

THE UNIVERSAL DECLARATION OF HUMAN RIGHTS

45th anniversary 1948-1993

PREFACE BY FEDERICO MAYOR
DIRECTOR-GENERAL OF UNESCO

ARTICLES BY GLEN JOHNSON
AND JANUSZ SYMONIDES



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PREFACE

The Universal Declaration of Human Rights is a beacon in the history of humanity. The unceasing struggle for the dignity of the individual and against all forms of injustice in time and space, has been marked by treaties, codes, declarations and proclamations that stand out as landmarks, as so many victories of the human spirit, now etched in men's minds and consigned in the written or customary laws of societies all over the world. On the occasion of the forty-fifth anniversary of the 1948 Declaration, this book sets out to retrace some of the lanes and bye-ways that remain fresh in the memory of man as he struggled for human rights.

Starting with a vivid overview of a few historical references and a description of the preparations of a universally applicable convention, the articles range from the legal, social, political and philosophical implications and repercussions of that text to the specific efforts of UNESCO to get it heard throughout the world, ranging from images to texts, from the encounters of differing viewpoints and the convergent aspirations of adults and young people alike, hoping thereby to strengthen and sharpen knowledge of human rights, to encourage reflection and to spur human energies on to even greater efforts in the future.

The constant affirmation of human dignity must be an ever-present, living concern: moral and political exigencies evolve as the world itself evolves and it is for this reason that human rights are both an ideal and a strategy.

Not only must these rights be constantly defended against violation, not only must they be consolidated so as to withstand the manifold dangers that threaten them, they must also be constantly extended and strengthened so as to widen

the horizons of freedom and individual creativity and to consolidate international understanding and solidarity.

Education for human rights involves unceasing activity and a renewal of efforts with each rising generation. This does not mean an unending, Sisyphus-like uphill struggle, quite the contrary. As the history of the world since the last War amply demonstrates, wherever it is protected and nourished, the seed of human rights eventfully sprouts, in spite of contrary winds, in whatever soil it has been planted.

Ideas of freedom slowly but surely make their way in men's minds irrespective of the obstacles they may come up against.

Federico Mayor
Director-General of UNESCO

**THE TEXT OF THE
UNIVERSAL DECLARATION OF
HUMAN RIGHTS**

Universal Declaration of Human Rights

Adopted and proclaimed by the United Nations General Assembly resolution 217 A (III) of 10 December 1948

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 people 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 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 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 to 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 limitations 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 to 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.

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 the 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.

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 again.

**WRITING THE
UNIVERSAL DECLARATION OF
HUMAN RIGHTS**

**M. Glen Johnson
Professor of Political Science
Vassar College, U.S.A.**

Between June, 1946 and December, 1948 a small group of unusual men and women worked in the new institutional setting of the United Nations to write a document which has become a major touchstone in the global struggle for human rights. In meetings in New York, in Geneva and, finally, in Paris, they debated philosophy, law, cultural differences and practical politics; they argued over tactics and language and reached compromises in pursuit of larger goals. Finally, late in the night of 10 December 1948, their efforts were rewarded when the General Assembly of the United Nations adopted, without dissent, the Universal Declaration of Human Rights. This is the story of their work, their trials, their confusions, their debates, the pressures on them and, in the end, their success - a success which substantially exceeded their own assessment at the time.

I. THE PLAYERS

The drama which produced the Universal Declaration had a remarkable cast of characters. Central were the four main members of the United Nations Commission on Human Rights: Eleanor Roosevelt of the United States, the Chair of the Commission; P.C. Chang of China, its Vice-Chair; Charles Malik of Lebanon, the Rapporteur, and René Cassin of France. The principal staff person of the Commission whose role far exceeded normal staff duties was John P. Humphrey, a Canadian lawyer who served as Director of the Division of Human Rights in the fledgling United Nations Secretariat. They were prodded and monitored by a remarkably skilled and committed group of representatives of non-governmental organizations, many of whom were continuing roles they had played in strengthening the human rights mandate which emerged from the United Nations Charter negotiations.

ELEANOR ROOSEVELT

Mrs. Roosevelt, widow of the late American President whose name was practically synonymous with the war against fascism and the development of international institutions to foster peace and freedom, had been an unusually active and visible First Lady but she was frightfully inexperienced in arenas usually reserved for international diplomats. She had overcome a rather lonely and isolating childhood, a lack of extensive formal education and an unfulfilling experience as wife and mother to become a confident partner in one of the most unusual political alliances in history. She was the peripatetic eyes and ears for the physically handicapped president, travelling relentlessly, speaking widely, reporting to and prodding Franklin D. Roosevelt (FDR), peppering various officers of government with queries about individual problems in ways later institutionalized as governmental *ombudsmen* and, through it all, building a not inconsiderable political reputation in her own right.

