that the Declaration did not have any legal value.

The United States was the leading force among those who stressed the *non-binding character* of the Declaration. Over and over again, Eleanor Roosevelt underlined that the Declaration was only a guide and a source of inspiration. It would serve as a beacon towards which all nations should strive. "The draft declaration was not a treaty or international agreement and did not impose legal obligations; it was rather a statement of basic principles of inalienable human rights, setting up a common standard of achievement for all peoples and all nations. Although it was not legally binding, the declaration would nevertheless have considerable weight."

<sup>38</sup> OR-ECOSOC 7/3, p. 645 (Brazil); GAOR-TC 3, pp. 35 (Norway), 36 (Ecuador), 43 (Panama) and 61 (France).

<sup>39</sup> GAOR 3, p. 920 (Ecuador); E/CN.4/82/Add.1. p. 3 (Mexico); OR-ECOSOC 7/3, p. 2 (Lebanon).



Eleanor Roosevelt expressed this point of view in detailed fashion at the opening of the third session of the Commission on Human Rights, referred in records as:<sup>40</sup>

[I]n the opinion of her delegation the Declaration should serve two purposes:

1) To establish basic standards which would guide the United Nations in the realization, within the meaning of the Charter, of international co-operation in promoting and encouraging respect for human rights and fundamental freedoms for all;

2) To serve as a guide and inspiration to individuals and groups throughout the world in their efforts to promote respect for human rights.

The Declaration should not be in any sense a legislative document. The General Assembly was not a legislative body. The manner in which the United Nations could and would wish to undertake the task of promoting and encouraging respect for human rights and fundamental freedoms remained in large measure to be determined. Further, it was clear that the Declaration, as envisaged, did not create legal remedies or procedures to ensure respect for the rights and freedoms it proposed to the world; that ideal would have to be achieved by further steps taken in accordance with international and domestic law. The Declaration would have moral, not mandatory, force.

In addition, the United States repeatedly reminded other delegates that the US federal system was an obstacle to ratification of international treaties. Only H. Plain, who represented the United States in the working group for the convention during the second session of the Commission on Human Rights, expressed the unorthodox view that: “[i]nasmuch as the American Federal State played a predominant role in world affairs and had now become, in fact, the leading country in the world, it should adapt its federal system to the requirements of human progress and prevent its own internal provisions from impeding the ratification of a Convention on Human Rights.” The US delegation to the third General Assembly was aware that parts of the Declaration did not conform with their national legislation. The right of access to public employment was in conflict with the American restrictions on employment for Communists. In order to prevent internal criticism on such issues and to secure internal American acceptance of the

<sup>40</sup> GAOR-TC 3, p. 32; see also E/CN.4/82/Rev.1, p. 18 and OR-ECOSOC 7/3, p. 642. E/CN.4/SR.48, pp. 5-6.

Universal Declaration of Human Rights, Eleanor Roosevelt emphasised the Declaration as a compromise which did not reflect completely the point of view of any of the participating governments. The US delegation made strong endeavour to publish her speeches in the American press. The repeated American insistence on the non-binding character of the Declaration was a part of this strategy.<sup>41</sup>

The Chinese delegate, T. Y. Wu, shared the US point by arguing that “the declaration could only serve as a moral standard towards which mankind should aspire.” He was joined by representatives of Australia, Mexico, the Netherlands, New Zealand, Poland, the Union of South Africa and the United Kingdom explicitly expressed that they did not consider the Declaration to have any legally binding character.<sup>42</sup>

There existed also a considerable fear among those states that the Declaration finally might be interpreted to have some legal force. The UK representative at the seventh session of ECOSOC, Christopher Mayhew, objected to the point of view that the Declaration could be considered as an authorised interpretation of the relevant provision of the Charter and he particularly protested against Cassin’s point of view. The British fear of a strong Declaration was repeatedly expressed in internal documents. “There is . . . a risk . . . there will be pressure . . . for treating the Declaration as an authoritative definition of what human rights are at the present time.” Because of this risk there were internal suggestions to be careful about what they agreed to include in the draft Declaration. The British fear was also shared by New Zealand, Poland and the Union of South Africa. The South African representative, E. H. Louw, wanted to be quite sure that there would be no unforeseen legal or moral obligations after the Declaration had been adopted. In his opinion, the Declaration had no legal significance. He was afraid of the possibility that some might insist on interpreting its provisions in the light of certain passages of the Charter and

<sup>41</sup> E/CN.4/AC.3/SR.4, p. 7. Minutes of the Fourth meeting of the US delegation to the third regular session of the General Assembly, 24 September 1948, US(P)/A/M(Chr)/4; Minutes of the Fifth meeting of the US delegation to the third regular session of the General Assembly, 25 September 1948, US(P)/A/M(Chr)/5, and US Delegation Decisions, 25 September 1948, box 60, US Mission to the United States, RG 84, NARA. GAOR 3, p. 862. Eleanor Roosevelt, “General Assembly Adopts the Universal Declaration,” 751. In the United States there was some opposition to the International Bill of Human Rights; see Holman, “Dangerous Implications” and “Human Rights on Pink Paper.”

<sup>42</sup> E/CN./AC.1/SR.20, p. 6. GAOR 3, p. 876; 885; 873; OR-ECOSOC 7/3, p. 652 and GAOR 3, p. 888; GAOR 3, p. 905; and OR-ECOSOC 7/3, p. 697 respectively.

might likewise insist on the existence of legal obligations. This was exactly the intention of those who considered the Declaration as legally binding.<sup>43</sup>

The position of Australia, with less internal or colonial problems, was not consistent. While holding that the Declaration had no legally binding character, representatives also referred to the Declaration as a definition of the UN Charter's reference to fundamental human rights. This was a point of view generally held by those who gave the Declaration some sort of legal value.<sup>44</sup>

Those opposed to the Declaration having any legal force underscored its great moral force. The Mexican representative, Pablo Campos Ortiz, even considered that a moral obligation was just as strong as a legal binding one. Some of the delegates were afraid of being interpreted as under-estimating the value of the document. This refers in particular to the representatives of the USSR, the United Kingdom, and Canada who pointed out that the Declaration was an extremely important document. The representative of Canada, L. A. D. Stephens, declared that "[t]hat fine statement of principles would certainly influence the course of legislation in States which considered, or would consider themselves, bound by it." Similarly, the USSR representative, Alexei P. Pavlov, did not agree that the Declaration should be confined to pious wishes. It was not only an educational document (as the UK representative had said), but must be a recommendation, he argued. Even more important than the drafting of the document was the genuine desire for cooperation in putting its principles into practice. This high price of the Declaration was, however, mostly a question of tactics, at least for some of them. UK's Geoffrey Wilson for instance maintained that "history had proved over a period of time the effectiveness of such declarations as the US Bill of Rights and the French Declaration of the Rights of Man." But the British were never whole-hearted defenders of a Declaration. Their strategy clearly reflected fear of criticism.<sup>45</sup>

Those who stressed the *authoritative character* of the Declaration most consistently — Chile, France and Lebanon — were represented by three of

<sup>43</sup> Ormerod, Commonwealth Relations Office to Hebbelthwaite, Foreign Office, 1 May 1948, PRO, FO 371/72805/UNE 1805; see also OR-ECOSOC 7/3, p. 697. OR-ECOSOC 7/3, pp. 646 (Poland) and 652 (New Zealand); GAOR-TC 3, p. 39 and GAOR 3, p. 911 (Union of South Africa).

<sup>44</sup> OR-ECOSOC 7/3, p. 695; GAOR-TC 3, p. 55; GAOR 3, p. 876.

<sup>45</sup> GAOR-TC 3, p. 668 (Mexico); E/CN.4/SR.41, p. 5 and SR.49, p. 7-12 (USSR); OR-ECOSOC 7/3, p. 655 (Canada); E/CN.4/AC.1/SR.29, p. 6, E/CN.4/82/Add.9, p. 2 and OR-ECOSOC 7/3, p. 697 (United Kingdom). OR-ECOSOC 7/3, p. 655. E/CN.4/AC.1/SR.29, p. 6.

the most energetic delegates in the Commission on Human Rights (Santa Cruz, Cassin and Malik). All admitted that only the covenant would be legally binding, but this probably was said partly for tactical reasons. Hernan Santa Cruz (Chile) called attention to the fact that the Declaration merely stated rights granted by the Charter, and that violation by any state of the rights enumerated in the Declaration would mean violation of the principles of the UN. This was a legal obligation and those who did not fulfil it were liable to the sanctions provided for in the Charter, or, at any rate, to the moral censure of the world.<sup>46</sup>

René Cassin presented two conflicting views about the legal force of the Declaration:

Some saw the Declaration purely as a document *interpreting the Charter* and therefore vested with the same *mandatory force* as the Charter itself. Others saw it as a purely formal document, giving expression to a hope of a rather limited moral influence, and of *no legal value* until its principles had been embodied in one or several covenants.

The French delegation did not share either of those too strict and simple views. The French Government believed that the Declaration, which would in a sense be an explanation of human rights in existence before the Charter, rights which it was incumbent upon the Members of the United Nations to protect in accordance with the Charter, should to a certain extent bear an assertive character. Even in the absence of any Covenant, therefore, the principal organs of the United Nations would, in the opinion of the French delegation, be entitled to take cognizance of the fact if any State violated human rights. Moreover, there was legal precedent to support that opinion, as appeared when the General Assembly decided that the Indian complaint against the Union of South Africa was within its competence.

The Declaration should *not*, however, be of a *purely assertive* character. It should be a guide and, by that function, introduce new conceptions. In so far as it assumed the role of a guide, it would be required to make a distinction between those obligations which applied to the United Nations as a whole and those which applied to each particular nation.

The United Nations Organization was subject to the obligations imposed by the General Assembly's resolutions. In respect of the United Nations as a whole, therefore, the mandatory force of the proposed Declaration

<sup>46</sup> GAOR-TC 3, pp. 50 and 671 (Santa Cruz/Chile). E/CN.4/SR.48, pp. 7-9; OR-ECOSOC 7/3, p. 648; GAOR-TC 3, p. 61 and GAOR 3, p. 865 (Cassin/France). E/CN.4/SR.50, p. 5 GAOR-TC 3, p. 51 and GAOR 3, pp. 188-192 (Malik/Lebanon).

would derive from the resolution the General Assembly might adopt on it.

In respect of individual States, the new concepts which the Declaration would contain, such as the right of nationality or the right of asylum, would have only the value of a recommendation like the resolutions of the General Assembly.

The French delegation, then, envisaged the Declaration as a document shorter than the Covenant, without the legal value of a convention, but which would have the function of keeping the fullest possible list of human rights in everybody's mind. [*Italics added.*]<sup>47</sup>

Perhaps it seems peculiar to classify France among those who gave the Declaration some legal force, in particular because Cassin explicitly dissociated himself with that position. It is nevertheless reasonable to defend such an interpretation in the light of all his statements on the issue. He clearly attached more importance to the Declaration than most of the other delegates and later Cassin argued that it would be dangerous to tell the peoples that the Declaration lacked full legal validity and merely was a guiding beacon. The Declaration was a complement and a clarification of the Charter and a basic instrument of the UN, having all the legal force of such an instrument, he maintained. Moreover, during the drafting process Cassin expressed clearer and clearer the legal value of the Declaration. Thus, under the 1948 General Assembly, he maintained that the document was an authoritative interpretation of the UN Charter and therefore, he concluded, human rights had become a part of positive international law.

In addition to Chile, France, and Lebanon, some Latin American countries, Denmark, and Belgium also expressed in different ways that they regarded the Declaration a legally binding document. The Bolivian Anze Matienzo regarded the draft as a new international constitution, whereby the rights of states were limited in the interests of the rights of individuals, and the representative hoped that the Declaration would become an integral part of international law. He also saw its adoption as a new phase, which was to lead to the establishment of a true international constitution, founded on the limitation of the sovereignty of the states for the benefit of the individual. Enrique C. Armand Ugon, the representative of Uruguay, the

<sup>47</sup> E/CN.4/SR.48, pp. 7-9.

Haitian representative, Emile Saint-Lot and Denmark, represented by Max Sørensen expressed similar views.<sup>48</sup>

Belgium deserves special attention. Represented by Fernand Dehousse the delegation had originally argued that the Declaration was not legally binding. During the drafting process, the delegation, represented by both Dehousse and Henry Carton de Wiart, modified its opinion. The Belgian point of view now was that the Declaration would be communicated to member states of the United Nations in the form of a recommendation of the General Assembly. The authority of the General Assembly, the highest organ of the UN, was based on the Charter. The General Assembly was a juridical organ and any recommendation made by it had an undeniable legal character. Admitting that legal binding or not was not a simple question. The Belgian representative stated that the Declaration had both an unprecedented moral value and contained a potential legal status.<sup>49</sup>

The questions of national sovereignty, the interpretation of the Charter, and the legal status of the Declaration were in fact three ways of discussing the same question of whether the Declaration should be in any way legally binding. Therefore, most of the UN members did not participate in all three debates. Those who did had adopted consistent positions. The defence of national sovereignty corresponded with the strong interpretation of the UN Charter and with the objection of giving the Declaration any legal value — and vice versa. Chile, France and Lebanon were the leading forces among those who saw the Declaration as binding. They got support from a lot of smaller states, especially a number of Latin American countries. On the other side there were the Great Powers, China and the United Kingdom and the super-powers the United States and the USSR. The division between small and Great Powers described by Malik was obvious. The same idea was inherent in the Panamanian statement when its representative, M. Amado, as a citizen of a small country, stated that it was the responsibility of the Great Powers to draft a declaration that was not merely idealistic, but would effectively guarantee the rights it proclaimed.<sup>50</sup>

What was the final legal status of the Declaration? A statement from the Norwegian representative, Frede Castberg, answered this:

<sup>48</sup> GAOR-TC 3, p. 43 (Panama); GAOR-TC 3, p. 42 and GAOR 3, p. 900 (Bolivia); GAOR 3, p. 887 (Uruguay); GAOR-TC 3, p. 431 and GAOR 3, p. 853 (Haiti) and OR-ECOSOC 7/3, p. 653 (Denmark).

<sup>49</sup> E/CN.4/SR.25, p. 6 and E/CN.4/AC.4/SR.2, p. 2. GAOR-TC 3, pp. 199-200 and GAOR 3, p. 800.

<sup>50</sup> E/CN.4/AC.2/SR.1, p. 4.

While the declaration was designed to set moral standards rather than to impose legal obligations, it would be of practical value, since it would undoubtedly serve as a basis for the discussion in the United Nations of any question of human rights.<sup>51</sup>

In the end, the Declaration was adopted with a variety of views on its legal value. The following years have proved its value, in a way which some feared and other desired.

<sup>51</sup> GAOR-TC 3, p. 35.

## **5. The negotiations on the substance: A minimum common denominator**

In spite of their many differences, the members of the United Nations had a common point of departure as well a common, ultimate goal. Hence, a strong motivating factor was present during the drafting process. *First*, it is remarkable that human rights had positive connotations for all the participants in the drafting process. Of course they defined the concept in different ways and had their own “favourite rights”, but none of them questioned the existence of human rights as such. All of them wanted to present themselves as protagonists in the struggle for such rights.

At the second session of the ECOSOC, Nikolai I. Feonov, the representative of the USSR, spoke about human rights conditions in the Soviet Union. Human rights were not only provided for in the Constitution, but violation against the observance of human rights was punishable by law. Charles Malik, the Lebanese representative during the entire drafting process, declared that his country was deeply interested in the struggle for freedom of thought and conscience, and had always been a haven for persecuted minorities. He therefore welcomed the creation of an international bill of rights. Alexandre Argyropoulos, the Greek representative, emphasised that the Greek people had always fought for human rights at all times and had made their contribution to the development of those rights. The British representative, Charles Dukes (later Lord Dukeston), presented the United Kingdom as a country which had always been in the forefront in the struggle for human rights. He argued that his government had always and everywhere fostered the emancipation of the human person, along with the promotion of education and of social and economic progress. In 1940, according to Charles Dukes, the United Kingdom had been the sole champion of freedom against tyranny, and the country would remain faithful to that ideal. The list of examples could go on and on. There was no shortage of high-flown rhetoric. The participants seemed to compete for the honour of being the most zealous human rights defender. They competed from start to end of the drafting process. During the last months before the Declaration was



adopted all of the delegations emphasized their great interest in human rights work.<sup>1</sup>

*Second*, the task of drafting a human rights bill must be seen in its historical context. In a long term perspective, the drafters had in mind the ideas of the French Revolution — liberty, equality and fraternity. These had become global ideals on the last two centuries. The immediate experiences seemed even more important. The World War II experiences had a decisive impact on the drafters. For most, perhaps all of them, human rights were defined as those rights which had been violated so grossly by the Nazis and the Fascists. The formulation in the preamble of the UN Charter, “to *reaffirm* faith in fundamental human rights [italics added],” also supports such a view. Their alliance against a common enemy, Nazism or Fascism, formed a definition of the concept of human rights. Human rights became the antithesis of Nazism. As Juliusz Katz-Suchy, representative for Poland, said: “[V]iolation of human rights and contempt of human dignity lay at the very roots of fascist ideology.” Although the Soviet representatives were the most ardent opponents of Nazism and Fascism, it was widely believed that the best and most effective way to cure the evils of Nazism and Fascism was to ensure basic freedoms.<sup>2</sup>

*Third*, the United Nations members had a common ground for negotiations. There were the fundamental freedoms, proclaimed in 1941 by the President of the United States, Franklin D. Roosevelt. He enumerated the four freedoms — freedom of speech and expression, freedom of worship, freedom from want and freedom from fear. These became the banner which united all in the struggle against Nazism. After the war, these four freedoms were recognized as a basis upon which the definition of the concept of human rights could be built. Both Panama’s representative, Guy Pérez Cisneros and Charles Malik, representing Lebanon, emphasized that the declaration had been directly inspired by the proclamation by President Roosevelt of the four essential freedoms.<sup>3</sup>

*Fourth*, every participant publicly supported the decision to make a declaration or some kind of a human rights document. This consensus also

<sup>1</sup> OR-ECOSOC 2/1, p. 35-40.

