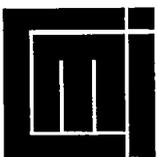


Human Rights as International Consensus

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

Åshild Samnøy

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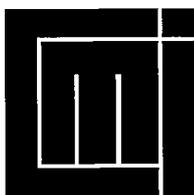
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Preface

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.

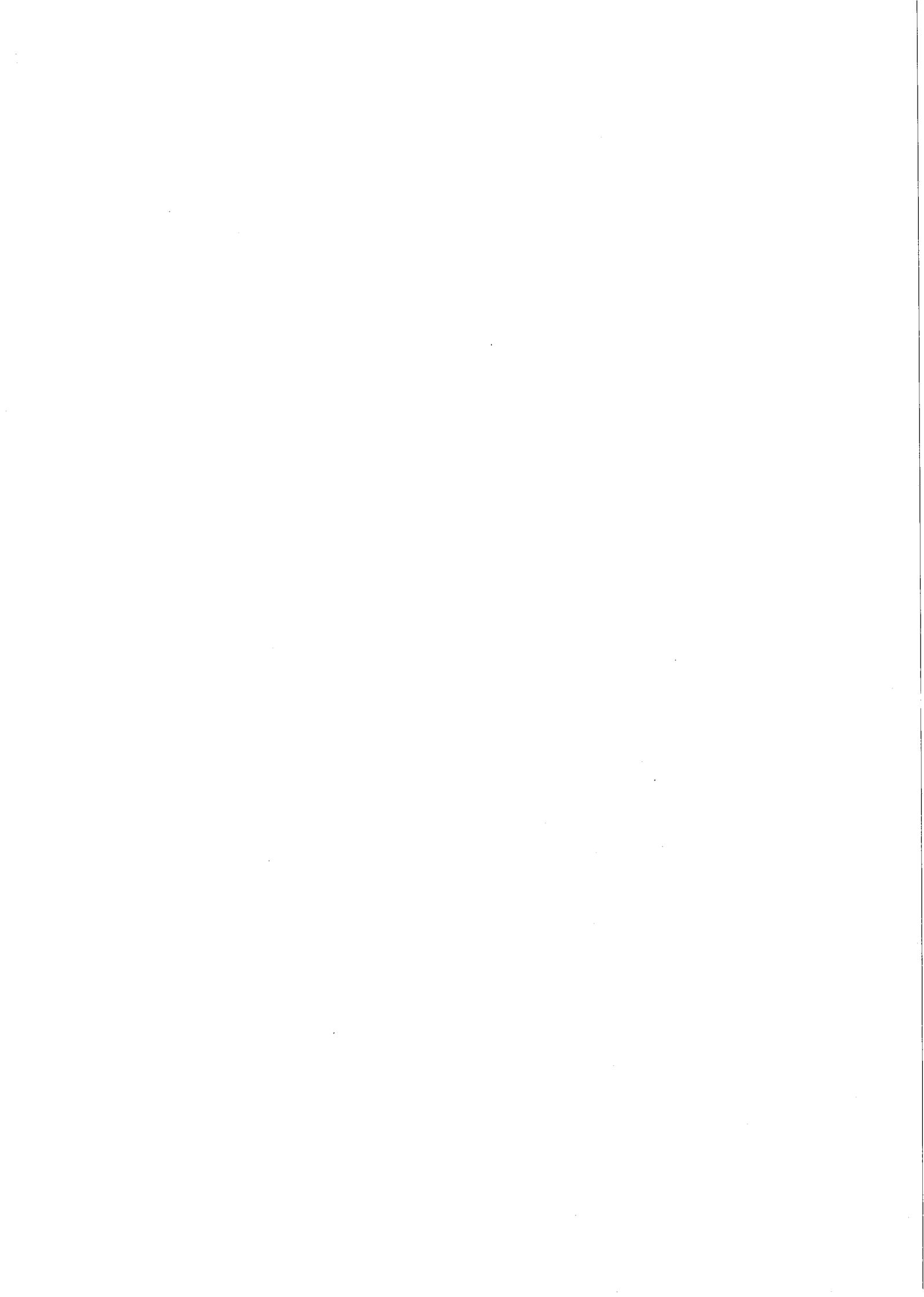
I am grateful to the Norwegian Research Council for Humanities (NAVF) and the Norwegian Ministry of Foreign Affairs for financial support.

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.¹ 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

¹ 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.²

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

² 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.³

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.⁴

³ 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*.

⁴ 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.⁵

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.⁶

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.

⁵ 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.

⁶ 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.⁷

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.⁸

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

⁷ 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."

⁸ 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.⁹

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.¹⁰

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

⁹ 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.

¹⁰ 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.¹¹

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.¹²

¹¹ Conot, *Justice at Nuremberg*, 3.

¹² 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?¹

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

¹ 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.²

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.”³

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 1945.⁴

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.

² 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.

³ 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.

⁴ 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.”