After FDR died, his inexperienced and politically insecure successor, Harry Truman, asked Mrs. Roosevelt to join the first US delegation to the UN. His purpose was frankly political - to have her on «his» team and, at the same time, distance her from some of those politically touchy causes with which she had become identified. Senior members of the US delegation were appalled by the appointment and succeeded in «relegating» her to the Third Committee (Social, Humanitarian and Cultural) where, they assumed, important issues would be eschewed and she could do no harm. It was natural therefore, that she should also be selected to serve on the Economic and Social Council and eventually on its Human Rights Commission¹.

¹ For a more complete analysis of Eleanor Roosevelt's role on the Human Rights Commission, see my "The Contributions of Eleanor and Franklin Roosevelt to the Development of International Protection for Human Rights", *Human Rights Quarterly*, 9:1, February 1987, pp. 19-48. Readers interested

Eleanor Roosevelt was neither a scholar nor a profound thinker. Her contribution to the drafting of the Universal Declaration of Human Rights was not made in the realm of philosophy or legal analysis². She was a doer, a prodder, a facilitator, a consensus builder. These were the skills she brought to her task as Chair of the Human Rights Commission and its Drafting Committee. Without her skills in managing different human relationships and often conflicting cultural perspectives, it seems unlikely that we would have today a Universal Declaration adopted without dissent by the General Assembly and incorporated by reference so widely in other United Nations and national constitutional documents³. It should also be said that the diligence and

in more complete treatments of Mrs. Roosevelt's life and work should consult the "semi-official" biography by Joseph P. Lash, *Eleanor and Franklin*. New York: Norton, 1971 and *Eleanor: The Years Alone*. London: Andre Deutsch, 1973; and the more recent, avowedly feminist interpretation in the first volume of a projected two volume biography by Blanche Wiesen Cook, *Eleanor Roosevelt*. New York: Viking, 1992.

² She, herself, was among the first to recognize her limitations as Chair of the Human Rights Commission. She once told readers of the six-times-a-week syndicated newspaper column she wrote from the 1930s until shortly before her death in 1962:

"The writing of a preliminary draft of the bill of rights may not seem so terrifying to my colleagues in the drafting group -- Dr. P. C. Chang, Dr. Charles Malik and John Humphrey, all of whom are learned gentlemen. But to me it seems a task for which I am ill-equipped.

However, I may be able to help them put into words the high thoughts which they can gather from past history and from the actuality of the contemporary situation, so that the average human being can understand and strive for the objectives set forth. I used to tell my husband that, if he could make me understand something, it would be clear to all the other people in the country -- and perhaps that will be my real value on this drafting commission!"

Eleanor Roosevelt, *My Day*, Release date, 12 February 1947, text in Eleanor Roosevelt Papers (Hereafter ER Papers), Franklin D. Roosevelt Library, Hyde Park, NY.

³ This is the judgement of, among others, Porter McKeever who worked with her at the UN. Porter McKeever interview, 24

enthusiasm she brought to her task coupled with her public standing in the United States and abroad, gave a stature to the whole effort which would have been unlikely without her⁴.

Mrs. Roosevelt became, in so many ways, the persona of the human rights effort in the early post-war years that we sometimes forget that she was surrounded by an unusually able and interesting group of people both as members of the Commission and working with the Secretariat and with various non-governmental organizations (NGOs).

P. C. CHANG

The Vice-Chair of the Commission was Dr. P. C. Chang of China. Dr. Chang was educated primarily in the United States, first as an undergraduate at Clark University and then as a graduate student at Columbia University where he earned his Doctorate with a thesis on education and modernization in China. Although Western educated and at home in Western academic settings - he served as a visiting professor at the University of Chicago and several British Universities - Dr. Chang was one of the few members of the Commission who consistently reminded his colleagues that a Universal Declaration had to incorporate philosophical systems other than those of the West and he himself frequently cited Confucian principles to inform the discussion. Humphrey credits him with using his mastery of Confu-

March 1979, Eleanor Roosevelt Oral History Project, Roosevelt Library.

⁴ John P. Humphrey, who was Director of the Human Rights Division of the Secretariat at the time, sees this as her most important contribution. See his *Human Rights and the United Nations: A Great Adventure*. Dobbs Ferry, NY: Transnational Publishers, 1984, p. 5.

cian philosophy to find compromise language at particularly difficult points⁵.