<sup>2</sup> Robinson, *Human Rights and Fundamental Freedoms*, 35 and Cassin, “Man and Modern State,” 43. OR-ECOSOC 7/3, p. 647; see also E/CN.4/SR.28, p. 11; GAOR-TC 3, p. 435 and GAOR 3, p.857. E/CN.4/SR.25, p. 9; E/CN.4/AC.2/SR.8, p. 4; E/CN.4/AC.1/SR.21, pp. 3 and 8; E/CN.4/AC.1/SR.26, pp. 6 and 11; E/CN.4/AC.1/SR.28, p. 3; E/CN.4/AC.1/SR.32, pp. 7-10; E/CN.4/SR.49, pp. 9-11; E/CN.4/SR.74, p. 7; E/CN.4/SR.75, p. 10.

<sup>3</sup> GAOR-TC 3, pp. 164 and 857. Several other delegations expressed similar views: Haiti, Lebanon, Chile and Paraguay. See GAOR 3, pp. 853, 857, 863 and 901 respectively.

created a common ground for negotiations. In the General Assembly 1948, the representative of Venezuela, Eduardo Plaza, emphasized that “[p]revious debates had shown a unanimous desire to draw up an international instrument of definite value.” Although some UN members were not very enthusiastic about the text that was to be adopted, there was a reluctance to be seen rejecting the declaration. None of those that expressed the strongest criticism of the draft Declaration voted against the text. They instead abstained on the final vote. Some like the United Kingdom may have had serious objections but voted in favour because they feared negative publicity.<sup>4</sup>

Moreover, it was difficult to withdraw from the drafting process after first to have participated. A decision to leave the process would create negative attention. It was important that the USSR representative at the second session of the Commission participated substantially in the drafting process. At earlier stages the USSR had reserved itself, and without any real participation by the Soviets in the drafting process, it is difficult to imagine an adoption of the Universal Declaration. By the participation, however, the USSR bound itself to the on-going process.

### **Limits of the terms of reference**

Despite the broad terms of reference, the possibilities were limited in the content of the planned international bill of human rights. Some decisions were explicitly or tacitly made in advance.

The United Nations had decided to make an “International Bill of Human Rights” and had given the task to the Commission on Human Rights. The terms of reference did not say anything about what was meant by “human rights”. Nowhere in the UN Charter were “human rights” or “fundamental freedoms” defined. However, some conventional ideas helped. “Human rights” were generally seen to include 1) the principle of non-discrimination; 2) certain civil and political rights; 3) some social and economic rights. Moreover, 4) there was a clear understanding that the proposed bill had to be universal. The different declarations which were the basic material for the Commission on Human Rights were surprisingly similar. Thus, in the single enumeration of rights there was a considerable degree of agreement.<sup>5</sup>

<sup>4</sup> GAOR-TC 3, p. 53.

<sup>5</sup> McKeon, “The Philosophic Bases and Material Circumstances of the Rights of Man,” 35.

1) The principle of non-discrimination: The UN Charter (Art. 1, 13, 55 and 79) repeatedly stated that the projected rights and freedoms were subjected to “all without distinction as to race, sex, language, or religion.” The principle of equality or non-discrimination was established and therefore almost beyond discussion. The representative of South Africa caused strong reactions in the Third Committee when he maintained “that not now *or ever* would certain people enjoy equal rights . . . and that women could never have the same rights as men.”<sup>6</sup>

2) Civil and political rights: It was natural that the eighteenth century civil and political rights should be included. Civil and political rights made up the traditional interpretation of human rights. The difficulty was how to express them. Because their inclusion were self-evident, none of the representatives found it necessary to give them any special attention to ensure their position in the bill.

3) Social and economic rights: The inclusion of social and economic rights in the Universal Declaration of Human Rights was a novelty at that time. It has been argued that this was a result of pressure from Eastern Europe and the USSR in particular, but this is a myth. The myth may have been created partly as a result of later political development. In the later debates on the covenant(s), the Soviet bloc participated very actively in discussions on the social and economic matters while the United States sought to exclude economic rights from the binding document. During the drafting phase of the Declaration, however, it appears that to include social and economic rights was an uncontroversial decision tacitly agreed to beforehand. Henri Laughier, Assistant Secretary-General in charge of Social Affairs, opened the first meeting of the nuclear Commission on Human Rights this way:<sup>7</sup>

You will have to show that the political rights are the first condition of liberty but that today the progress of scientific and industrial civilization has created economic organizations which are inflicting on politically free men intolerable servitude, and that therefore, in the future, *the declaration*

<sup>6</sup> Minutes of the fifteenth meeting of the US delegation to the third regular session of the General Assembly, 14 October 1948, US(P)/A/M(Chr)/15, box 60, US mission to the United Nations, RG 84, NARA. However, the final text of the Universal Declaration included a statement which some saw as an exception to the principle of non-discrimination. Article 25,2 reads: Motherhood and childhood are entitled to special care and assistance.

<sup>7</sup> See e.g. Alston, “Universal Declaration at 35,” 61-62. Malik, *Human Rights in the United Nations*, and Johnson, “Contribution of Eleanor and Franklin Roosevelt,” 34. E/HR/6, p. 2.

*of the rights of man must be extended to the economic and social fields.*  
[Italics added.]

Most of the draft declarations which were the basic material of the drafting process were written during and after World War II. All of them dealt with the problem of social security. This was also the case for the four basic drafts. Social and economic rights were also included in a draft bill of human rights written by the American administration as early as in 1942. From the very beginning of the drafting process, it was agreed to include these rights in the Declaration. When John Humphrey, the Director of the UN Division of Human Rights, gives himself the honour of introducing the economic and social rights, he largely over-dramatizes his own role. Several delegates had strongly argued for the inclusion of the economic and social rights at the first session of the Commission of Human Rights, and Humphrey had no alternative but to include those rights when preparing the Secretariat Outline several months later.<sup>8</sup>

The most zealous defender of social and economic rights was Chile's representative, Hernan Santa Cruz. He argued that "if the Drafting Committee did not introduce economic and social rights into the Declaration, it would not appear to the world to be acting realistically." On this occasion, he was supported by Eleanor Roosevelt, who pointed out that the ECOSOC had laid stress on the inclusion of social and economic rights. The representatives of the Philippine Republic, Belgium and France were also among the supporters of social and economic rights. Charles Romulo of the Philippines added that "a traditional declaration of political rights would be insufficient unless buttressed by a declaration of economic and social rights." On several occasions and by different representatives, Belgium desired to affirm the social and economic rights and welcomed their inclusion. René Cassin "warned against the danger of placing too little importance upon social rights." Later China, now represented by C. H. Wu, also added its support declaring that without freedom from want, there could be no question of human rights nor peace. The representatives of the USSR and Yugoslavia had promoted social and economic security in the

<sup>8</sup> "Bill of Rights," draft approved 3 December 1942, box 2, Human Rights, Alger Hiss Files 1940-46, NARA. Humphrey declares that: "It is by no means certain that the economic and social rights would have been included in the final text if I had not included them in mine," in Humphrey, *Great Adventure*, 32. See also Chapter 3.

ECOSOC at an earlier stage, but did not participated very actively on this matter in the drafting process of the declaration.<sup>9</sup>

In the debate of the General Assembly before the adoption of the Declaration, the delegations competed with each other to praise most highly the social and economic rights. The representative of the Netherlands, J. H. van Roijen, recognized the inclusion of social and economic rights as a marked improvement compared to previous declarations. The New Zealand delegation, represented by C. C. Aikman, noted with satisfaction the place given to economic and social rights. He argued that those rights could give the individual the normal conditions of life which would enable him to experience greater freedom. Enrique V. Corominas from Argentina maintained that social and economic rights should serve as a basis for the whole declaration, and so on. Only the Union of South Africa expressed criticism and argued the UN Charter had not intended to include these rights. If this statement had any impact, it may have strengthened the others in their opinion to include these rights, because South Africa was already rather isolated.<sup>10</sup>

Apart from South Africa, even the most sceptical attitude to economic and social rights did not imply any rejection. The United States, the United Kingdom, Australia, India and Lebanon were more or less ambiguous about a detailed enumeration of these rights. They rather preferred to include them in general terms. However, Australia held these rights as important as civil and political rights and Lebanon referred to the lacunae in the League of Nations, which had not recognized the economic and social rights. The United Kingdom was apparently afraid that a high priority would be given to these rights, but kept a low profile in the UN discussions on this issue. This low profile was a part of its caution in matters which the Soviet Union could use to criticize UK. The social standards in the British colonies was a delicate subject.<sup>11</sup>

<sup>9</sup> E/CN.4/AC.1/SR.9, p. 10-11. GAOR, p. 868; see also E/CN.4/SR.8, p. 2. E/CN.4/SR.14, p. 5; see also E/CN.4/SR.8, p. 4 and GAOR-TC 3, p. 49 (Belgium); E/CN.4/AC.3/SR.8, p. 5 (China) and ECOSOC 2/1, pp. 35-36 (USSR) and 42 (Yugoslavia).

<sup>10</sup> See e.g. GAOR 3, p. 874 (Netherlands); GAOR-TC 3, p. 504 and GAOR 3, p. 888 (New Zealand) and GAOR-TC 3, p. 41. GAOR-TC 3, p. 45 and GAOR 3, p. 911

<sup>11</sup> E/CN.4/SR.50, p. 7; E/CN.4/99; E/CN.4/AC.1/SR.9, p. 10. and GAOR 3, p. 876 and OR-ECOSOC 7/3, p. 2. Some of them also opposed the inclusion of the social and economic rights in a convention, arguing that they could not be defined as legal obligations; E/CN.4/21, p. 27. On the Australian position, see E/CN.4/AC.1/SR.29, p. 2; E/CN.4/SR.71, p. 4; OR-ECOSOC 7/3, p. 2 and GAOR 3, pp. 875-76. Australia, which was represented by a great variety of delegates, was not consistent. Usually, its delegate warned against any impression of priority to social and economic rights, but one

As noted, the Americans started out with a positive attitude towards social and economic rights, a position which changed in the early 1950s. If the US State Department was reluctant to include these rights in the Declaration Eleanor Roosevelt persuaded them. The economic and social rights in the Declaration were incorporated in more detailed terms than the United States desired. The problem seems, however, not to have been the inclusion of social and economic rights as such, but that some elements of the American federal system fell within the jurisdiction of states. As Eleanor Roosevelt explained after the adoption of the Declaration:<sup>12</sup>

. . . [M]y government . . . does not consider that the economic and social and cultural rights stated in the declaration imply an obligation on governments to assure the enjoyment of these rights by direct governmental action. . . . This in no way affects our whole-hearted support for the basic principles of economic, social and cultural rights set forth in these articles.

This reveals a real point of disagreement. When the representatives of the USSR began to participate substantially in the debate on the question of social and economic rights in the Commission on Human Rights, the question of whether or not to include them was not on the agenda. The Eastern bloc did not only want to include them. One of their arguments was that the declaration in particular should ensure and guarantee the implementation of the economic and social rights.<sup>13</sup>

A fourth limitation was that the Declaration was intended to be universal. This assumption was implied in the name of the planned project, an *international* bill of human rights. It was never stated openly that one fundamental principle was universality. The principle was widely accepted

of its representatives at one time argued that freedom from want had been widely accepted in the world, that people were especially interested in economic and social rights, and therefore, it was important to include them. Draft brief and brief for the UK delegate to the third session of the Commission on Human Rights, PRO, FO 371/72806-7/UNE 1987 and 2071; Wilson to Foreign Office, 15 June 1948, PRO, FO 371/72809/UNE 2462.

<sup>12</sup> It has been argued that the reference of Franklin D. Roosevelt to freedom from want was interpreted in broader terms than the President intended. His main concern is said to have been the United States traditional defence of free trade. (See Johnson, "Contribution of Eleanor and Franklin Roosevelt," 20-22.) Lash, *The Years Alone*, p. 62 and van den Heuval, "40th Anniversary of Universal Declaration of Human Rights," 2. Pratt, 53 and 58. Eleanor Roosevelt, "General Assembly Adopts the Universal Declaration," 751.

<sup>13</sup> E/800, pp. 30-31; OR-ECOSOC 7/3, p. 659; GAOR-TC 3, p. 498 and GAOR 3, p. 855.

though with different interpretations. Universality was an argument to defend or oppose several amendments.

The first interpretation of the principle of universality was a demand for universal participation in the drafting process. From the very beginning of the drafting process, it was emphasized that the membership in the Commission on Human Rights should have an equitable geographic distribution. René Cassin emphasized the value of gathering documents concerning human rights from the whole world, not just from the Western Hemisphere. The other members of the nuclear Commission supported Cassin in his effort to gain the views of different regions. This view was also confirmed later in the drafting process. The United Nations fulfilled this aspiration of universality to a rather high degree. In spite of the many colonies at that time, the participation of third world countries was extensive. Chile, China, Cuba, India, Lebanon, Panama and the Philippines were among those that most actively participated in the drafting process.<sup>14</sup>

The second interpretation of the principle of universality was the desire to get the support and approval of the Declaration. Hoping to get universal support for the human rights document, it was important to take care of the interests of the different parts of the world. René Cassin strongly emphasized the importance of writing a Declaration of Human Rights which any nation which might want to join the United Nations would have to accept. It was therefore it was necessary to take into consideration the great variety of views. The presupposition of universal support meant that some special provisions had to be excluded. It was also essential that none of the UN members withdrew from the drafting process. The support of the USSR and its allies were given special care. As communists they represented the alternative and minority ideology in the United Nations.<sup>15</sup>

The third interpretation of the concept of universality was expressed by the Chinese representative, Peng Chun Chang. He argued that "the principle of human rights should be given universal application regardless of human level." By the term "everyone", this principle linked the whole Declaration, and this universal claim was not controversial, he said. The universal validity of human rights was taken for granted.<sup>16</sup>

<sup>14</sup> E/HR/10, p. 2. E/HR/13, p. 2. E/HR/15, pp. 5-6 and E/HR/29, p. 3. E/CN.4/SR.9, p. 2 and SR.10, p. 5. See also Alston, "The Universal Declaration at 35," 61.

<sup>15</sup> E/HR/13, p. 2.

<sup>16</sup> E/CN.4/SR.7, p. 4.

## Obstacles to the adoption of a Declaration

There were two categories of obstacles to the declaration. The first category was the *name-calling*, the practice of criticizing concrete internal conditions of other states. The second was certain issues about which the actors in the drafting process disagreed.

Accusations against concrete conditions within any particular states, known as name-calling, was not an especially effective strategy in the drafting process. Such accusations would easily disturb the possibilities for an agreement. According to Humphrey, the drafting process of the Declaration had very little name-calling. He describes the first session of the Commission on Human Rights in this way:

The Cold War had already begun, and the difficulties which faced the commission and all the uncertainties inherent in a new undertaking were compounded by political controversy and recrimination. But politics nevertheless played a secondary role in the early years and, by United Nations standards, the commission performed its mandate well. Specific instances of violations of human rights, real or alleged, were rarely mentioned. Paradoxically, this was the proper approach at a time when the commission was performing a quasi-legislative function. Too much name-calling would have diverted us from the working in hand, and there were other forums in the United Nations for the purpose. Mrs. Metha nevertheless found an opportunity early in the session to mention the treatment of Indians in South Africa.<sup>17</sup>

The Indian attack on the Republic of South Africa was repeated many times by the USSR representative, Alexei P. Pavlov, "the great name-caller". He held the conditions for the Indians in South Africa and the negroes in the United States as examples of discrimination by the law and contrasted this with conditions in the USSR where, according to Pavlov, all citizens enjoyed absolute equality and sixty nationalities lived side by side in peace. Eleanor Roosevelt felt Pavlov "could be very thorough in seeking out American weaknesses," e.g. by quoting old laws, and in such cases the Americans were at a loss for an answer. In other cases, Mrs. Roosevelt answered USSR criticism, in particular when Pavlov attacked social conditions in the United States and compared them favourably to those of the USSR.<sup>18</sup>

<sup>17</sup> Humphrey, *Great Adventure*, 24.