CHARLES H. MALIK

Charles Malik of Lebanon served as rapporteur of the Commission. A tall, striking Greek Orthodox Christian, Malik also served as President of the Economic and Social Council and Chair of the Third Committee during the 1948 debates on the Universal Declaration. Educated in philosophy at the American University of Beirut, Freiburg and Harvard, where he took his Ph. D., Malik taught at AUB for many years. He succeeded Mrs. Roosevelt as Chair of the Human Rights Commission in 1951 and later became President of the General Assembly. Malik was a towering figure in more ways than one. American State Department analysts said that he had «acquired a reputation of being a mental and metaphysical gymnast and, some say, an eccentric⁶«. But he was destined to play a critical role in the drafting and adoption of the Declaration. In fact, Durward Sandifer, one of Mrs. Roosevelt's State Department aides, considered the two of them particularly responsible for the successful conclusion of the effort to draft and secure the adoption of the Universal Declaration⁷. A firm believer in the natural law basis of human rights, Malik was often prickly, sometimes approaching dogmatic. He supported the unsuccessful but sometimes divisive effort to write a natural law foundation into the Declaration⁸.

⁵ Humphrey, p.23 (see Note 4).

⁶ United States, Department of State, "Biographic Reports", in *US Delegation Handbook, No. 2*, UN Commission on Human Rights, Third Session, Lake Success, NY, May-June 1948, in Box 4595, ER Papers, Roosevelt Library.

⁷ Durward Sandifer interview, 27 April 1979, Eleanor Roosevelt Oral History Project, Roosevelt Library.

⁸ Some indication of his views can be gathered from his article on "International Business-Government Relations", pp. 3-48 in

RENÉ CASSIN

A fourth very significant member of the Commission was René Cassin, the distinguished French lawyer and philosopher who was later awarded the Nobel Peace Prize for his human rights work. One of France's leading jurists, Cassin had been President of the Law Faculty of the University of Paris. With the outbreak of the Second World War, he joined General de Gaulle in London where he became chief legal adviser and brought his considerable prestige to de Gaulle's resistance movement⁹. An outstanding public speaker, Cassin was asked by the drafting committee to write an early draft of the Declaration. His handwritten draft, produced over a long weekend, is an interesting mix of the many suggestions which had been put forward by various governments and NGOs. Although the French and the Americans were sometimes at pains to outdo each other in their claims to have originated human rights, at least one American State Department official considered Cassin and Mrs. Roosevelt to be the two outstanding members of the Commission and a State Department Memorandum noted that, in his work on the Human Rights Commission, Cassin was «very considerate of other members, easy to deal with and not insistent on his own ideas which were generally very constructive».

Sol Linowitz, Charles H. Malik and Daniel Parker, *The Creative Interface: International Business-Government Relations*, Vol. 2. Washington: American University, 1970. See also Charles H. Malik, *War and Peace*. Stamford, Conn.: The Overbrook Press, 1950.

⁹ Unless otherwise indicated, biographical information and judgements are taken from United States, Department of State, "Biographic Reports".

OTHER COMMISSION MEMBERS

Mrs. Roosevelt, Chang, Malik and Cassin were clearly the giants of the Commission and of the drafting and adoption of the Universal Declaration of Human Rights but there were other Commission members who played crucial roles in various parts of the drama.

Professor Fernand Dehousse also played a prominent role in the work of the Commission. A Belgian Socialist who had been Professor of Law at the University of Liege and editor of an underground newspaper during the German occupation, Dehousse was described by the State Department as «intelligent, energetic and affable, although disposed to considerable directness in manner».

Col. William Hodgson of Australia, short of stature, with bushy gray hair, a heavily lined face, and a stubby moustache, was sufficiently lame from a First World War wound to require a cane. Holder of the *Croix de Guerre*, Col. Hodgson was a complex character - chauvinistic, nationalistic, blunt, direct and sometimes irascible in fighting the battle of the small nations in a world of big powers.

Mrs. Hansa Mehta, the Indian representative, an active member of the Indian National Congress, the independence movement, had served significant terms of imprisonment for her anti-colonial activities. President of SNDT Women's University, Mrs. Mehta was evaluated by the US State Department as an intelligent person, a clear thinker, but her effectiveness was somewhat limited by the fact that she spoke in a barely audible whisper.

JOHN P. HUMPHREY

The principal staff person in the Secretariat responsible for the work of the Human Rights Commission was John P. Humphrey, the Director of the Human Rights Divi-

sion in the Secretariat's Department of Social Affairs. Humphrey, a hard-nosed and pragmatic Canadian international lawyer, was also a passionate idealist when it came to human rights. A former Dean of the Faculty of Law at McGill University, he was described by the State Department as someone who «demonstrated unusual qualities of constructive leadership». Equally at home in French and English and skilled as a civil servant, Humphrey became an important link between English and French-speaking cultural perspectives, between scholars and pragmatists, between politicians and civil servants. He carried the main responsibility for gathering and analyzing the background documents which informed the Commission's work. These he assembled in a 408 page «Documented Outline» which became the working document for the Commission¹⁰. Following extended service at the United Nations, Humphrey returned to McGill and continued his distinguished human rights work in Canada and around the world. He has written widely on human rights matters generally and the Universal Declaration in particular and, in 1984, authored a memoir of his UN human rights work¹¹.

NON-GOVERNMENTAL ORGANIZATIONS (NGOs)

This unusually talented and imaginative cast of characters worked in a close relationship with many representatives of non-governmental organizations. The institutionalization of NGO involvement was one of the remarkable innovations of the new United Nations system. Human rights work became the focus of some of the most extensive manifestations of that involvement. Individuals and organizations submitted drafts and comments to the

¹⁰ United Nations, Economic and Social Council, Division of Human Rights, Documented Outline, UN Doc E/CN.4/AC.1/3/Add.1, 2 June 1947, in Box 4594, ER Papers.

¹¹ Humphrey (see Note 4).

Commission and representatives of some NGOs regularly attended and even participated in Commission sessions including sessions of its Drafting Committee. In this, they were continuing a tradition established in the drafting of the UN Charter. The most active NGOs were based in the United States which seemed to reflect both the geographical realities of headquarters location and the involvement of these same NGOs during Charter-drafting. We will consider the contributions of some of these groups later. For now it will suffice to introduce them briefly.

The American Law Institute was responsible for the preparation of an important draft which was embraced and pressed by the Government of Panama whose foreign minister, Alfredo Alfaro, had been among its authors. Other significant drafts and comments were submitted by the American Federation of Labor, the Commission to Study the Organization of Peace of the American Association for the United Nations, the American Jewish Committee, the Federal Council of Churches, the Women's Trade Union League, the American Bar Association, etc. While US NGOs predominated, communications were also received from some international NGOs including the Inter-American Bar Association, the International League for the Rights of Man, and non-recognized NGOs including peace groups, lawyers groups, church groups and individuals from the US, the United Kingdom, Germany, Canada, Australia, Argentina, Denmark, France and Palestine¹²

II. THE CONTEXT

This remarkable cast did not suddenly simply appear on the world stage to write an International Bill of Rights.

¹² Many of these communications can be found in File # 605-5-1-2-3, Central Registry, 1946-47, RAG-1/:73, UN Archives, New York, NY.

They came together in a specific context - a context which provided the mandate for the work they were about to do. That context included two salient features - the global reaction to the widespread and horrendous violations of the most basic human rights which had characterized the Second World War and the hope and authority with which the United Nations had been invested at its inception.

REVULSION AT HUMAN RIGHTS VIOLATIONS.

Except for the limited precedents of the International Labour Organisation and the not very satisfying efforts to protect minorities through treaties sponsored by the League of Nations, the standard assumption of international relations before the Second World War was that the treatment of citizens by their own governments, however offensive it might be, was not properly the concern of other governments or of international organizations. The bestial behaviour of fascist regimes on the eve of and during the Second World War, however, so offended the global conscience that statesmen and citizens alike began to search for international protection for some basic standard of human dignity and worth¹³.

The American President, Franklin D. Roosevelt, articulated some of these goals in his statement of war aims of 6 January 1941, a speech we have come to char-

¹³ Recent scholarship has substantially enlarged our understanding of the links between World War II and the Universal Declaration. See Jan Herman Burgess, "The Road to San Francisco: The Revival of the Human Rights Idea in the Twentieth Century", *Human Rights Quarterly*, 14:4, November, 1992, pp. 447-477; Johannes Morsink, "World War II and the Universal Declaration", *Human Rights Quarterly*, 15:2, May, 1993, pp. 357-405; and my "The Contributions of Eleanor and Franklin Roosevelt ...".

acterize as «The Four Freedoms»¹⁴. The Atlantic Charter agreement between Roosevelt and British Prime Minister Winston Churchill in August 1941, also contained references to international human rights obligations¹⁵ and the allied United Nations Declaration of 1942 broadened these commitments still farther¹⁶.

THE UNITED NATIONS HUMAN RIGHTS MANDATE

In this context of analysis and commitment, the major allied powers began their preparation for a post-war general international organization to keep the peace and offer some sort of protection for basic human rights. The major focus of their effort was the maintenance of international peace and security - to protect future generations, in the words of the United Nations Charter, from «the scourge of war». Their attention to human rights was secondary, almost tangential - but real nonetheless - because allied war aims had so often been cast in human rights terms. The United States, in particular, following President Roosevelt's lead, was determined that global human rights should be incorporated in the Charter. Before the process was over, American leaders would find themselves caught between their British and Soviet allies on the one hand who were less keen on international human rights protections and the representatives of smaller states and their own NGO consultants on the other hand who pressed for more precise, clear and specific commitments in this area.