<sup>18</sup> E/CN.4/SR.2, p. 3; E/CN.4/AC.1/SR.21, p. 3; E/CN.4/SR.27, pp. 5-6; E/CN.4/SR.49, p. 11 and GAOR-TC 3, p. 131. Roosevelt, *Autobiography*, pp. 311-12 and E/CN.4/SR.37, p. 6. Compare with E/CN.4/SR.66, pp. 14-15.



Alexei P. Pavlov also criticised the United Kingdom, especially its treatment of the colonies. The United Kingdom representative, Christopher Mayhew, replied in a strong language:

Communism was one of the most cruel forms of political and economic dictatorship that the world had ever known. [. . . T]he fact that thousands of democrats, socialists, peasant or trade union leaders, men who had distinguished themselves in the struggle against fascism, were fleeing from countries under communist control, was sufficient to reduce the mountain of Soviet fairy-tales to nothingness. . . . Like hitlerite Germany, the communist countries had a one-party Government. . . . It was never possible for the people in communist countries to express their opinion.<sup>19</sup>

He also criticised the case of Soviet women who had married British subjects and who had been refused the right to accompany their husbands to the UK. He “deplored the fact that the Third Committee was used by some delegations as a platform from which to make tendentious accusations for propaganda purposes against countries that did not share their ideology.” Then he attacked the existence of forced labour in the USSR.<sup>20</sup>

Pavlov answered by declaring that Mayhew had been the first to launch the cold war which was being conducted against the Soviet Union in the Third Committee. That attitude did not help the Committee’s work. He compared Mayhew with Goebbels and also put Winston Churchill on the list of fascists.<sup>21</sup>

These mutual accusations obviously did not improve the negotiation climate. Several states protested, a criticism which they directed against the USSR in particular. The Lebanese representative emphasized that the Commission was not on a battlefield, and Chile’s Hernan Santa Cruz wondered aloud whether the Third Committee was receiving the constructive participation in its work that it had a right to expect from a great Power. The Mexican representative regretted the verbal duel between the representative of the major Powers. “In spite of divergencies of ideas, the Allies had achieved close collaboration which made victory possible. It was that collaboration which had made it possible to draw up the Charter at San Francisco; if the labours of the Third Committee were to be crowned

<sup>19</sup> GAOR-TC 3, pp. 65-66. For Pavlov’s criticism, see GAOR-TC 3, pp. 57-59 and 131.

<sup>20</sup> GAOR-TC 3, pp. 159-60.

<sup>21</sup> GAOR-TC 3, pp. 66-67 and 169-70.

with success, such collaboration should govern the study of the declaration of human rights.”<sup>22</sup>

The *creation of sub-commissions* was one of the first signs of controversies during the drafting. The task of establishing sub-commissions on particular issues was a part of the mandate of the new Commission on Human Rights. The nuclear Commission recommended a sub-committee on Freedom of Information and [Freedom] of the Press. When the ECOSOC discussed this recommendation, the representative of the USSR, Nikolai I. Feonov, argued that Protection of Minorities and Elimination of Discrimination were as important fields as Freedom of Information and of the Press, and suggested the creation of two other sub-commissions. This may be interpreted as an attack on the US delegates who had been preoccupied with the freedom of information and of the press. It also indicates the political, ideological and rhetorical interests of the two super-powers. The solution was three sub-commissions: a sub-commission on Freedom of Information and of the Press; a sub-commission on the Protection of Minorities, and a sub-commission on the Prevention of Discrimination. It was scarcely an accident that these issues were among the most controversial ones in the further work on the Universal Declaration.<sup>23</sup>

The issues of protection of minorities and the freedom of information were highly controversial in the Commission on Human Rights as well as within the United Nations as a whole. Elimination of discrimination seemed less problematic; only the Union of South Africa openly opposed this principle. The different interpretations of discrimination revealed important disagreement on this point.<sup>24</sup>

There were many controversies. Some were fundamental, but others seemed only to be a question of taste. The drafting participants put different emphasis on the freedom of the individual as distinct from the interests of the state. Should the Declaration abolish death penalty or not? Should there be any particular reference to non-self-governing territories (the colonial

<sup>22</sup> E/CN.4/SR.51, p. 11 (Lebanon) and GAOR-TC 3, p. 147 (Chile). GAOR-TC 3, p. 163.

<sup>23</sup> The ECOSOC had already established the Sub-Commission on the Status of Women subordinated to the Commission on Human Rights. This sub-commission was given the status of a full committee at the second session of ECOSOC; OR-ECOSOC 2/1, p. 405. E/HR/16, pp. 3-4; E/38/Rev.1, p. 7 and OR-ECOSOC 2/1, p. 36. E/HR/2. OR-ECOSOC 2/1, p. 402. Humphrey, *Great Adventure*, 20. E/259, p. 18. The Commission on Human Rights decided to combine the two last mentioned sub-commissions were combined in one, which yet exists. ECOSOC abolished the Sub-Commission on Freedom of Information and of the Press in 1951.

<sup>24</sup> A/C.3/275 and GAOR-TC 3, pp. 136-37.

issue)? In which legal terms should rule of law be formulated? What about the question of retroactivity of laws? Would such a principle contradict the Nuremberg and Tokyo Trials? How should human rights be justified? With a reference to God or by reason or by other means? Should the Declaration include an explicit reference to Nazism and Fascism? If so, how should these concepts be defined? To what extent should the right to asylum be granted?

The different interpretations of democracy represented another problem. The discussion on family and marriage revealed deep-rooted cultural differences on the equal rights of men and women. The delegates also had different views on the limits of the freedoms of thought, religion, expression, association, assembly and movement. The right to own property was viewed differently within the various economic systems. The right to work raised discussions on the questions of guaranteeing work and protection against unemployment. Which standards of living was reasonable and how should social security be interpreted? Should there be limits on science? Should parents choose the kind of education for their children? Which limitations should be set for the exercise of these rights? As these questions illustrates, there was an abundance of matters for conflict.

## **Facilitating factors to adopt the Declaration**

The process of achieving compromises depended on five types of mechanisms. 1) The most extreme strategy was to reject problematic issues by not including them in the Declaration at all. 2) Another strategy was the general and diffuse expression of difficult questions. 3) The inclusion of limitation clauses in the Declaration was also a factor which contributed to acceptance of difficult matters. 4) The agreement to disagree on the questions of foundation of the Declaration allowed possible compromises of the human rights text. 5) Finally, crosscutting argumentative cleavages simplified the process of achieving an agreement on the content.

### *1) Rejecting controversial issues*

Particularly difficult and controversial issues could be handled by simply not putting them on the agenda. Few questions were solved in this way. This suggests a high degree of willingness to negotiate and find compromises. The formulation of the right to work was one of the difficult questions in the drafting process, but in spite of these controversies it was

generally agreed that a Declaration without this article was inconceivable.<sup>25</sup>

Some of the issues which were rejected were not proposed as complete articles, but only as additional explanations to already existing draft articles. The prohibition of abortion as an additional part of the article stating the right to life was such a matter. This inclusion was introduced at the first session of the Drafting Committee by the representatives of Lebanon and Chile. Hernan Santa Cruz wanted to include that unborn children should have the right to life, and Charles Malik suggested that the right to life be declared to begin from the moment of conception. The practice of abortion was allowed in some European countries, and prohibition was opposed by representatives of the United Kingdom, the USSR, the United States, China, Australia and France. René Cassin supported the substance of the amendments, but argued that it would not be acceptable to all the UN members. Others argued that such an inclusion was unnecessary, because abortion was forbidden by law in their country. The Lebanese and Chilean initiatives led nowhere. The discussion of the issue continued as far as the drafting of a convention, but the question of abortion was left to national law.<sup>26</sup>

A rather curious suggestion by René Cassin to include an article dealing with a public force and declaring military service an honour was rejected. The representatives of the United Kingdom, the United States and Australia argued that this was neither a right nor a freedom, and the issue was not discussed further.<sup>27</sup>

The right to own property was another issue which some of the participants considered too difficult to agree upon. At an early stage, the representatives from Australia and the United Kingdom maintained that the best solution was to eliminate any reference to property. The Chinese and the Chilean representatives believed that omission of the article was a real threat. Only at the very end was a compromise found.<sup>28</sup>

The right to petition was another article which from the beginning was proposed to be included in the Declaration. René Cassin emphasized that this right had been mentioned in all the historical declarations of the rights

<sup>25</sup> GAOR-TC 3, p. 542.

<sup>26</sup> E/CN.4/21, Annex F, p. 74. The discussion on the question of abortion, see E/CN.4/SR.35, pp. 12-16; E/CN.4/AC.1/SR.35, pp. 2-6 in particular, but also E/CN.4/AC.3/SR.1, p. 4-SR.2, p.2 and OR-ECOSOC 7/3, p. 656 and GAOR-TC 3, p. 111.

<sup>27</sup> E/CN.4/AC.1/W.2/Rev.1, Art. 28 and E/CN.4/AC.1/SR.9, p. 3.

<sup>28</sup> See E/CN.4/AC.1/SR.8, p. 10 and E/CN.4/AC.1/SR.38, pp. 2 and 5.

of man and questioned whether the declaration could be considered as complete without such a right. Cuba, Ecuador and Argentina also supported this right, but most of the states — among them the USSR, the United States, the United Kingdom, Australia, New Zealand and Belgium — were occupied with the question of national sovereignty. The right to petition was not formally rejected, but instead recommended to further examination in connection with the study of the draft covenant and the measures of implementation.<sup>29</sup>

The conflicting views were too strong to compromise on the essential *question of minorities*. This problem was finally solved by rejecting the article altogether, although many attempts were made to reach a compromise. The protection of minorities was a rather controversial question during the drafting process. The main division of the attitude towards this issue was between the Western and the Eastern Hemisphere. The Inter-American Conference in Chapultepec in 1945, which in other respects proved to be an important incentive toward the adoption of the Declaration, had stated that the existence of groups claiming minority status was not desirable in America. Both Eleanor Roosevelt and several Latin American representatives followed up by rejecting the view that the minority question was an American problem. Their problem was how to achieve their goal of assimilation of minorities. On the other hand, the USSR and the other Eastern Europe countries, supported by Lebanon, saw the protection of minorities as crucial.<sup>30</sup>

Charles Malik described the problem of minorities as arising from two different basic conceptions of the state. There was the uni-national, uni-cultural state which incorporated various ethnic, racial, religious and linguistic groups and practised a “melting-pot” policy, and there was the multi-national, multi-cultural state which encouraged the development of diversified groups and was best exemplified by the USSR. Malik maintained that the United States and most countries of South America had based their policy toward ethnic and cultural groups on the principle of assimilation. The countries of Western Europe had been able to create fairly homogenous States by the amalgamation and fusion of various ethnic and

<sup>29</sup> See E/CN.4/AC.1/3/Add.1, pp. 246-53 (art. 28); E/CN.4/21, pp. 78-79 (art. 24) and GAOR-TC 3, pp. 694-716 (Third Committee debate).

<sup>30</sup> The entire discussion of the minority question will be found in the following documents: E/CN.4/AC.1/3/Add.1, pp. 380-86; E/CN.4/AC.1/SR.15, pp. 5-6; E/CN.4/AC.2/SR.9, p. 5; E/CN.4/SR.40, pp. 16-17; E/CN.4/85, pp. 47-48; E/CN.4/SR.73, pp. 5-13 and SR.74, pp. 2-6; GAOR-TC 3, pp. 588 and 717-36 and A/C.3/307/Rev.2. The US policy of assimilation is clearly expressed in “Possible modes of dealing with minorities,” 14 October 1943, box 3, American group at Dumbarton Oaks, Alger Hiss Files, 1940-46.

linguistic elements of the population. Malik held France as an outstanding example of that homogeneity. He did not recognize the principle of assimilation as applicable to many countries of Eastern Europe and Asia, such as India. As a model, Malik referred to his own multi-religious Lebanon which, according to him, had been exerting every effort to protect the freedom of religious belief of its heterogenous population.<sup>31</sup>

At its first session, some of the members of the Commission on Human Rights, India, Australia and the Philippines, had referred to the need of protecting minorities. The inclusion of such a provision was secured in the first draft declarations, but agreement could not be reached to recommend any article on this at any stage of the drafting process. The first session of the Drafting Committee referred the matter to the Sub-Commission on Prevention of Discrimination and Protection of Minorities. Then two different texts were sent to the governments for comments. The first vote on the topic was taken at the third session of the Commission. An article on the protection of the minorities was rejected by 10 votes to 6. The vote was not taken by a roll-call, but the supporters of this article were the USSR, Ukraine, Byelorussia, Yugoslavia, Lebanon and most likely the Philippines. The USSR representative, Alexei P. Pavlov, recognized the right of minorities to use their own language in schools as particularly important.

Australia, China, Egypt, France, India, the United Kingdom, the United States and Uruguay proposed to delete the article. Their arguments varied. Some of them argued that the problem did not exist in their parts of the world (the United States, Uruguay), some held the minority groups to be protected by other articles (Egypt, Belgium, India, Australia) and one representative argued pragmatically, saying it would be too difficult to satisfy all needs (Geoffrey Wilson, the United Kingdom). Some of the Belgian resistance was connected with the use of irredentism by Hitler in the pre-war years (the Sudetenland is the most well-known example). There were German minorities on Belgian soil.<sup>32</sup>

The issue of minorities was reopened in the Third Committee. In addition to the Eastern Europe countries, Denmark eagerly defended the protection

<sup>31</sup> Lebanon was long an example of a stable, consociational democracy, but lately the situation is totally changed. See Lijphart, *Democracy in Plural Societies*, 147-50.

<sup>32</sup> E/CN.4/SR.73, p. 5-SR.74, p. 6. The French point of view seemed to be dependent of the representative present at this stage. France was represented by Ordonneau at parts of this session, not by René Cassin. At a previous stage, Cassin considered the article about protection of the minorities as one of the most important (E/CN.4/AC.1/SR.15, p. 6) and France had proposed its own text on this issue (E/CN.4/82/Add.8, p. 6).

of minorities, as well as India and others. The American states continued to be the strongest opponents of such an article. While they argued that the problem did not concern them because of their policy of assimilation, they still feared it would disrupt national unity. As a result, the action for the minorities led nowhere.<sup>33</sup>

## 2) *General and vague formulations*

Vague expressions of controversial and difficult issues was another way to get a compromise. A short text could be chosen which did not have room for any precise details. Moreover, there were always vague terms which could be interpreted in different ways. Both strategies were used.

Since the Declaration was given status as “a common standard of achievement” and was not a law, it was not necessary to be precise. One possible consequence was that states would be willing to accept an ambitious text that was not legally binding document. The implementation of the principles would be considered voluntary and the states did not have to commit themselves.<sup>34</sup>

The preamble of the Declaration is the best example of the strategy of adopting diffuse formulation. Egon Schwelb has quite rightly described as deliberately obscure;

The General Assembly proclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by *progressive measures*, national and international, to secure their *universal and effective recognition and observance*. [Italics added.]<sup>35</sup>

Another illustration of the conscious use of vague language is the use of the word “arbitrary”. The word allows for individual judgment, which doubtless was intended. Four of the articles of the Declaration use the word “arbitrary”:

<sup>33</sup> Denmark’s special interest in the minority question was interlinked with the Danish minority in Germany. “Danish amendment to Human Rights Declaration,” 30 September 1948, US(P)/A/C.3/11, box 60, US Mission to the United Nations, RG 84, NARA.

<sup>34</sup> Quoted from the preamble of the Declaration.

<sup>35</sup> Alston, “Universal Declaration at 35,” 61-62.

No *arbitrary* arrest, detention or exile. (Art.9.)

No *arbitrary* interference with privacy, family, home or correspondence.  
(Art.12.)

No *arbitrary* deprivation of nationality. (Art.15.)

No *arbitrary* deprivation of property. (Art.17.)

The sections on social and economic rights also contain some words which clearly show the very general character of these articles. The text includes for example the right to social security *in accordance with the organization and resources of each state* (Art. 22); the right to *just and favourable* conditions of work (Art. 23.1); the right to *just and favourable* remuneration ensuring for himself and his family *an existence worthy of human dignity*, and supplemented, if necessary, by other means of social protection (Art. 23.3); the right to *reasonable* limitation of working hours (Art. 24); the right to a standard of living *adequate* for the health and well-being of himself and his family, including . . . (Art. 25). As with the term *arbitrary*, these articles required judgment.