¹⁴ *The Public Papers and Addresses of Franklin D. Roosevelt: War -- And Aid to Democracies, 1940*. New York: Macmillan, 1941, pp. 663-672.

¹⁵ *The Public Papers and Addresses of Franklin D. Roosevelt: The Call to Battle Stations, 1941*. New York: Harper and Bros., 1950, pp. 314-315.

¹⁶ *The Public Papers and Addresses of Franklin D. Roosevelt: Humanity on the Defensive, 1942*. New York: Harper and Bros., 1950, pp. 3-5.

From the beginning, American NGOs had prodded the State Department to take human rights seriously indeed as it worked to develop a charter for a new international organization. Members of the State Department's Planning Group were frequent participants in the deliberations of groups such as the American Law Institute and the Commission to Study the Organization of Peace¹⁷. On the other hand, the US Government was constantly cautioned by such important figures as Senator Arthur H. Vandenberg of Michigan, Senior Republican on the Foreign Relations Committee, to resist the temptation to do too much in the way of enforceable policies in the human rights area where he realized cultural differences were likely to loom larger as time went on¹⁸. To an administration keenly aware of President Wilson's unsuccessful attempt to secure Senate approval of the League of Nations Covenant, Senator Vandenberg's views demanded careful attention.

The initial predisposition within the American Planning Group was to incorporate an international bill of rights into or add it as a simultaneous supplement to the charter creating a new international organization. Indeed, early planning groups actually drafted a version of a bill of rights giving traditional American emphasis to familiar civil and political rights and wrestling rather inconclusively with economic rights and enforcement measures. Difficulties of substance and language revealed in these discussions coupled with the sense of urgency attendant upon the whole Charter-drafting enterprise finally led American officials to conclude that adoption of a formal

¹⁷ A good summary of this activity may be found in Alice M. McDiarmid, "The Charter and the Promotion of Human Rights", *US Department of State Bulletin*, 10 February 1946, pp. 210-212.

¹⁸ See L. K. Hyde, Jr., *The United States and the United Nations: Promoting the Public Welfare -- Examples of American Cooperation, 1945-1955*. New York: Manhattan Publishing Co. for the Carnegie Endowment for International Peace, 1960, pp. 38, 159.

bill of rights would have to follow rather than accompany Charter adoption rather like the American Bill of Rights had followed the adoption of the US Constitution, an analogy made by the US Secretary of State himself¹⁹. They concluded that only a brief reference to human rights should be incorporated into the Charter itself.

Even this modest approach provoked objections from the Soviet Union and the United Kingdom. As the allies worked out their joint proposals at Dumbarton Oaks, however, the US delegation succeeded in including a reference to the promotion of human rights as a way of creating conditions of stability and well-being necessary to peaceful and friendly relations among nations²⁰.

Even before the Dumbarton Oaks Proposals could be considered at the San Francisco Conference on International Organization in May 1945, the United States had clear evidence that other states and NGOs had a somewhat different set of priorities for the proposed international organization, namely, greater emphasis on social and economic affairs in general and human rights in particular. A major demonstration of differing views came during the Mexico City Conference of American States in February and March 1945. There, the US found Latin American countries insistent that a higher priority be attached to human rights and that the proposed Economic and Social Council (under whose purview human rights

¹⁹ See "Report to the President on the Results of the San Francisco Conference, by the Chairman of the United States Delegation, the Secretary of State, June 26, 1945", in United States, Senate, Committee on Foreign Relations, *Hearings on the Charter of the United Nations*, 79th Cong., 1st Sess., 9-13 July 1945. Washington: US Government Printing Office, 1945, p. 108.

²⁰ These developments are summarized in the definitive study of the US role in the creation of the United Nations Charter, Ruth B. Russell, *A History of the United Nations Charter: The Role of the United States, 1940-1945*. Washington: Brookings Institution, 1958, pp. 323-29, 423-24.

would primarily fall) should be elevated to one of the principal organs of the United Nations²¹.

At San Francisco, NGO consultants added their voices to demands that human rights commitments be made more prominent, more precise and more extensive in the Charter. The American Secretary of State, Edward Stettinius, who also served as President of the San Francisco Conference, paid tribute to the effectiveness of the NGOs on human rights issues when he submitted his report on the Conference to President Truman²². Their pressure persuaded the sponsoring powers - the United States, the United Kingdom, the Soviet Union and China - to propose a series of amendments to their own Dumbarton Oaks Proposals, amendments designed to upgrade the Economic and Social Council and enhance the commitment to human rights.

Several Latin American countries joined in suggesting that the human rights provisions of the Charter be strengthened. Their efforts reflected, in part, an emphasis that had emerged from the Inter-American Conference in Mexico in February and March 1945. That conference had called for the development of a Declaration of the International Rights and Duties of Man by the Inter-

²¹ Ibid., pp. 568-569.

²² See "Report to the President...", p. 105. Stettinius said:
"In no part of the deliberations of the Conference was greater interest displayed by the group of American consultants, representing forty-two leading American organizations and groups concerned with American foreign relations, than in the opportunity accorded to extend the enjoyment of human rights and basic freedoms to all peoples. They warmly endorsed the additions to the statement of objectives. Beyond this they urged that the Charter itself should provide for adequate machinery to further these objectives. A direct outgrowth of discussions between the United States Delegation and the consultants was the proposal of the United States Delegation, in which it was joined by the other Sponsoring Powers, that the Charter (Article 68) be amended to provide for a commission on human rights...".

American Juridical Committee. Chile and Cuba both tried to introduce similar mandates at San Francisco and Panama urged that a Declaration of Essential Human Rights, which had been drafted by a multinational committee under the auspices of the American Law Institute, be attached to or incorporated into the Charter. None of these suggestions prevailed but issues raised by them were discussed again during the drafting of the Universal Declaration²³.

The outcome of this effort was a Charter with no fewer than seven references to human rights, references which were to serve as a mandate for the Human Rights Commission as it embarked on its quest for an international bill of rights. The Preamble of the Charter asserts a determination by the «Peoples of the United Nations ... to reaffirm faith in fundamental human rights, in the dignity and worth of the human person...». One of the important additions made at the San Francisco Conference was the inclusion among the purposes of the United Nations: «To achieve international co-operation ... in promoting and encouraging respect for human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion...». (Article 1) Similar, although slightly varied language appears in the description of the function and powers of the General Assembly (Article 13), the Economic and Social Council (Article 62), and the Trusteeship System (Article 76). In Articles 55 and 56, members pledge cooperative effort to achieve, inter alia, «universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion». And, in what became probably the most important of the San Francisco

²³ See James Frederick Green, *The United Nations and Human Rights*. Washington: Brookings Institution, 1956, p. 15. The declaration mandated by the Mexico City Conference was completed before the Human Rights Commission finished its work and became an important factor in the final framing of the Universal Declaration.

amendments, adopted largely at the prodding of the US NGOs, Article 68 mandates that the Economic and Social Council, now defined as one of the principle organs of the United Nations, set up commissions «in economic and social fields and for the promotion of human rights²⁴ ».

Although an extended analysis of the Charter provisions on human rights is beyond the scope of this paper, a couple of important points should be noted. First the language used is consistently that of promoting and encouraging human rights rather than protecting or guaranteeing. More compelling language had been considered - indeed, Panama, among others, had pressed vigorously for stronger wording - but rejected as subject to the possible interpretation that it carried a legally enforceable obligation²⁵. As we shall see, this issue was to surface again during the drafting of the Universal Declaration.

Second, it is important to note that the domestic jurisdiction limitation on UN authority was directly related in its inception to human rights issues. In an attempt to meet Soviet and British objections to US human rights proposals at Dumbarton Oaks, the American Group had suggested the following compromise wording:

The International Organization should refrain from intervention in the internal affairs of any state, it being the responsibility of each state to see that conditions prevailing within its jurisdiction do not endanger international peace and security and, to this end, to respect the human rights and fundamental freedoms of all its people and to govern in accordance with principles of humanity and justice²⁶.

²⁴ Ibid., pp. 15-23.

²⁵ Russell, pp. 780-781.

²⁶ Quoted in Ibid., p. 423. See also her discussion on pp. 423, 463-464.

Although the direct link between human rights and domestic jurisdiction clauses was eventually eliminated from the Charter in favour of a more sweeping domestic jurisdiction limitation [Article 2(7)], the connection would surface again while the Universal Declaration was being drafted.