Another strategy was the selection of terms and concepts which the drafters defined in different ways. The participants had a somewhat ambiguous attitude towards this strategy. On the one hand, a reference to Fascism and Nazism was rejected because of the difficulties in defining these concepts. The French representative, Grumbach, pointed out the danger of using expressions which could be interpreted differently. The USSR and their allies regarded it essential to include an explicit reference to Fascism and Nazism. Pavlov argued that without such a reference the Declaration was a mere abstraction. This might give opportunity for the propagation of Fascist and Nazi views. He declared that during the war there was no need for any definition of Fascism and Nazism, but if it was necessary now, it was not difficult. Fascism meant dictatorship, imperialistic in its foreign policy and reactionary in its domestic policy. This definition met opposition, e.g. by the representative of the United Kingdom stating that the word "fascism" had lost its value. Churchill had, after all, been called a fascist by a USSR representative.<sup>36</sup>

Similarly, the word "democracy" was included in the Declaration in spite of the variety of interpretations. Interestingly, it was the USSR and its allies that urged an inclusion of "democracy" in the text. Opposition or scepticism was expressed by the United Kingdom, India, Chile, China and Belgium. Representatives of these countries argued that the concept had

<sup>36</sup> The discussion on the concepts of "Nazism"/"Fascism", see E/CN.4/AC.1/SR.21, pp. 3-7; E/CN.4/SR.49, p. 10; OR-ECOSOC 7/3, p. 698; GAOR-TC 3, pp. 67, 415 and 426.



come to have different meanings in different countries for instance, the United Kingdom did not want to allow the right to vote “in certain backward countries.” Some delegates also criticized the Soviet conception of democracy. The USSR representative, Pavlov, defined a democracy as a state in which all citizens had an equal right to participate in the government, and he denied that the existence of a number of parties was a criterion of democracy. The actual term, however, was only mentioned once, namely “the general welfare in a democratic society” (Art. 29.2). Political rights were expressed in Article 21 without using the term “democracy”. Instead the right to democracy was defined as a minimum common denominator:<sup>37</sup>

1. Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.
2. Everyone has the right of equal access to public service in his country.
3. The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

This final wording conformed to a considerable extent to the Soviet proposal, and its delegation was very satisfied.

Given the varying economic systems in the different countries, the right to own property was a delicate question in the drafting process. The participants were fully aware of the difficulties, and the representatives of Chile, France, the USSR and China emphasized that an agreement could only be a result of compromise and an abstract formulation. The later Convention did not achieve any agreement on such an expression and omitted the entire issue. The drafters of the Declaration managed to adopt a very general text (Article 17):<sup>38</sup>

1. Everyone has the right to own property alone as well as in association with others.
2. No one shall be arbitrarily deprived of his property.

This formulation said so little that everybody could agree with it. At the same time, it allowed each participant to read what he wanted into it.

<sup>37</sup> The discussions on the concept of “democracy”, see E/CN.4/SR.49, pp. 9-11; SR.51, pp. 2-11; A/C.3/296/Rev.1 and GAOR-TC 3, p. 473. Memorandum by J. P. Hendrick, 13 February 1947, box 103, US Delegation to the United Nations, RG 84, NARA.

<sup>38</sup> E/CN.4/AC.1/SR.8, pp. 9-10; E/CN.4/AC.2/SR.8, pp. 2-3 and E/CN.4/SR.38, pp. 2-3.

An interesting case of general formulation is the article on family and marriage (Article 16). The question of divorce is especially important. One of the intentions of the article was to secure equal rights for men and women in marriage. This of course also raised the question of divorce. The problem was that the Catholic Church did not accept divorce and neither did many of the Catholic countries. They could not accept any statement which implied that the United Nations approved such a "disrupting factor" on the same footing as marriage. Among the drafters there was also a desire to protect the economically weaker partner in case of divorce. The compromise was a general formulation: "They are entitled to equal rights as to marriage, during marriage and at its dissolution." They avoided any explicit mention of divorce. For the marriage could also be dissolved by death.<sup>39</sup>

At the third session of the Commission René Cassin rightly pointed out that there were two tendencies in the Commission concerning the length of the document. Some tried to shorten the text of the Declaration as much as possible, others added a lot of details. The attempt to draft a short text was also a way of making it general and vague. The United States was the strongest supporter of this tendency, supported by China, the United Kingdom and India.<sup>40</sup>

### 3) *Limitation clauses*

Another way to deal with controversial matters to achieve compromises was the explicit use of limiting clauses. These clauses either limited a right in a defined area or gave a general limitation which then could be given a wide or a narrow interpretation, according to the wishes of the individual state.

The USSR used this strategy frequently by proposing clauses such as "in accordance with the law of the state/country." This was in particular the case regarding freedom rights. Alexei P. Pavlov argued that the freedom of information, the freedom of expression and the freedom of assembly had to be limited because of the danger of Fascist propaganda and war-mongers. He maintained that freedom of thought and religion had to be limited because many "superstitions" were incompatible with national laws and public morality. These forms of belief were also dangerous for the moral

<sup>39</sup> A/C.3/287; GAOR-TC 3, pp. 363-79 and A/C.3/400/Rev.1, p. 128.

<sup>40</sup> See E/CN.4/SR.55, p. 16; E/CN.4/36 and 36/Add.1; E/CN.4/82/Rev.1, pp. 18-20; E/CN.4/95, pp. 14-15; E/CN.4/102 and E/CN.4/99.

education of youth, health and for respect for others. Even more important, some religious practices represented a real danger for society, a point supported by Saudi Arabia and Egypt. Pavlov also wanted to limit the freedom of movement because he held this matter to be within domestic jurisdiction. Nor could anyone leave his country without consideration of "the higher interests of his homeland." None of these suggested inclusions of the phrase "according to the laws of the state" were adopted. The final Declaration had a similar expression in only one instance, "the right to be presumed innocent until proved guilty *according to law*." [Italics added.] (Art.11.)<sup>41</sup>

One article, however, received a clear limitation clause, the right to seek asylum (Art.14). This right was already included in the first drafts, but the limitation was introduced by the Drafting Group at the second session of the Commission. The limitation applied to criminals, in particular war-criminals. The French proposal was very similar to the final wording:<sup>42</sup>

This right [to seek and enjoy asylum] may *not* be invoked in the case of prosecutions genuinely arising *from non-political crimes or from acts contrary to the purposes and principles of the United Nations*. [Italics added.] (Art. 14.2.)

At the third session of the Commission on Human Rights a move to delete this limitation clause was narrowly defeated. The USSR and their allies were most zealous defenders of such a limitation, while India, the United Kingdom, China and the Philippines preferred the article formulated in general terms.<sup>43</sup> During the considerations of the Third Committee, this clause was strongly supported. Both the Polish and the French representatives criticized the Latin American countries for giving asylum to Nazi war criminals.

From the very beginning of the drafting process, every draft had included a limiting article. "The rights of others" was the limitation most used in the

<sup>41</sup> E/CN.4/AC.1/SR.32, pp. 7 and 10 and SR.44, p. 3; E/CN.4/SR.49, p. 12; SR. 60, p. 7; SR.61, p. 7 and SR. 63, p. 2; GAOR-TC 3, pp. 391 and 408; GAOR 3, p. 855 and E/800, pp. 31-35. Egypt and Saudi Arabia's main reason for limiting religious freedom was that Islam did not permit the freedom to change religion, an interpretation which Pakistan challenged; see GAOR-TC 3, p. 392 and GAOR 3, pp. 890 and 912. E/CN.4/AC.1/SR.21, p. 3 and E/CN.4/SR.55, p. 7.

<sup>42</sup> E/CN.4/AC.1/3, Art. 34; E/CN.4/21, Annex F, Art. 14; E/CN.4/57, Art. 14; E/600, p. 16, Art. 11 and E/CN/AC.2/SR.5, pp. 5-6. The French proposal, see E/CN.4/82, Add.8, Art. 10.

<sup>43</sup> E/CN.4/SR.56, pp. 7-12 and SR.57, pp. 2-11. GAOR-TC 3, pp. 341-42.

early drafts. Later “the requirement of the democratic state” was added as a limiting clause. The reference to “morality and public order” was included in the last part of the third session of the Commission, submitted by Egypt after consultations with the representatives of France and the United Kingdom. The Uruguayan representative, Fontaina, objected to the expression “public order”. He argued that many crimes had been committed in the name of public order, and the Lebanese representative supported him. However, such an expression was adopted, very similar to the final text, which reads:<sup>45</sup>

In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing 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. (Art. 29.2.)

In the General Assembly, the representatives of Uruguay and France feared that this article should give rise to arbitrary acts, and the Netherlands wanted this clause as narrow as possible. Also the United Kingdom, Greece and Lebanon were aware that this article opened a door to abuses by the state, but nevertheless, the article finally was adopted with only one abstention.<sup>46</sup>

However, according to Art. 29.3: “These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations,” and, according to Art. 30: “Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.” Thus, the Declaration included a counterweight to a too broad an interpretation of the general limitation clause in Article 29.2.

#### 4) *No philosophical justification?*

Several scholars have rightly maintained that natural rights philosophy has inspired the Universal Declaration of Human Rights. The very idea of the declaration challenges the legal positivism which only holds positive law as normatively binding. The drafters were inspired by several sources, and

<sup>45</sup> E/CN.4/57, Art. 2 see also E/CN.4/AC.1/3, Art. 2 and E/CN.4/21, Annex F, p. 73, Art. 4. E/CN.4/SR.74, p. 11-15.

<sup>46</sup> GAOR-TC 3, pp. 643; 645; 647; 649; 651 and 664.

the final formulation of the basic, first article of the Declaration was a compromise in many ways:<sup>47</sup>

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

A somewhat similar article was introduced by René Cassin at the first session of the Drafting Committee as a part of his revision of the Secretariat Outline:

All men, being members of one family are free, possess equal dignity and rights, and shall regard each other as brothers.<sup>48</sup>

The changes from the first draft to the final text seem less extensive than for many other articles, but required considerable drafting. The different philosophical views, or "the fundamental conflict of ideologies" which the articles touched on, are clearly shown in a commentary produced by UNESCO at the time. In spite of the Commission's rejection of this report, the UN members chose the strategy recommended by the report:

We agree about the rights but on the condition that no one asks us why. . . . In the field of practical conclusions, . . . agreement on a joint declaration is possible, given an approach pragmatic rather than theoretical."<sup>49</sup>

The fact that an agreement on the Declaration finally was reached, was due largely to the rejection of giving religious or philosophical justifications to human rights.

The most persistent attempt to include the source of human rights in the Declaration came from those who wanted a reference to God as the Creator. This opinion was first set forth in the seventh session of the ECOSOC by the representative of the Netherlands, and Canada gave its support. During

<sup>47</sup> Morsink, "Philosophy of Universal Declaration" and Donnelly, "Human Rights and Human Dignity" and "Human Rights as Natural Rights."

<sup>48</sup> Lindholm, "Article One: A New Beginning?" 4.

<sup>49</sup> Maritain, "Introduction," 9 and 11. See also d'Entrèves, *Natural Law*, 114. The Commission on Human Rights rejection of the UNESCO report seems to have been a result of territorial rivalry between the two bodies; see Samnøy, *Human Rights as International Consensus*, (thesis) 74-75 and 80-82; Lindholm, "Article One: A New Beginning," 36-38 and E/CN.4/SR. 26, pp. 11-17.

the Third Committee's examination of the Declaration, some Latin American states — Brazil, Argentina, Colombia and Bolivia — were warm defenders of a reference to the human beings as created in the image and likeness of God. Augusto Ramírez Moreno, representing Colombia, also suggested that a reference to God could be interpreted by each country in accordance with its religious belief. Realizing the difficulties such an inclusion encountered, L. J. C. Beaufort, the representative of the Netherlands, later recommended to withdraw the reference to God, only later to amend it again in the preamble. His curious argument was that those who were agnostics or atheists could simply ignore this amendment. This argument caused a Polish reprimand on the danger of applying such a reason to any part of the declaration, since it could also be applied to other parts.<sup>50</sup>

There was another problem. The draft article read “endowed by nature with reason and conscience.” The clause “by nature” was interpreted by some as distinct from, and even a rejection of, God. As a compromise, the Belgian representative, Henry Carton de Wiart, suggested to delete the ambiguous words “by nature”, a proposal which was adopted by a great majority. “That measure would obviate any theological question, which could not and should not be raised in a declaration designed to be universally applicable,” as the Chinese representative put it. The decision expressed an intended renunciation by the General Assembly of the pure ideas of natural right as a philosophical foundation of the Declaration. Still, some of the delegates found sufficient natural law heritage to judge the text acceptable.<sup>51</sup>

The text of Article 1 was a minimum common denominator for the philosophy on human rights of the UN members. Article 1 represented a typical case of what John Rawls termed an *overlapping consensus*. This was possible because the participants managed to hold their divergent views outside the debates. They agreed to disagree on these philosophical matters

<sup>50</sup> OR-ECOSOC 7/3, pp. 644 and 655. In the Third Committee, the representative of Brazil proposed an amendment to article 1 (A/C.3/243) and was supported by several other Latin Americans. See GAOR-TC 3, pp. 55, 109, 112 and 113. The Netherlands' initiative, see A/C.3/314/Rev.1 and GAOR-TC 3, pp. 755 and 776. The representative of the Netherlands was a clergyman. See Castberg, *Minner*, p. 145. GAOR-TC 3, p. 762.

<sup>51</sup> E/CN.4/95. GAOR-TC 3, pp. 90-126, in particular pp. 96, 98, 101, 111, 114, 117-19 and 125. P. C. Chang (China) supported the Belgian proposal; GAOR-TC 3, p. 98. Lindholm: “Article One: A New Beginning” and Castberg, *Minner*, 144-145. Cf. Meighen, *Universal Declaration of Human Rights: Democratic Representative*, 32.

in order to attain a practical goal, the adoption of the Universal Declaration.<sup>52</sup>

### 5) *Crosscutting cleavages*

The effect of social and political crosscutting cleavages to produce moderation and political stability is an important idea in modern political science. Crosscutting cleavages in arguments, it seemed, produced moderation and contributed to solutions that made it easier to achieve an agreement on the content. Those who were opponents in one case could be allies in the next.<sup>53</sup>

The East-West conflict was only one among many others that affected the drafting process. According to Humphrey:

There was much controversy but it was usually pertinent to the issues in debate. Although these issues were most sharply drawn in exchanges between the spokesmen of the traditional democracies and those of the new “popular democracies”, it would be an oversimplification to think that the ideological debate was carried on only between communists and noncommunists. There were also sharp differences between the spokesmen for traditional democracy.<sup>54</sup>

For instance, Charles Malik advocated nearly unrestricted individual liberty. He also argued that man needed protection against the new form of tyranny exercised by the masses and the state. He saw the human person as more important than the racial, national or other group to which he may belong. The USSR representative opposed it. The most powerful attack came from the representative of the United Kingdom, Charles Dukes (later Lord Dukeston), who believed it was impossible in an organized society to prevent groups from exercising a certain pressure upon individuals. According to Dukes, that was the price which had to be paid for freedom of association. He saw it as useless to try to define the liberties of the individual without taking into account his obligations towards the state or benevolent organisations. The conflict between Pavlov and Malik was not surprising in view of their ideological orientations. More interesting is the criticism by the UK representative of Malik, usually a close ally, and the

<sup>52</sup> See Rawls, “Idea of Overlapping Consensus.”

<sup>53</sup> See e.g. Lijphart, *Democracy in Plural Societies*.

<sup>54</sup> Humphrey, *Great Adventure*, 25.

defense of views close to the Soviets. In this case the traditional opponents were allies and, thus, clearly illustrate the crosscutting cleavages in argument. The Netherlands expressed an intermediate view, emphasizing that the rights of the individual were not absolute. It was necessary to define the restrictions on individual liberty with reference to the rights of other individuals.<sup>55</sup>

The confrontation between the representatives of Poland and New Zealand went along unexpected lines. Freedom of the individual was the over-arching theme. New Zealand opposed the right to choose whether or not to join a trade union. Poland attacked compulsory membership in a trade union. The Polish view won through. (Art. 20.2 and 23.4.)<sup>56</sup>

The conflict over whom shall control education did not follow the conventional form. Early in the drafting process, the USSR representative had stressed the role played by the state in all levels of education. When the third session of the Commission discussed the relevant article, Malik feared that the word "compulsory" connected to education could be interpreted as depriving the parents of their right to choose the appropriate education for their children. His interpretation was rejected. He nevertheless suggested a reference to the rights of parents in this matter. Cassin pointed out that there were two trends regarding the system of education. He refused to refer either to the right of the state or to the right of the family. Most of the other members of the Commission also held Malik's amendment to be unnecessary, and it was rejected.<sup>57</sup>

But the last word had not yet been said. In the ECOSOC, Brazil stressed parental authority over their minor children in education. And when the issue was examined in the Third Committee, Lebanon as well as the Netherlands proposed amendments to this effect, with support from Colombia, Pakistan, Ecuador and Belgium. The Netherlands withdrew their amendment in favour of the Lebanese one. The vote was taken by roll-call. This is a perfect example of the changing alliances during the drafting process. In the end, the Lebanese amendment was adopted by 17 votes to 13, with 7 abstentions. The positions were as follows: *In favour*: Argentina, Australia, Belgium, Brazil, Chile, Colombia, Cuba, Denmark, India, Lebanon, Luxembourg, Netherlands, Pakistan, New Zealand, Paraguay,

<sup>55</sup> E/CN.4/SR.9, p. 3 and E/CN.4/SR.14, pp. 3-4; see also E/CN.4/AC.1/SR.21, p. 6. E/CN.4/SR.14, pp. 4-5. The Soviet-Lebanese confrontation, see E/CN.4/AC.1/SR.21, p. 3-6.