III. DRAFTING THE UNIVERSAL DECLARATION

The Economic and Social Council (ECOSOC) of the United Nations held its first meeting in February 1946. It decided to begin to fulfil its human rights mandate by creating something it rather unfortunately called a nuclear Commission on Human Rights. The frame of reference given to the nuclear Commission included submitting reports and proposals on an international bill of rights. That Commission met in April-May 1946. It was composed of nine members elected by the ECOSOC in their personal capacities rather than as representatives of their governments²⁷. Mrs. Roosevelt was elected Chair with Chang as Vice-Chair and Malik as Rapporteur. Much of the work of the nuclear Commission concerned establishing the full Commission and setting its terms of reference and pattern of work. It made its only report to the ECOSOC which responded in June 1946 by electing 18 members of the full Commission. The Commission held its first session in January and February 1947. Its members, although

²⁷ At one point there had been an intent to specify in the Charter that the members of ECOSOC Commissions should be "experts" in the appropriate fields rather than instructed delegates of their respective governments but this had been abandoned in response to the argument that only official governmental representatives would insure that recommendations could be implemented. So the Human Rights Commission, among others, came to be staffed by instructed governmental representatives. See *ibid.*, p. 794. See also James P. Hendrick, "An International Bill of Human Rights", *US Department of State Bulletin*, 15 February 1948, pp. 196-197.

chosen after technical consultation with the Secretary General in order to insure balance and expertise, were instructed representatives of their governments²⁸.

DEFINING AN INTERNATIONAL BILL OF RIGHTS

In the Nuclear Commission and in the full Commission, members had first to determine what they were going to do. Both the Charter mandate and the terms of reference voted by the ECOSOC were broad and would have to be ordered in some way. The principal question involved the meaning of the term international bill of rights. As members looked at national precedents from the French Declaration of the Rights of Man and the Citizen and the US Bill of Rights and the drafts submitted to them by various governments and NGOs, there seemed to be three possible approaches which could be employed either jointly or separately. One model would involve a simple declaration of goals or standards which, although lacking legal

²⁸ Researchers who work in Eleanor Roosevelt's papers at Hyde Park can get a feel for the way in which instruction operated. Scattered through her files from the Human Rights Commission are the handwritten notes passed to her by the Foreign Service Officers assigned to her by the State Department, usually James P. Hendrick. They say, "Vote Yes here", or "US Govt opposes this", or "You're on your own here", or "Use your own judgement". Unfortunately for the researcher, there is usually no indication of the nature of the issue on which the instruction was being given. Hendrick comments that he discovered early on that these notes were more effective than the customary method of whispering in her ear from his usual position behind her. Although he doesn't say so, this was probably because Mrs. Roosevelt was partially deaf. See handwritten explanatory note added by Hendrick to a carbon of a letter he wrote to Mrs. Roosevelt on 29 March 1950 in James P. Hendrick Papers, Harry S. Truman Library, Independence, Mo., Xerox copy in James P. Hendrick File, Small Collections, Roosevelt Library, Hyde Park, NY. See also Sandifer interview, pp. 14-18, where he discusses the role of the adviser in the American UN delegation.

precision and standing, would have moral force as a pronouncement by the global community. A second model would involve a covenant or covenants, legally binding on states accepting them as treaties under international law. A third model would be to focus on implementation by establishing international machinery to protect human rights.

From the start it seemed clear that the question of implementation would be the thorniest because it raised the issue of domestic jurisdiction in the most direct way. But the other two models raised questions of their own which would be resolved more by the evolution of events than by formal decision and which were to be debated through all the Commission and ECOSOC sessions until the adoption of the Universal Declaration by the General Assembly in December 1948.

One group argued that priority should be given to work on a general declaration since the people of the world expected prompt international action by the United Nations. A declaration would, presumably, be quicker of adoption because it would require neither legal precision in language nor the time-consuming process of national ratifications. Moreover, they argued, such a declaration would have enormous authority as the first statement of a human rights consensus by representatives of most of the countries of the world.

Against this, others advocated priority for work on a covenant. They argued that simple declarations were inadequate because they were unenforceable either through national or international processes. Global expectations, they argued, pressed for legally effective protections; a simple declaration might be little more than a cruel hoax. Moreover, some argued that global pressures for effective action might be at least partially dissipated by a widely publicized declaration, thereby

making the adoption of binding covenants more difficult²⁹.

Without resolving this controversy, the nuclear Commission signaled its preference for an international bill of rights which could be drafted rather rapidly³⁰. But the ECOSOC refused to choose among these alternatives continuing to instruct the Commission to work on the declaration and the binding covenants along with the implementation procedures which, together, came to be referred to as the International Bill of Human Rights.