<sup>56</sup> GAOR-TC 3, pp. 518 and 521. A New Zealand law from 1936 declared employment of non-union members illegal.

<sup>57</sup> E/CN.4/SR.8, p. 4; SR.67, pp. 14-18 and SR.68, pp. 2-11.



Philippines, Sweden. *Against*: Afghanistan, Byelorussia, Ecuador, France, Mexico, Poland, Ukraine, USSR, United Kingdom, United States, Uruguay, Venezuela, Yugoslavia. *Abstaining*: Canada, China, Czechoslovakia, Dominican Republic, Honduras, Peru, Turkey.<sup>58</sup>

The attempt to include a reference to God yielded a similar division, but the roles as winners and losers had changed. Lebanon, Netherlands, Brazil, Argentina, Colombia and Bolivia supported an inclusion of "God", but the other participants rejected it. The question of abortion produced a division between Lebanon and Chile on the one hand and on the other hand the United Kingdom, the USSR, the United States, France, China and Australia.<sup>59</sup>

Alliances followed lines other than the cold war divide. This was also the case with respect to the right to petition. While France, Cuba, Ecuador and Argentina defended such an article, opposition was strong from the USSR, the United States, the United Kingdom, Australia, New Zealand and Belgium. A parallel situation occurred when a few representatives suggested to grant the right to asylum. The strongest protests were expressed by the USSR, the United States and the United Kingdom. Regarding the possible inclusion of the terms "Fascism"/"Nazism" and "democracy", the East-West division prevailed. The USSR and its allies were strongest opposed by the United Kingdom, France, Chile and some other Latin American states.<sup>60</sup>

The article dealing with the right to work caused much debate, at least in the Third Committee. This was an important issue for the USSR, which wanted to obligate the state to provide work and to secure a high degree of security in the event of unemployment. On the other hand, the United States preferred a short and general article. The USSR proposals met with much sympathy from European and Latin American states. In the end, only the representative of the United States voted against it.<sup>61</sup>

An interesting alliance appeared towards the end of the Third Committee. It was a division that foreshadowed the coming years in the United Nations when the USSR and the other socialist countries together with numerous Third World constituted a majority. Yugoslavia proposed an inclusion which declared that all the rights in the Declaration applied to persons in independent and non-self-governing areas as well. The suggestion was

<sup>58</sup> OR-ECOSOC 7/3, p. 646; A/C.3/302; GAOR-TC 3, pp. 45, 584, 589, 594 and 599.

<sup>59</sup> E/CN.4/SR.37, p. 11 and E/CN.4/AC.1/SR.38, p. 8.

<sup>60</sup> E/CN.4/AC.1/SR.36, pp. 7-16 and SR.37, pp. 8-14.

<sup>61</sup> See GAOR-TC 3, pp. 516-54 and 680-89.

obviously an attack on the colonial powers. The amendment was adopted with a narrow majority (16-14).<sup>62</sup>

## **The adoption of the Universal Declaration of Human Rights**

On the evening of 10 December 1948, just before midnight, the United Nations adopted the Universal Declaration of Human Rights. Forty-eight states voted in favour and eight abstained. The abstaining votes were the socialist states, the USSR, Byelorussia, Ukraine, Poland, Czechoslovakia and Yugoslavia, and, in addition, Saudi Arabia and South Africa.<sup>63</sup>

Statements made by the UN members on this occasion give an impression of a massive support for the Declaration. The President of the General Assembly, Herbert Evatt (Australia), has later described how a real enthusiasm gripped all the members. That is evident by the abundance of praise. The events was characterised as “the most important document of the century” (Ecuador), “a world milestone in the long struggle for human rights” (France), “a decisive stage in the process of uniting a divided world” (Haiti), “an epoch-making event” (Pakistan) and “a justification of the very existence of the United Nations” (the Philippines). Appreciation was also expressed by those who abstained in the final vote of the Declaration. The USSR considered the document as containing many positive elements, and in connection with the adoption of the right to democracy, the USSR representative considered it as “one of the all too rare cases when the Third Committee had adopted progressive ideas. The conciliatory spirit manifested on that occasion was very encouraging.”<sup>64</sup>

The universal character of the Declaration was also greatly appreciated. Charles Romulo, representing the Republic of Philippines, described the Declaration as the first document in history which, from a truly universal standpoint, defined the basic rights and the fundamental freedoms to which

<sup>62</sup> A/C.3/307/Rev.2. The USSR had set forth a similar proposal for inclusion in the preamble. A/C.3/314/Rev.1. GAOR-TC 3, pp. 740-46. *In favour*: Byelorussia, Czechoslovakia, Ethiopia, Haiti, India, Iran, New Zealand, Pakistan, Peru, Poland, Saudi Arabia, Syria, Ukraine, USSR, Yemen, Yugoslavia. *Against*: Australia, Belgium, Canada, Chile, China, Costa Rica, Dominican Republic, France, Honduras, Netherlands, Paraguay, Sweden, United Kingdom, United States. *Abstaining*: Argentina, Brazil, Denmark, Ecuador, Greece, Uruguay, Venezuela.

<sup>63</sup> GAOR 3, p. 933. Honduras and Yemen were not present.

<sup>64</sup> Evatt, *Task of Nations*, 115. GAOR-TC 3, p. 36 (Ecuador); GAOR 3, pp. 864 (France); 852 (Haiti); 889 (Pakistan) and 867 (the Philippines). GAOR 3, p. 923 and GAOR-TC 3, p. 473.

all men were entitled. The Paraguayan view, expressed by Carlos A. Vasconcellos, was that the Declaration was the most universal that had so far been achieved. Emile Saint-Lot from Haiti praised<sup>65</sup>

. . . a declaration of human rights which, for the first time, was to be universal in scope [and in spite of] rival ideologies confronting each other, the United Nations representatives had sought out, among old-established and recent political, economic, social and cultural rights, formulas which might be acceptable to men from the four corners of the earth. The text of the draft declaration represented a kind of common denominator for those various ideas. It was perhaps not perfect, but it was the greatest effort yet made by mankind to give society new legal and moral foundations; it thus marked a decisive stage in the process of uniting a divided world.

New Zealand's representative, C. C. Aikman, and France's Cassin also praised the universal aspects of the Declaration. The representative of Saudi Arabia, Jamil M. Baroody, however, was more ambiguous. He stated that the Declaration was based largely on Western patterns of culture, which were frequently at variance with the cultural patterns of Eastern states. That did not mean, however, that there was any antagonism between the two. Some weeks later he strongly defended the provisions on social rights, declaring that social security was a recent historical development in Western society, but old in Islam. He assumed of course that social rights in the text were drawn mostly from non-Western values.<sup>66</sup>

The claim of the Declaration to be universal was more difficult. The freedom of belief also included freedom to change religion. The representatives of Saudi Arabia, Afghanistan and Egypt pointed out this problem. The representative of Pakistan, Mohammed Zafrullah Khan, argued — by quoting the Koran — that Islam recognized the right of conversion. Because of the difficult point Saudi Arabia chose to abstain on the final vote. South Africa objected to the Declaration text because of its broad universality. The Declaration went beyond what South Africa considered to be generally accepted rights. South Africa was in particular sceptical about the inclusion of social and economic rights, while the USSR

<sup>65</sup> GAOR 3, pp. 867-68 (Philippines); p. 901 (Paraguay); pp. 853-54 (Haiti); p. 888 (New Zealand); p. 866 and OR-ECOSOC 7/3, p. 649 (France). GAOR 3, pp. 853-54.

<sup>66</sup> GAOR-TC 3, p. 49 and 515.

and the other socialist states attacked the text for not guaranteeing these rights and for not being sufficiently democratic.<sup>67</sup>

Even those who voted for the Declaration had objections. Almost every delegation in the general debates pointed out omissions and shortcomings of the text. The Declaration clearly appeared to be a compromise. In the words of the Brazilian representative:

The draft declaration did not reflect the particular point of view of any one people or any one group of peoples. Neither was it the expression of any particular political doctrine or philosophical system. It was the result of the intellectual and moral co-operation of a large number of nations; that explained its value and interest and also conferred upon it great moral authority.<sup>68</sup>

<sup>67</sup> GAOR-TC 3, pp. 392 (Saudi Arabia) and 884 (Afghanistan) and GAOR 3, p. 912 (Egypt). GAOR 3, p. 890 (Pakistan). The Islamic or rather Muslim fundamentalist objections against the Declaration or the idea of human rights resurfaced when Khomeini seized power in Iran in 1979. See Gellner, "Human Rights and New Circle of Equity." GAOR-TC 3, p. 39 (South Africa). GAOR-TC 3, pp. 46-47 and 58-59 and GAOR 3, pp. 880, 882, 896, 913 and 923.

<sup>68</sup> GAOR 3, p. 878.

## 6. A struggle against time

In January 1947, the Commission on Human Rights had started to draft the Universal Declaration of Human Rights. Less than two years later, by December 1948, the Declaration had passed all the procedural hurdles in the United Nations and was adopted by the General Assembly. It was a remarkable feat. The time from the beginning to adoption of the Declaration was unusually short compared to other international human rights documents. One reason, perhaps, was a growing awareness in the United Nations that if the declaration were not adopted then, it could never be. This certainly seems, in retrospect, to be right. Formulating the declaration was a “task that would have been inconceivable at any other period in history.”<sup>1</sup>

### The importance of time

Three factors show the value of the timely and speedy adoption of the Declaration: 1) The horrors of World War II were becoming less vivid; 2) the Cold War intensified; and 3) the question of self-determination became increasingly sensitive. The pressure of expectations also helped to accelerate the drafting process. The actors were aware of the pressure of expectations and the fading memory of the war. The relatively strong international interest in human rights in the late 1940s, and especially its high priority on the UN agenda, was a direct result of *World War II*. However, the effect of the war would decrease with the passing of time. In 1952 Charles Malik, then chairman of the Commission on Human Rights, described the general circumstances of the Commission’s work in this way:

Now, the troubled world situation has been with us for a number of years, but the more we are removed in time from the original moral indignation evoked by the Second World War in favour of man and his freedoms, the

<sup>1</sup> Hessel, “Remarks,” 21. See also Alston, “Third Generation of Solidarity Rights,” 321. Also contemporary observers recognized the rapid drafting process of the Declaration, see Hendrick, *International Bill of Human Rights*, 14.

more the questions of war and peace cast their pall upon the reality of our work.<sup>2</sup>

Competing political developments and events emerged on the international agenda. The issues important by the end of World War II seemed not so important any longer. The drafting of the declaration of human rights was a struggle against time and the erosion of memory.

As the Human Rights Declaration was taking shape, the beginning of the Cold War crowded out the already fading memories of World War II. Many hoped that cooperation between East and West on concrete issues could still be possible. The deepening tension during the latter part of the 1940s between the Soviet Union and its former wartime allies made this difficult. While less contentious than other issues dividing the large powers, the Human Rights Declaration was also affected. The drafting process, it will be recalled, started in January 1947, about half a year after Churchill recognised the Cold War division of Europe in his "Iron Curtain"-speech. Work on the Declaration was continued in the shadow of the Berlin crisis and the communist coup d'état in Czechoslovakia. Probably the single most formative event of the Cold War, the Prague coup took place in February 1948, when the Declaration was still several months from its final adoption. At the third session of the Commission on Human Rights (May-June) the deteriorating relationship between the United States and the Soviet Union was clearly evident. The pace of mutual criticism increased. When the third session of the General Assembly was convened in Paris during the autumn of 1948, Eleanor Roosevelt gave a speech at Sorbonne. In this speech she stated that there was "a fundamental difference in the conception of human rights" as it exists in the Soviet Union and Eastern Europe and in the other UN member states.<sup>3</sup>

Another increasingly controversial issue was the self-determination of peoples, which in particular affected the colonies in Africa and Asia. This question was only just mentioned in the debates during the drafting of the declaration, but it became a major and controversial issue on the UN agenda in the subsequent human rights debates. Malik describes the question of self-determination as the most complicated issue at the Commission's eighth session in 1952. From the forth session of the General

<sup>2</sup> Malik, *Human Rights in United Nations*, 2.

<sup>3</sup> Humphrey, *Great Adventure*, 53 and Eleanor Roosevelt, *Autobiography*, 313. "The struggle for human rights," 28 September 1948, Research project 87: American Soviet relations, Research Reports of the Foreign Policy Studies Branch, Division of Historical Policy Research, RG 59, NARA.

Assembly (1949) this question, connected with other colonial issues, constituted a considerable part of the human rights issues voted upon. From this perspective, “[i]t was something of a miracle that the great General Assembly debate on the Declaration took place in 1948,” as Humphrey declares. As the Universal Declaration of Human Rights was only one of three parts in the forthcoming International Bill of Human Rights, several delegations wanted them to be adopted at the same time and to this end proposed a delay of the Declaration. If this procedure had been adopted, the Declaration would have been affected by the controversies over self-determination. Such was the fate of the covenants. They were not adopted until 1966 (and not ratified until ten years thereafter).<sup>4</sup>

### **Pressure of expectations**

The enormous pressure of expectations which was directed at the United Nations in general and the Commission on Human Rights in particular caused the process of drafting to be hurried. The adoption of a declaration of human rights became some kind of a litmus test of the effectiveness of the United Nations. The UN members were fully aware of this. As the Cuban representative said at the beginning of the first session of the General Assembly:

All through the war that brought into existence the United Nations, it has been repeatedly said by our great leaders that the victory would lead us into a new world organization based on justice and on law; and if that is true, now that victory has been won and the United Nations has come into existence, carrying the expectations of the whole world, we need to tell that world that we have not forgotten the promises that were made in San Francisco, and that though there are urgent matters that will require our attention in the days to come, from the very beginning the United Nations stands by its obligations, and that we are going to establish those human rights and those rights of nations.<sup>5</sup>

When Henri Laughier, the Assistant Secretary-General in charge of Social Affairs, opened the first meeting of the nuclear Commission on Human

<sup>4</sup> Malik, *Human Rights in the United Nations*, 5-7. Rowe, “Human Rights Issues in United Nations,” 426. Rowe’s table shows the sessions two by two, and examined thus the third and fourth session in combination. Compared with the information of Humphrey quoted above, the fourth session of the General Assembly appeared as the turning point. Humphrey, *Great Adventure*, 66.

<sup>5</sup> GAOR 1/1, pp. 102-103.

Rights, he expressed himself in this way: "You know . . . that all men of all the free peoples and of all the peoples liberated from slavery, put in you their confidence and their hope, so that everywhere the authority of these rights, respect of which is the essential condition of the dignity of the human person, be respected." At the same session, Eleanor Roosevelt declared that the peoples of the world looked upon the members of the Commission as their representatives, which implied a heavy responsibility. Later that year a US governmental working group on human rights emphasized the "urgent need for the Commission [on Human Rights] . . . to demonstrate real progress [in the drafting process]."<sup>6</sup>

The question of the prestige of the United Nations was a part of the reason why the United Kingdom, which had wanted to postpone of the Declaration, ultimately agreed to a 1948 adoption. On the other hand, when the House of Commons debated the report of the Commission on Human Rights in February 1948, one of the representatives maintained that the prestige of the United Nations had not fallen so low that it could accept merely a declaration.<sup>7</sup>

At the third session of the Third Committee of the General Assembly, the representative of Argentina, Enrique V. Corominas, argued that the members of the Third Committee were responsible to their peoples. They could not return from the current session empty-handed, and must respond to the civic and social aspirations of mankind and adopt the declaration of human rights for which the world was waiting. The Belgian representative, Henry Carton de Wiart, recommended the adoption of the Declaration at this session "because it was important for the United Nations to give the waiting world a tangible proof of its activity and usefulness." René Cassin expressed similar views:<sup>8</sup>

<sup>6</sup> E/HR/6, p. 1. E/HR/10, p. 1; Mrs. Roosevelt used this as an argument for non-governmental representation in the Commission on Human Rights. "Preparation of an international bill of rights," 31 October 1946, SD/E/CN.4/W.11 (Rev.2), box 45, position papers, Bureau of International Organization Affairs and its Predecessors, RG 59, NARA.

<sup>7</sup> "Human Rights," Notes for meeting with representatives of the Commonwealth High Commissioners by R. Heppel, PRO, FO 371/72810/UNE 3479. The United Kingdom's desire for postponement of the draft Bill of Rights is clearly expressed in numerous documents from the British Foreign Office, but in the United Nations the British kept a low profile on this matter. Fletcher, House of Commons, 26 February 1949, PRO, FO 371/72800/UNE 847.

<sup>8</sup> GAOR-TC 3, p. 36 and 49; see also pp. 867-68 and 889. GAOR-TC 3, p. 61.



From the moral point of view, it must not be forgotten that it was at the end of the San Francisco Conference that the President of the United States had, speaking in the name of the United Nations, promised the peoples of the world that respect for their essential rights would be ensured by an international bill. The time had come to fulfil that promise.

From the beginning, the Commission on Human Rights was faced with “the problem of considering a large number of appeals and communications addressed to the United Nations from groups and individuals who considered themselves to be victims of violations of their rights. The petitioning was controversial since it concerned the internal affairs of states. A concrete examination of every petition was nearly impossible, at least at that time. Therefore, at its first session, the Commission recognized that it had no power to take any action about complaints concerning human rights. The Commission voluntarily restricted its mandate so as not to deal substantively with these controversial matters. Several members of the Commission were willing to study some of the petitions “in so far as they were likely to contribute towards the drawing up of the Declaration.” The petitions were merely identified and enumerated in closed meetings, and the petitioners were only informed that their communications had been brought to the Commission’s attention. The stream of complaints did not cease, however, and in an indirect way exerted some pressure on the Commission. The Commission had to justify its refusal to accept the petitions by producing a speedy draft of a Universal Declaration.<sup>9</sup>

### **Adoption of schedule**

The ECOSOC Resolution 46/4 of 28 March 1947, which appointed the eight members of the Drafting Committee, also contained a procedure and a step-by-step procedural timetable for completing the Declaration. The United Nations imposed restrictions on itself. The time procedure included the following seven steps:<sup>10</sup>

- 1) Preparation of a draft by a drafting committee on the basis of documentation prepared by the Secretariat;
- 2) Consideration of the draft by the Commission on Human Rights;

<sup>9</sup> E/CN.4/SR.1, p. 2. Alston, *United Nations and Human Rights*, 127-29. E/CN.4/SR.26, pp 5-6. E/CN.4/SR.23, pp. 9-12; E/CN.4/SR.26; E/259, pp. 5-6; E/600, pp. 7-8 and E/800, p. 6.

<sup>10</sup> OR-ECOSOC 4, p. 356 and E/325.

- 3) Submission of the resulting draft to Members of the United Nations for observations, suggestions and proposals;
- 4) Consideration of the above observations, suggestions and proposals as a basis of redraft, if necessary, by the Drafting Committee;
- 5) Consideration of the resulting draft by the Commission on Human Rights;
- 6) Consideration by the Council of the resulting text;
- 7) Submission of the draft Bill of Human Rights by the Council to the General Assembly in 1948.

The origin of this procedure is not completely clear. It was recommended by the Committee of the Whole Social Affairs, a recommendation which Eleanor Roosevelt repeated. The procedure was not openly opposed, although internal British documents complained about the "ill-considered haste" of the drafting process. The United Kingdom, it will be shown below, had a strong desire to prolong the drafting process.<sup>11</sup>

It was a very demanding and optimistic schedule. The draft documents had to go through a long and complicated decision process. Delay could easily occur on any one of these points. If so, the total delay might be at least one year, since the General Assembly, which needed to give final approval, had only one session annually. A brief look at the time-span for the drafting process shows that there was not much spare time. Some of the sessions over-lapped. And between the sessions which had to examine the whole draft, the two sub-commissions and the Commission on the Status of Women were expected to consider relevant articles, which they also did. This use of the sub-commissions was in fact a method of saving time. The sub-commissions examined two and four articles each. These examinations meant a considerable relief for the Commission. Controversial issues were dealt with before they were submitted to the Commission.<sup>12</sup>

<sup>11</sup> E/CN.4/AC.1/2, p. 5 and E/383. Record of a meeting held in the Foreign Office to discuss the work of the Commission on Human Rights, 30 April 1947, PRO, FO 371/67 603/UNE 335.

<sup>12</sup> See Table 1. The Sub-Commission on the Prevention of Discrimination and the Protection of Minorities met from 24 November to 6 December 1947 and discussed four of the articles in the draft declaration. These were the article on non-discrimination (the final Article 2); the right to freedom of movement (the final Article 14); the right to equal access to public service (the final Article 21,2) and the rights of minorities (finally rejected). See E/CN.4/52. The Sub-Commission on Freedom of Information and of the Press gave their recommendations on two articles at their session from 19 January to 3 February 1948. Later this spring the UN Conference on Freedom of Information also delivered its draft on the same issues. The sub-commission and the UN Conference considered the articles dealing with freedom of opinion and expression (the final Articles

In order to keep the schedule, different procedural arrangements were introduced. At the second session of the Commission on Human Rights, only one speech for and one speech against each amendment was allowed. Several night meetings continued into the early hours of the morning and "most of the delegates, and even more the Secretariat, suffered from loss of sleep." The delegates really had a reason to be tired: The summary records from this session reported twenty-three plenary meetings and nine working group meetings more than three hours average, more than hundred hours in total. In addition, the delegates had a lot of preparation between the meetings. At the second session of the Drafting Committee, a discussion on an article was only re-opened if any changing proposals were set forth. Thus, half of the draft articles were submitted to the Commission on Human Rights without consideration. At the third session of the Commission, more than ten sub-committees were set up in order to combine different preferences and suggestions on various issues. These sub-committees were an addition to the ordinary meeting program and the representatives who had specific suggestions in the different cases were frequently appointed as members in these committees. They worked out compromise articles, and the controversies were solved outside the entire Commission, which proved to be a time-saving procedure.<sup>13</sup>

When the draft Declaration was submitted to the General Assembly in September 1948, it had reached its final stage. Still, there were hindrances left. A majority of the delegations were not familiar with the previous drafting work in the Commission on Human Rights, and others saw a new opportunity to fight for their points of view. As a result the Third Committee went through the text again and reopened most of the questions which had been discussed by the Commission. Many amendments and sub-amendments were under consideration, more than ten for some of the articles. Each had to be voted on. Every one of the thirty articles of the Declaration was discussed in great detail and the meetings were often dramatic. The Third Committee spent nearly two months on an article-by-article consideration of the draft Declaration. In the first weeks, one meeting a day was held, but soon there were two, sometimes three, meetings a day. The average length of the meetings was three hours. The last day in which the Third Committee examined the declaration it held

18 and 19). See E/CN.4/84.

<sup>13</sup> Humphrey, *Great Adventure*, 48. A matter was thoroughly discussed within the whole Commission before any sub-commission was established. Otherwise, it is remarkable that France and the United Kingdom attended practically all of the sub-committees.

three meetings which lasted more than twelve hours in a race to keep the schedule.<sup>14</sup>

When its consideration was completed, the Third Committee decided “to set up a sub-committee . . . to examine the full draft text of the declaration of Human Rights, . . . with the mandate of reviewing the consistency and uniformity of the draft and to submit proposals to the Third Committee.” The Committee examined the report from this sub-committee, suggested a few changes and made a slight rearrangement on the articles. When the draft Declaration was put to the vote as a whole in the Third Committee, it was adopted by twenty-nine votes to none, with seven abstentions. Then the draft was passed on to the General Assembly sitting in plenary. The Assembly dealt with the declaration at four meetings, and late in the evening on 10 December 1948, the Universal Declaration on Human Rights was adopted as a whole. The voting was taken by roll call. Forty-eight voted in favour, eight abstained and none voted against.<sup>15</sup>

In terms of the schedule, it was a close call. As Humphrey puts it:

I was soon preoccupied by another worry: Would the committee get through the draft before the end of the session? At times it seemed that it could not, and as it turned out it was a very near thing. We finished just in time for the General Assembly to vote the final text in the night of 10 December — only two days before the end of the session. Had the discussions gone on any longer the adoption of the Declaration would have had to be postponed for another year, or perhaps indefinitely.<sup>16</sup>

<sup>14</sup> In a few cases the Committee could not agree upon a text, and then it set up a sub-committee in order to work out compromises. The sub-committees met at night after the adjournment of the main committees. Humphrey, *Great Adventure*, 70.

<sup>15</sup> A/C.3/380. The sub-committee was supposed to examine the twenty-nine articles and the preamble, adopted by the Third Committee. The sub-committee was composed of the following eleven members: Australia, Belgium, China, Cuba, Ecuador, France, Lebanon, Poland, Union of the Socialist Republics, United Kingdom and United States of America. The report from the Sub-Committee, see A/C.3/400/Rev.1.GAOR-TC 3, pp. 879-880. The seven abstaining states in the Third Committee were Byelorussia, Canada, Czechoslovakia, Poland, Ukraine, the USSR and Yugoslavia. As the vote numbers show, several states did not attend this vote. Saudi Arabia and the Union of South Africa, who abstained in the final vote in the General Assembly did not attend, nor did Norway. The report from the Third Committee to the General Assembly, see A/777.

The eight abstaining states in the final voting were the six states of Eastern Europe, Saudi Arabia and the Union of South Africa. Canada had changed its vote, probably because of the company in which it found itself.

<sup>16</sup> Humphrey, *Great Adventure*, 71.

## Priority to the Declaration

At its second session, the Commission on Human Rights decided to prepare the International Bill of Human Rights in three parts: a Declaration, a Convention, and Measures of Implementation. As a consequence of this decision, the Commission provisionally divided itself into three working groups, which dealt with the different parts. It was quite obvious for the Commission members that these three drafting tasks had different degree of difficulty. Therefore, it was of great importance for its speedy completion that the Declaration in fact was given priority at this early stage of the drafting process of the International Bill of Human Rights. Initially the Commission tried to examine all three drafts and some of the actors in the drafting process had a different priority. The Declaration took the lead, however, and explicitly so at the third session of the Commission lasting from 24 May to 18 June 1948. As René Cassin expressed it: “[T]he Commission should begin by dealing with the Declaration which was the first document on which agreement could be reached.” One of the US arguments for giving priority to the Declaration was “the advantage of relatively speedy adoption.” This decision seems fortunate for the Declaration since the Commission did not have time to consider the other parts of the bill at this session. In twenty-six days the Commission held thirty-five meetings and numerous sub-committee gatherings, and almost all of them dealt with the Declaration.<sup>17</sup>

The Commission on Human Rights had earlier decided that the seventh session of the ECOSOC would discuss the Commission’s report, even though it had not been delivered the required six weeks before the Council opened its session. The ECOSOC session nearly turned out to be a stumbling block. The report of the Commission on Human Rights was not the only human rights item on the Council’s agenda. It had to consider, amongst others, the final act of the UN Conference on Freedom of Information which contained three draft conventions on this matter and the draft Convention on the Crime of Genocide. After some discussion the Council decided to refer all these items, without first considering them in plenary, to a temporary human rights committee. Several representatives, among them the Chilean, Hernan Santa Cruz, objected to the organizing of a human rights committee. He argued that this would be another drafting committee and that such a committee would not be able to complete its task

<sup>17</sup> See E/CN.4/SR.46-81, E/CN.4/81-154 and E/800. E/CN.4/SR.47, p. 2. “Legal forms of an international bill of rights,” 31 October 1946, SP/E/CN.4/W.10, box 45, position papers, Bureau of International Organization Affairs and its Predecessors, RG 59, NARA.

on schedule. This proved true. The human rights committee spent two weeks discussing the report of the Commission on Status of Women. It continued on other items before the Declaration could be put at the agenda. "By the end of the next week the situation was critical," Humphrey concluded, "there were only two weeks left, and it seemed that the special committee would not get through its agenda. One heard talk of an attempt to sabotage the Declaration or, at the very least, to prevent its reaching the General Assembly that year."<sup>18</sup>

It is difficult to prove any attempts of sabotage. The members of the ECOSOC were obviously concerned about the modest progress in its human rights committee. They discussed working arrangements for the session during the three meetings when reciprocal accusations of complications and obstructions were brought forth. The main problem in the temporary human rights committee seemed to be the conventions on freedom of information. These questions had not obtained the necessary consensus before the session. The debate reflected the large East-West division. The committee consequently proceeded very slowly. Some Western representatives were afraid that the conventions on freedom of information would not be completed. Several other representatives argued that human rights was the most important issue at this session and therefore the Council should pay special attention to the draft Declaration of Human Rights (and the draft Convention on the Crime of Genocide). The solution which was adopted by a great majority, was to withdraw the draft Declaration and some other human rights issues from the temporary human rights committee. They were transferred directly to the General Assembly without having been discussed by the ECOSOC in plenary.<sup>19</sup> The schedule was kept because the ECOSOC gave priority to the Declaration.

When the General Assembly opened its third session on 21 September in Paris, the different items were for the most part left to their respective committees. The draft declaration was one of eleven items on the Third Committee's agenda. The Declaration also received high priority as most of the ninety-seven meetings held by the committee was dedicated to the Declaration. This was not an obvious procedural decision. The general debate also dealt with the other parts of the human rights bill. The Third Committee adopted an Egyptian proposal on 5 October. Henceforth they

<sup>18</sup> E/600, p. 4. OR-ECOSOC 7/3, pp. xxv-xxvi and 57. Humphrey, *Great Adventure*, 57.

<sup>19</sup> The accusations of obstructions reflected the East-West division and involved the USSR versus France, the United Kingdom and the United States in particular; see OR-ECOSOC, pp. 382-389, 412-432 and 434-438. OR-ECOSOC 7/3: Byelorussia, p. 418; Chile, p. 421; China, p. 430; the USSR, p. 431. OR-ECOSOC 7/3, p. 438.

were to examine *only* the draft declaration and prepare a text for adoption by the General Assembly during the present session.<sup>20</sup>

## Rejection of alternative drafts

When the Commission on Human Rights opened its second session on 2 December 1947, the Commission had before it the first official draft declaration, prepared by the Drafting Committee. A single text was useful if the schedule was to be followed. As general negotiation theory points out, a single negotiation text is an effective strategy to produce results, as: “[M]any-party negotiations are often too diffuse to be effective unless they focus on a single negotiation text.”<sup>21</sup>

When the Drafting Committee convened its second session in May 1948, a procedural proposal was taken which could have destroyed the advantage of a single draft. The USSR representative, Alexei P. Pavlov, suggested a general discussion on the basic questions of the Declaration. This implied that work begin all over again. If such a procedure had been adopted, it would obviously have delayed the drafting work and the final adoption of the Declaration. The representatives of the United States and Chile strongly opposed this proposal. They used the terms of reference given by the ECOSOC. The commission was only to revise the prepared document on the basis of comments from governments. The USSR proposal led nowhere.<sup>22</sup>

At its third session, the Commission on Human Rights had before it the last report of the Drafting Committee, a French draft, a Chinese draft, and a common reviewed edition of the report of the Drafting Committee presented by the United Kingdom and India. Different members of the Commission proposed amendments or revisions for separate articles. The negotiation text remained as was prepared by the Drafting Committee. Even the United Kingdom which did not approve this text, found it difficult to abandon a draft in which so much work was invested.<sup>23</sup>

Problems appeared at a later stage as well. In March 1948, the Latin American states had adopted the American Declaration of the Rights and Duties of Man in Bogotá. In the Third Committee, the representative of Cuba, Guy Pérez Cisneros, suggested that a sub-committee study and

<sup>20</sup> GAOR-TC 3, pp. 74-82 and A/C.3/222.

<sup>21</sup> E/CN.4/21. Raiffa, *Art and Science of Negotiation*, 254.

<sup>22</sup> E/CN.4/AC.1/SR.20, pp. 2-4.

<sup>23</sup> Memorandum by Hebbelthwaite, 18 May 1948, PRO, FO 371/72806/UNE 1928.

compare the Bogotá text and the draft Declaration. The procedure implied a new basis for the drafting work and would have caused considerable delay. The Cuban proposal was supported by several other Latin American states. The Latin American region had more than a third of the representatives of the Assembly (twenty of fifty-eight). A joint Latin American initiative could carry great weight. Despite their numerous strength, they only occasionally acted as a voting bloc, neither did they in this case. The representative of Chile, Hernan Santa Cruz, who had been an active member of the Commission on Human Rights, continued to defend the original text.<sup>24</sup>

It should not be forgotten that the draft declaration was a result of two years' painstaking effort by several organs of the United Nations to reach a compromise, acceptable at least to the majority, of all those conflicting views. The text of the Bogotá declaration had not been overlooked. While there was no complete concordance between it and the draft declaration, it had been given thorough consideration, and many of its articles had been accepted.

The representatives of France, the United Kingdom and the USSR expressed similar views. The Cuban procedural proposal was rejected.<sup>25</sup>

## **Postponement turned down**

When every member state of the United Nations was invited to comment on the draft International Bill of Rights in the first three months of 1948, serious attacks were directed against the time-table. The criticism was in particular voiced by Canada and New Zealand. Behind the scene the United Kingdom was the leading force, although carefully avoiding to take any initiative in this matter in public. The UK found it premature to submit the draft declaration to the 1948 General Assembly and tried to persuade its Commonwealth fellows, Australia, Canada and New Zealand, to support a postponement. They responded positively. Then the British UN delegation sounded out the opposition from China, France, the United States and in particular the Latin Americans, and it concluded that it was "unwise to risk

<sup>24</sup> GAOR-TC 3, p. 38 and A/C.3/218. The Bogotá text will be found in E/CN.4/122. Hohmann, "Latin American Voting Bloc in United Nations," 38 and Evatt, *Task of Nations*, 16-17; see also Ball, "Bloc Voting in General Assembly." GAOR-TC 3, pp. 49-50. See also E/CN.4/AC.1/SR.36, p. 6.

<sup>25</sup> GAOR-TC pp. 63, 65 and 75.



ill with a proposal so little likely to succeed.” Therefore, in the hearing, only Canada and New Zealand proposed postponement. Canada explained that its government wanted to hear the opinion of the Parliament, which was not available before the time limit. New Zealand explained its position in this way:<sup>26</sup>

[H]owever desirably may be the early conclusion of an agreement or agreements on human rights, it is essential that sufficient time should be allowed for each government to consider the views and comments of other governments, for different viewpoints to be reconciled, and for the greatest possible measure of agreement to be achieved. Some delay would be preferable to the over-hasty adoption of texts which any considerable number of states might, upon reflection, be unwilling to ratify.

Such suggestions had only minority support, and they were not given much weight by the members of the Commission. During the third session of the Commission on Human Rights the UK made, nevertheless, another attempt to postpone the Declaration — without success. Then the British view changed; “Departments here have in the meantime come round to the view that there will be no harm, and possibly advantage, in the Declaration going forward and being adopted by this year’s Assembly.” Thus, one of the ardent defenders of a postponement of the Declaration was “converted”.<sup>27</sup>

In September 1948, when the General Assembly opened its debate on the draft Declaration, New Zealand continued its previous line and got support from Haiti. The USSR followed up by requesting the General Assembly to postpone the final adoption of the declaration to its next session. The argument for such a proposal was “unsatisfactory aspects of the draft”. This proposal obtained support only from the other Eastern European states. As if they had forgotten completely their own efforts to postpone the drafting process, the British delegates complained repeatedly over “the delaying tactics of the Slavs.” Now, the UK as well as the US delegation were very anxious not to reopen the substantial discussions on the Declaration, as they feared that the text could change in an undesirable way. The postponement tactics did not succeed. The Universal Declaration of Human Rights was

<sup>26</sup> “Human Rights,” May 1948, PRO, FO 371/72807/UNE 2071. “Draft brief for debate on human rights in the House of Lords,” May 1948 PRO, FO 371/72805/UNE 1969. Foreign Office to UK delegation to the United Nations, 10 February 1948, PRO, FO 371/72799/UNE 488 and UK delegation to the United Nations to Foreign Office, 14 February 1948, PRO, FO 371/72800/UNE 618. E/CN.4/82/Rev.1, pp. 1-2 and E/CN.4/82/Add.12, p. 2.

<sup>27</sup> Foreign Office to UK delegation Geneva, 14 July 1948, PRO, FO 371/72809/UNE 2863.

adopted after a drafting process of less than two years. This is a remarkably short period for an international document of this kind. As one of the important persons in the preparation of the Declaration and from 1951 the chairman of the Commission of Human Rights, he compared the ongoing work on the covenant with his previous experiences in the work on the Declaration:<sup>28</sup>

Certainly the sense of urgency and drive that characterized the preparation of the Declaration back in 1947 and 1948 was absent, and it was impossible to brush aside the reflection that the proclamation of the Declaration in 1948 was really something of a miracle, so that if it were not proclaimed then, possibly we would still be working on it now.

<sup>28</sup> GAOR-TC 3, pp. 34, 78, 80, 887-890 and A/C.3/407. UK delegation to the United Nations to the Foreign Office, 6 December 1948 and Report on the Plenary Session: Note on the Foreign Office, 14 December 1948, PRO, FO 371/72812/UNE 4722 and 4858. The delaying tactics of the Soviets were partly interpreted as obstacles to a General Assembly discussion on Korea, the next item on the agenda. See Luard, *History of United Nations*, 229-239. "Comment paper, Draft International Declaration on Human Rights," 26 August 1948, SP/A/C.3/70, box 27, position papers, Bureau of International Organization Affairs and its Predecessors, RG 59, NARA. UK delegation to the United Nations to Foreign Office, 29 November 1948, PRO, FO 371/72812/UNE 4636. Malik, *Human Rights in United Nations*, 2.

## 7. The aftermath of the Declaration

The Universal Declaration of Human Rights was adopted almost forty-five years ago. Was it “an epoch-making event”? The Declaration was intended to be only one part of the International Bill of Human Rights and was intended to be the least important part. When the General Assembly had adopted the Universal Declaration of Human Rights in 1948, some resolutions regarding the further human rights work were also made. The Commission on Human Rights was already working on the *Covenant and the Measures of Implementation*. It was widely thought that these texts could be prepared for adoption at the next session of the General Assembly. This hope seemed to be too optimistic.<sup>1</sup>

The drafting process of the remaining parts of the International Bill of Human Rights was hampered by controversial issues. There was the question of self-determination and even whether there should be one or two covenants. Another difficulty appeared. Malik complained: “Nobody seemed to be in a hurry to push our work to a conclusion.” The circumstances which speeded the adoption of the Declaration, later hindered the adoption of the covenant(s). Because of different opinions about social and economic rights, there was an argument whether there should be one or two covenants. It was decided finally to have two covenants; one on civil and political rights and another on social, economic and cultural rights. Because of these difficulties, there were many long delays.<sup>2</sup>

Another difficulty was the shift in United States policy. President Eisenhower in 1953 officially declared that the United States would neither participate in the drafting of any covenant nor ratify such a document. This position caused strong criticism from, among others, Eleanor Roosevelt, who declared that “[e]ven the Soviet Union, though many of us are fairly sure it will not ratify, have not announced through their government that they will not ratify.” As it turned out, the USSR did ratify both the Conventions while the United States did not. One reason was because of the federal system. An even more important reason was the general

<sup>1</sup> Mohammed Zafrullah Khan, the representative of Pakistan in the General Assembly in 1948; see GAOR 3, p. 889. UN Resolution 217 (III) B-F.

<sup>2</sup> Malik, *Human Rights in United Nations*, 2. See also Martin, “Human Rights and World Politics,” 43-44 and Neal, “United Nations and Human Rights,” 125-135.

unwillingness of the US to be subordinate to international interpretations of human rights. The Commission dealt with the covenants until 1954, and the deliberations continued in the General Assembly until the adoption of the documents in 1966. The covenants had to be ratified by thirty-five nations before they came into force, and sufficient signatures were not collected until 1976.<sup>3</sup>

The measures of implementation, which were supposed to be the third part of the International Bill of Human Rights, were included as parts of the covenants. The International Covenant on Civil and Political Rights established a Human Rights Committee. It started to function in 1977 and was made up of 18 members serving in their personal capacity. A corresponding Committee on Social, Economic and Cultural Rights was also established. The first session was in the spring of 1987, and the states which had ratified the covenants had an obligation to report to these committees. Even though these states are obliged to submit regular reports, the United Nations has no means of pressure if the states do not report voluntarily. Connected with the Covenant on Civil and Political Rights there existed an Optional Protocol. It allowed the Committee to "consider communications from individuals claiming to be victims of violations of any of the rights set forth in the Covenant." Eastern European states used to ratify conventions more quickly and in greater numbers than the other states, but these states did not accept complaints from individuals. On 1 January 1993, 115 states had ratified the International Covenant on Civil

<sup>3</sup> See Falk, "Ideological Patterns in the United States Human Rights Debate: 1945-1978" and Sohn, "International Consequences of the United States Human Rights Policies." Johnson, "Contribution of Eleanor and Franklin Roosevelt," 46: The criticism from Eleanor Roosevelt was devastating: "The Russian representatives are not in quite as awkward a position as those of the U.S. . . . We have sold us to the Brickers and McCarthys. It is a sorry day for the honour and good faith of the present Administration in relation to our interest in the human rights and freedoms of peoples throughout the world. . . . We are not willing to sign anything that binds us legally in the field of human rights and freedoms. Yet, we in the U.S. find legal decisions helpful in gaining rights for our own people. Other nations may bind themselves if they wish, but we feel that it is impossible "to codify standards of human rights as binding legal obligations," and the Eisenhower Administration does not want to fight a section of the American Bar Association, or the isolationists or those who might vote for the Bricker amendment. In other words, we use high-sounding phrases but we are afraid — afraid to tackle a difficult thing and try to improve it and accept it ourselves as far as we are able."(Johnson, 46-47.) Even the Convention on Genocide adopted by the United Nations in 1948, was not finally ratified by the United States until 4 November 1988. In 1992, the United States finally ratified the Covenant on Civil and Political Rights.

and Political Rights and 117 states had ratified the corresponding Covenant on Economic, Social and Cultural Rights.<sup>4</sup>

## **The influence and the impact of the Declaration**

For more than twenty-five years, from 1948 until the covenants were ratified in 1976, the Declaration was the only internationally accepted standard of human rights. In this period the document had an immense influence. The effects were visible in several ways. First, a number of new human rights instruments both within and without the UN framework were inspired by the Universal Declaration.<sup>5</sup>

Second, several states which became independent during the fifties and sixties included the Declaration or similar texts in their constitutions. Previous French colonies followed this practice especially. According to the Secretary-General of the United Nations, U Thant, by 1968 a total of forty-three constitutions that were adopted in the foregoing years were clearly inspired by the Universal Declaration. Legislation could be found on all continents which quoted or reproduced provisions of the Declaration text.<sup>6</sup>

Third, the Declaration — from its adoption — has influenced other UN texts and has served as a basis and justification for numerous decisions made by different United Nations bodies. The most striking example may be the Declaration on Colonialism (1960). It declared that all states should “observe faithfully and strictly . . . the Universal Declaration of Human Rights,” a text which was adopted without objections. This was an explicit adoption of the Universal Declaration of Human Rights by those states which had become UN members after 1948. It also implied an approval of the Declaration by those who abstained in the final vote on the document in 1948. The USSR representative, Professor G. I. Tunkin, argued for the adoption and value of the Declaration of colonialism in 1960 by emphasising that even though all the Great Powers did not vote for it, none of them voted against.<sup>7</sup>

<sup>4</sup> Marie, “Classifications and Status of Ratifications,” 62.

<sup>5</sup> The influence and the impact of the Declaration are examined by numerous authors. See Sohn and Buergenthal, *International Protection of Human Rights*, 516-18 and Moskowitz, *Human Rights and World Order*, 23-30.

<sup>6</sup> The speech by U Thant is referred in Robertson, *Human Rights in World*, 28.

<sup>7</sup> United Nations, *United Nations Action on Human Rights*, 15-20; see also Humphrey, “Universal Declaration of Human Rights,” 357-58. Ninety voted in favour, nine abstained and none voted against the Declaration on Colonialism. The text was confirmed two years later by 101 votes in favour, none against and four abstentions; see

The record in the early years is ambiguous. The Declaration had little apparent impact on US policy. Contemporary analysis of foreign policy in the immediate post-World War period makes little reference to human rights. The subject was not very important for Washington. The Universal Declaration had immense influence and status elsewhere. A senior diplomat from Yugoslavia (one of the abstaining countries in 1948) insisted a few months later (after Yugoslavia had broken with the Cominform) that his country had voted in favour of the Declaration. This event suggests the growing status of the document.<sup>8</sup>

In 1949, one of the energetic supporters of the Declaration, O. Frederick Nolde stated that “[a]dequate appraisal [of the Declaration] must await the perspective of time.” The appraisal has become higher than most of its drafters expected. In 1948 some of those who praised the Declaration the highest insisted that the text was an authoritative interpretation of the human rights references in the Charter. Others feared such a development and therefore abstained from voting, for example South Africa. Forty-five years later, its prestige has reached out and diffused to all parts of the world. The Declaration has become a part of international customary law. Humphrey maintains that “[i]ts political authority is now second only to that of the charter itself. . . . In the considerable legislative work of the United Nations, the Declaration has become as a matter of practice the final arbiter and standard of reference to which every new text in related matters must conform.”<sup>9</sup>

The wide formal acceptance of the Declaration is not without ambiguity. The broad expressions which facilitated the drafting process, can now be used to justify acts which many consider as violating human rights. It is one thing to approve human rights in words and another to approve human rights in deed. The broad expressions of the Declaration also makes a direct implementation difficult.

Robertson, *Human Rights in World*, 28. Humphrey, "United Nations Charter and Universal Declaration of Human Rights," 53-54.

<sup>8</sup> Johnson, "Contribution of Eleanor and Franklin Roosevelt," 28 and 30. Humphrey, *Great Adventure*, 71.

<sup>9</sup> Nolde, 6. Nolde represented one of the NGOs which urged for international protection of human rights. He attended the drafting process of the Declaration as an observer. On the Universal Declaration as a part of customary law, see Humphrey, "International Protection of Human Rights," 51-53; Humphrey, "Magna Charta of Mankind," 37-39; Prochazka, "Changing Character of Universal Declaration;" Schwelb, *Human Rights and International Community*, 36-37; Sieghart, *International Law of Human Rights*, 53-54 and Vasak, "A 30-year Struggle," 29.

## The stage of deciding norms?

A great many human rights instruments were adopted within the frame of the United Nations during and after the preparation of the International Bill of Human Rights. First came adoption of the Convention on the Prevention and Punishment of the Crime of Genocide in 1948. This convention was more directly influenced by the Nazi crimes during World War II than the Universal Declaration. It has lived its life totally overshadowed by the Declaration. The Convention Relating to the Status of Refugees was adopted in 1951. The Slavery Convention of 1926 was amended by a Protocol in 1953. There were further conventions, such as the Convention on the Political Rights of Women (1953), the Convention relating to the Status of Stateless Persons (1954), the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (1956), the Declaration of the Rights of the Child (1959), the Declaration on the Granting of Independence to Colonial Countries and Peoples (1960), the Convention on the Reduction of Statelessness (1961), the Convention on the Elimination of All Forms of Racial Discrimination (1965), the Draft Convention on the Elimination of All Forms of Religious Intolerance (1967), the Declaration on Protection from Torture (1975), the Convention on the Elimination of All Forms of Discrimination against Women (1979), the Convention against Torture (1984); the Declaration on the Right to Development (1986), the Convention on the Rights of the Child (1989).<sup>10</sup>

It has been argued that during the first period of the United Nations and the Commission on Human Rights, their human rights activity concentrated on creation of norms and standards. This period was followed by efforts to make the human rights standards binding commitments. According to some the norm-creating period lasted until 1954, but others have extended this time-period to 1966. Looking at the list above, it may be asked whether it really has finished. A third phase has, however, started. The creation of norms and standards are only one part of the international protection of human rights. Standards are of little use if they are not respected. When the norms were adopted, the United Nations had to consider concrete violations of human rights. The strategy of name-calling was a hindrance in the process of drafting the Declaration, and it continued to be a hindrance of the observance of the Declaration. For a long time the ability of the United

<sup>10</sup> This list are mainly based on Brownlie, ed., *Basic Documents on Human Rights*, VII. The list may not be exhaustive, but nevertheless most of the norms created by the United Nations are included.

Nations to react was paralysed. The Cold War blocked any attempt to raise specific issues on the agenda. When, for example the United Kingdom suggested a resolution condemning the USSR treatment of Andrej Sakharov, the USSR "answered" by a counter-move on human rights in Northern Ireland. In the end, proposals and counter-proposals neutralized each other because the majority refused to take a stand on issues raised in the context of the East-West confrontation.<sup>11</sup>

This practice changed. The international reaction against the South African policy of apartheid became the turning point. In the late sixties the UN Commission on Human Rights established a special commission which delivered shocking reports and led to the convention against apartheid. The barrier was broken. The broad agreement on the criticism of South Africa expanded to the Israeli occupation of the West Bank and Pinochet' terror in Chile. Later El Salvador, Bolivia, Guatemala, Equatorial Guinea, Central African republic, Uganda, Iran, Afghanistan, Poland among others appeared on the list of states which were openly and critically evaluated. Fact-finding groups and special rapporteurs were among the "whole range of tools and mechanisms to deal in public with consistent patterns of gross violations on human rights." In addition, a secret procedure for considering potential violations of human rights was developed, the so-called "1503 procedure". This method was a compromise and involved a confidential examination of the alleged violation on human rights. The documentation was published only if the assertions were proven true.<sup>12</sup>

The practices referred to above represented an expansion of the UN activity for human rights. Decisions to consider human rights violations were still made on political grounds. They were not made on the basis of the severity of the violation. Serious violations of human rights were not always criticised because of political circumstances. This double standard or selectivity has been the target of much criticism, pointing to the need for improved selection criteria. Others find it unacceptable that a situation of gross violations of human rights in any country should not be discussed, or

<sup>11</sup> Forsythe, "United Nations and Human Rights," 250; Tolley, *U.N. Commission on Human Rights*, and Eide, "Det internasjonale menneskerettighetsvern," 216.

<sup>12</sup> van Boven, "United Nations and Human Rights; Innovation and Stagnation," 11-13 and 16. The "1503 procedure" is named after the number of the ECOSOC resolution which in 1971 adopted this practice. The procedure is thoroughly examined by Alston, *United Nations and Human Rights*, 144 ff. See also Gonzales, "Procedural Debates in United Nations."



actions taken therein, simply because other situations have not been taken up as well.<sup>13</sup>

## **Human rights activity outside the United Nations**

The growing concern for human rights is not only manifested within the United Nations. Much important human rights activity unfolds in other fora, either within regional IGOs or within NGOs.

On the regional level, several multilateral treaties include explicit references to the Universal Declaration as a part of their foundations. One of the most important is the legally binding European Convention on Human Rights (1950), later buttressed by several protocols. Within this framework the protection of human rights is entrusted in the European Human Rights Commission and the European Court of Human Rights. The Convention permits individual complaints of human rights violations, and has so far the strongest enforcement provisions than any other UN measures. The Convention deals almost exclusively with civil and political rights.

The American states got their Declaration in the spring of 1948 (the Bogotá Declaration) and adopted later (1954) a resolution which approved the Universal Declaration. A corresponding convention was adopted in 1969. The Charter of the Organization of African Unity, adopted 1963, included a reference to the Universal Declaration of Human Rights. This Charter has later been supplemented by the African Charter on Human and Peoples Freedom, adopted in 1981, in force from 1986. By 1992 it has been ratified by all member states except two, Ethiopia and Swaziland). A draft Charter on Human and People's Rights in the Arab World, was made by Arab human rights experts in 1986. Neither the League of Arab States nor any single Arab state had by 1993 approved the document.<sup>14</sup>

The Final Act of the Helsinki Conference of 1975, also known as The Conference of Security and Co-operation in Europe (CSCE), included statements on human rights. East-West cooperation and human rights were linked by the Final Act. The CSCE declarations represented a new development in this field. The Helsinki Conference put human rights on the

<sup>13</sup> van Boven, "United Nations and Human Rights; Innovation and Stagnation," 14.

<sup>14</sup> See Camargo, "American Convention on Human Rights" and Kunig, Benedek and Mahalu, *Emerging African System*, 95-106. It has been argued, however, that the African Charter on Human and People Freedom represented a step backward in the protection of human rights. The Charter include a lot of references to limitation clauses such as "in accordance with the law."

international agenda by connecting human rights questions to the negotiations on disarmament. The USSR, which was reluctant to speak about human rights on international level, had to accept the issue as part of the Final Act.<sup>15</sup>

In the United States there was a shift away from policy of the fifties which hampered the promotion of human rights. When President Jimmy Carter in 1977 gave human rights high priority in his foreign policy, this greatly helped international human rights activity. The end of the Cold War and the world wide wave of democratization in the 1990s have consolidated the position of human rights as a central issue on the international political agenda.

The NGOs' activities on human rights have increased during the last decades. The drafting process of the Universal Declaration and the human rights references in the UN Charter in particular, were inspired by individuals dedicated to human rights. Such activity, led by NGOs, has continued to play an important part in the field of human rights. Because of the criticism of the double standard in the human rights activity of the United Nations and other governmental agencies, such activism has been increased a lot. These organizations have also lobbied energetically at the United Nations. They must deserve much credit for the UN progress in the field of human rights. Among the most influential organizations are Amnesty International and the International Red Cross. Charta 77 and similar groups and organizations linked to churches and labour unions also played an important part.<sup>16</sup>

## **Towards a human rights regime**

The influence and status of the Declaration has exceeded the most far-reaching and optimistic interpretations during the drafting process. A document, which the Great Powers in particular refused to give binding force, is now widely accepted as a part of international customary law. Taking into account the emphasis some of the states laid on the non-legal

<sup>15</sup> See Maresca, *To Helsinki. The Conference on Security and Cooperation in Europe*.

<sup>16</sup> See Scoble and Wiseberg, "Human Rights NGOs." Amnesty International has been of essential importance for the present human rights concern, in particular in the West. In Third World countries the attitude toward Amnesty International is more ambiguous. The mandate of the organization mainly concerns civil and political rights, particularly the fate of political prisoners. Third World countries accuse it of neglecting social and economic rights and collective rights. In the recent years, the organization has, however, been more appreciated even in this part of the world.

character of the Declaration, it may be assumed that had the present significance and force of the Declaration been known during its drafting process, the text would have been adopted in a much weaker version. It was difficult to regulate its impact. When the text was adopted, the Declaration acquired a life of its own. An internationally adopted text of human rights which no voted against proved to have — despite its non-binding character — enormous moral force. A statement by Belarmino Austregesilo de Athayde, the Brazilian representative at the third session of the General Assembly, touched upon some of the essential features of the adoption of the Universal Declaration of Human Rights:

By making human rights international, the United Nations Charter had placed upon States positive legal obligations; it was the greatest of the victories achieved at the cost of the sacrifices made during the Second World War.<sup>17</sup>

By the Universal Declaration of Human Rights, the human rights references in the UN Charter got their authoritative interpretation. This interpretation is now a part of international customary law and constitutes the core of an international consensus on human rights.

In the words of Louis Henkin, the idea of human rights is “perhaps the only idea which is universally accepted.” John Gerard Ruggie compares its legitimacy to “the growing recognition of the validity of decolonialization throughout the twentieth century.” Of course, interpretation of particular formulations often vary according to culture and national interests. Even when agreement on interpretation obtains, practices does not always conform to norms. Governments systematically and grossly violate human rights. It is important to recognise that governments are sensitive to criticism on this point. “Certain governments accused of such violations have gone to considerable lengths to deny or to excuse their behaviour, thereby implicitly accepting the legitimacy of the very rights they have been abusing.” Human rights have achieved something equivalent to a moral hegemony.<sup>18</sup>

Some observers go further and argue that human rights constitute an international regime, which implies not only the existence of common norms but a modification of structures and functions to implement them. A persuasive case can be made that among the many UN human rights

<sup>17</sup> GAOR-TC 3, p. 54.

<sup>18</sup> Henkin, “The International Bill of Rights,” 18. Ruggie, “Human Rights and the Future International Community,” 96 and 100.

standards today the Universal Declaration is the most broadly accepted. The covenants have established stronger promotional activities and monitoring procedures than the Declaration. With their norms and procedures, the UN instruments and bodies dealing with human rights, the regional human rights activity and the standards and efforts of the NGOs to promote human rights, constitute at least a rudimentary form of an international human rights regime.<sup>19</sup>

The political changes which took place in Eastern Europe in 1989-90 and which have influenced most of the world, have transformed many of the traditional human rights conflicts. The East-West ideological warfare in which human rights were a weapon, is succeeded by a rather broad consensus on the definition of human rights. However, violations of human rights have assumed new forms, caused by lack of knowledge about what human rights really are and lack of will to give human rights a superior role in politics. At the same time, there are traces of a North-South division in the interpretation of human rights; some Southern states emphasize collective rights in opposition to the North's concentration on individual human rights. These differences are an important challenge to an international consensus on human rights.

<sup>19</sup> Donnelly, "International Human Rights: A Regime Analysis," Onuf and Peterson, "Human Rights from International Regimes Perspective" and Ruggie, "Human Rights and Future International Community" have used regime analysis in the human rights area. These "human rights regimists" were criticized by Henderson, "Human Rights and Regimes," arguing that their approach did not say anything new that cannot be said by traditional concepts.

# Appendix 1

## The Universal Declaration of Human Rights

### Preamble

*Whereas* recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

*Whereas* disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

*Whereas* it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,

*Whereas* it is essential to promote the development of friendly relations between nations,

*Whereas* the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,

*Whereas* Member States have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,

*Whereas* a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge,

*Now, therefore,*

*The General Assembly*

*Proclaims* this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of the Member States themselves and among the peoples of territories under their jurisdiction.

#### ARTICLE 1

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

#### ARTICLE 2

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

#### ARTICLE 3

Everyone has the right to life, liberty and the security of person.

#### ARTICLE 4

No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

#### ARTICLE 5

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

## ARTICLE 6

Everyone has the right to recognition everywhere as a person before the law.

## ARTICLE 7

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

## ARTICLE 8

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

## ARTICLE 9

No one shall be subjected to arbitrary arrest, detention or exile.

## ARTICLE 10

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

## ARTICLE 11

1. Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.
2. No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

## ARTICLE 12

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

### ARTICLE 13

1. Everyone has the right to freedom of movement and residence within the borders of each State.
2. Everyone has the right to leave any country including his own, and to return to his country.

### ARTICLE 14

1. Everyone has the right to seek and enjoy in other countries asylum from persecution.
2. This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

### ARTICLE 15

1. Everyone has the right to a nationality.
2. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

### ARTICLE 16

1. Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.
2. Marriage shall be entered into only with the free and full consent of the intending spouses.
3. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

### ARTICLE 17

1. Everyone has the right to own property alone as well as in association with others.
2. No one shall be arbitrarily deprived of his property.

### ARTICLE 18

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.



## ARTICLE 19

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

## 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 21

1. Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.
2. Everyone has the right of equal access to public service in his country.
3. The will of the people shall be the basis of the government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

## ARTICLE 22

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

## ARTICLE 23

1. Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.
2. Everyone, without any discrimination, has the right to equal pay for equal work.
3. Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.
4. Everyone has the right to form and to join trade unions for the protection of his interests.

## ARTICLE 24

Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

## ARTICLE 25

1. Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.
2. Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

## ARTICLE 26

1. Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.
2. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.
3. Parents have a prior right to choose the kind of education that shall be given to their children.

## ARTICLE 27

- 1 Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.
2. Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

## ARTICLE 28

Everyone is entitled to a social and international order in which the rights and freedoms set forth in this declaration can be fully realized.

## ARTICLE 29

1. Everyone has duties to the community in which alone the free and full development of his personality is possible.

2. In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing 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.

3. These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

#### ARTICLE 30

Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

## Appendix 2

# Human rights references in the UN Charter

The Charter of the United Nations has seven explicit references to human rights, including the reference in the Preamble. This appendix presents the actual articles and some articles which indirectly concern the human rights issue.

*The Preamble* proclaims: “We, the peoples of the United Nations determined . . . to reaffirm faith in *fundamental human rights*, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small. . . .”

*Article 1* examined the purposes and principles of the United Nations, and among the purposes are “[t]o achieve friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples” and “[t]o achieve international cooperation . . . in promoting and encouraging respect for *human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion.*”

In the Chapter which deals with the General Assembly, *Article 13* says: “The General Assembly shall initiate studies and make recommendations for the purpose of . . . assisting in the realization of *human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.*”

The Chapter in the UN Charter dealing with the International Economic and Social Cooperation opens with *Article 55*, which provides that “[w]ith a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote . . . universal respect for, and observance of, *human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.*” This article is the only one which also had a human rights reference in its model in the Dumbarton Oaks

Proposals. That suggestion sounds: "With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations, the Organization should facilitate solutions of international economic, social and other humanitarian problems and *promote respect for human rights and fundamental freedoms.*"

*Article 56* refers to the previous article, providing that "[a]ll Members pledge themselves to take joint and separate action in cooperation with the Organization for the achievement of the purposes set forth in *Article 55.*"

The part of the Charter dealing with the Economic and Social Council had several references to human rights. *Article 62* set out the Functions and Powers of the Council: "It may make recommendations for the purpose of promoting respect for, and observance of, *human rights and fundamental freedoms for all.*"

*Article 64* concerns also the human rights issue without mentioning the term: "The Economic and Social Council . . . may make arrangements with the Members of the United Nations and with the specialized agencies to obtain reports on the steps taken to give effect to its own recommendations and to recommendations on matters falling within its competence made by the General Assembly."

*Article 68* provides that "[t]he Economic and Social Council shall set up commissions in economic and social fields and for the promotion of *human rights*, and such other commissions as may be required for the performance of its functions."

*Article 71* deals with the human rights issue in an indirect way by empowering the Council to "make suitable arrangements for consultation with non-governmental organizations which are concerned with matters within its competence."

The Chapter dealing with the Trusteeship System has two articles which concern human rights, though only one of them refers to human rights. *Article 73* declares that "[m]embers of the United Nations which have or assume responsibilities for the administration of territories whose peoples have not yet attained a full measure of self-government recognize the principle that the interests of the inhabitants of these territories are paramount, and accept as a sacred trust the obligation to promote to the utmost, within the system of international peace and security established by

the present Charter, the well-being of the inhabitants of these territories, and, to this end:

a. to ensure, with due respect for the culture of the peoples concerned, their political, economic, social, and educational advancement, their just treatment, and their protection against abuses.”

*Article 76* provides that “[t]he basic objectives of the trusteeship system . . . shall be . . . to encourage respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion, and to encourage recognition of the interdependence of the peoples of the world.”

Table 1  
The chronology of the drafting process of the Declaration

	1946	1947	1948
January	General Assembly, 1 session, 1 part, London, 19 Jan-3 February.	Commission on Human Rights, 1 session, New York, 27 January-10 February.	Comm. on Status of Women, 2 session, New York, 5-19 Jan. Sub-Comm. on Freed. on Info. and of the Press, 2 session, New York, 19 Jan.-3 Febr.
February	ECOSOC, 1 session, London, 23 Jan-18 February.		ECOSOC, 6 session, New York, 2 February-11 March.
March		ECOSOC, 4 session, New York, 28 February-29 March.	
April			UN Conferance on Freedom of Information, Geneva, March/April.
May	Nuclear Commission on Human Rights, New York, 29 April- 20 May.	Sub-Commission on Freedom of Info. and of the Press, 1 session, New York, 19 May-4 June.	Drafting Committee on Human Rights, 2 session, New York, 3-21 May.
June	ECOSOC, 2 session, New York, 25 May-21 June.	Drafting Committee on Human Rights, 1 session, New York, 9-25 June.	Commission on Human Rights, 3 session, New York, 24 May-18 June.
July			
August	Humphrey director of Division on Human Rights, 1 August.	ECOSOC, 5 session, New York, 19 July-16 August.	ECOSOC, 7 session, Geneva, 19 July-28 August.
September			
October	ECOSOC, 3 session, New York, 11 September-3 October.		General Assembly, 3 session, 21 September- 12 December.
November	General Assembly, 1 session, 2 part, New York, 24 October-12 December.	Sub-Commission on Prevention of Discr. and Protection of Minorities, 1 session, Geneva, 24 November- 2 December.	General Assembly, Third Committee, 3 session, 30 September- 7 December.
December		Commission on Human Rights, 2 session, Geneva, 2-17 December.	Universal Declaration of Human Rights adopted 10 December.

Table 2: The representatives of the drafting bodies of the Declaration

State/body	CHR 1	DC 1	CHR 2	DC 2	CHR 3	TC/GA
Australia	Hodgson	Harry Hodgson	Hodgson	Heyward Hood	Hood Jockel	Hodgson
Belgium	Lebeau	xx	Dehousse	xx	Lebeau	de Wiart, Lebeau Dehousse
Byelorussia	Kaminsky	xx	Stephanenko	xx	Stepanenko	Kaminsky
Chile	del Rio	Santa Cruz	Cruz-Coke	Santa Cruz	Larrain Santa Cruz	Santa Cruz Larrain
China	Chang	Chang	C.H.Wu	T.Y.Wu	Chang T.Y.Wu	Chang T.Y.Wu
Egypt	Ebeid	xx	Loufti	xx	Loufti	Bahgat Raafat
France	Cassin	Cassin	Cassin	Cassin Ordonneau	Cassin	Cassin Ordonneau
India	Metha	xx	Metha	xx	Metha	Menon
Iran	Chani	xx	Pourevaly	xx		Esfandiary
Lebanon	Malik	Malik	Malik	Malik Azkoul	Malik	Malik
Panama	Alfaro	xx	Amado	xx	Quijano	Alfaro Quijano
Philippines Lopez	Romulo	xx	Romulo	xx	Lopez	Romulo Lopez
Ukraine		xx	Klekovkin	xx	Klekovkin	Demchenko Manuilsky
Ussr	Tepliakov	Koretsky	Bogomolov	Pavlov	Pavlov	Pavlov Bogomolov
United kingdom	Dukes	Wilson	Dukeston	Wilson	Wilson	Mayhew Davies
United states	Roosevelt	Roosevelt	Roosevelt	Roosvelt	Roosevelt	Roosevelt Thorp
Uruguay	Mora	xx	Victorica	xx	Mora	Quadros Ugon
Yugoslavia	Ribnikar	xx	Ribnikar	xx	Vilfan	Bakaric Vilfan



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