THE DRAFTING PROCESS

The Commission had created a drafting committee composed of Malik, Chang and Mrs. Roosevelt assisted by Humphrey, later enlarged by adding representatives of Australia, Chile, France, the Soviet Union and the United Kingdom. The Drafting Committee met initially on 9 June 1947. It worked with the 408 page Documented Outline prepared by Humphrey and his staff³¹. The Documented Outline contained a draft bill of rights prepared by the Secretariat³², annotated with references

²⁹ See, for example, the arguments of Mr. Newlands, representative from New Zealand, in the Third Committee debates, United Nations, General Assembly, Official Records of the Third Session of the General Assembly, Part I, Social, Humanitarian and Cultural Questions, Third Committee, *Summary Records of Meetings, 21 September-8 December, 1948*. Lake Success, NY: 1948, p. 34. Hereafter Third Committee, *Summary Records*.

³⁰ UN Doc E/38 Rev. 1, 21 May 1946, Commission on Human Rights, *Report of the Commission on Human Rights to the Second Session of the Economic and Social Council*, p. 6.

³¹ UN Doc E/CN.4/AC.1/3/Add.1, *Documented Outline*.

³² In preparing the draft, Humphrey had drawn on the many earlier statements of human rights and drafts submitted by governments and NGOs. His description of the process is found in Humphrey, pp. 31-32, in which he notes, "The best of the texts from which I worked was the one prepared by the American Law Institute, and I borrowed freely from it". His

to 1) observations made by members of the Human Rights Commission at its first session in January-February 1947, 2) drafts and proposals submitted by the Governments of Chile, Cuba, Panama, India and the USA, 3) provisions in the national constitutions of some 55 countries and 4) draft declarations submitted by certain NGOs. The Human Rights Commission also had before it a British draft convention and a precis of communications received from various NGOs³³.

Working with this material, the Drafting Committee debated the alternatives of a morally compelling declaration or a legally binding convention or treaty. By this time, American delegates were beginning to worry about potential problems which could arise if they had to submit a binding Covenant in the form of a treaty, the text of which reflected diplomatic compromise, for the advice and consent of the US Senate³⁴. This growing concern reinforced the US preference for the declaration approach, a predisposition already evident in Mrs. Roosevelt's desire to accomplish something tangible as soon as possible. The British, however, took a different view, believing that a somewhat vague declaration of goals would have little value and preferring, as they had

hand-written version of the Secretariat draft is among his papers deposited with the McGill University Library, Montreal, PQ, Canada. Responding to questions at the first session of the Drafting Committee, Humphrey asserted that no particular philosophy had guided the Secretariat draft which simply attempted to "include all the rights mentioned in various national constitutions and in various suggestions for an International Bill of Human Rights". UN Doc E/CN.4/AC.1/SR/1, 10 June 1947, Commission on Human Rights, Drafting Committee, First Session, *Summary Record of the First Meeting, 9 June, 1947*, p. 5.

³³ *United Nations Press Release*, 9 June 1947 in Box 4587, ER Papers.

³⁴ See Memorandum of Conversation between Mrs. Roosevelt, Senator Austin, Mr. Ross, Mr. Winslow and Mr. Hendrick, 3 July 1947, in Box 4587, ER Papers.

in League of Nations days, a treaty binding on ratifying states and carrying precise obligations³⁵.

In the end the Commission agreed to continue work on both but in fact devoted most of its attention to the declaration. The Drafting Committee appointed a temporary working group composed of Cassin, Malik, Wilson of the United Kingdom and Mrs. Roosevelt and that group in turn asked Cassin to come up with a draft declaration working from the Secretariat Outline. This he did over a long weekend in June. His draft, modified slightly by the other members of the temporary working committee, became the text from which the full Drafting Committee worked to prepare the document it eventually submitted to the Commission³⁶. The Drafting Committee devoted only brief attention to the draft Convention submitted by the United Kingdom. In the end, it forwarded to the Commission a slightly altered and rearranged version of the United Kingdom draft as a report rather than a recommended draft³⁷. As Eleanor Roosevelt noted, the Declaration was clearly the more carefully drafted and fully considered of the two³⁸.

Implementation questions received even less attention. In fact, only one meeting was devoted to the issue

³⁵ Green, p. 26 (see Note 23).

³⁶ See UN Doc E/CN.4/21, United Nations, Economic and Social Council, Commission on Human Rights, Drafting Committee on an International Bill of Human Rights, First Session, *Report of the Drafting Committee to the Commission on Human Rights*, 1 July 1947, pp. 3-4. The Cassin draft, the original of which is in the United Nations Archives in New York, has become somewhat controversial. It has been used to support a claim that Cassin was the "father of the Universal Declaration". At the other extreme, it has been criticized as little more than an alternative French translation of various other outlines. Humphrey discusses this matter at some length in his book cited above, pp. 42-45.

³⁷ UN Doc E/CN.4/21, *Report of the Drafting Committee*, pp. 64-67.

³⁸ See Memorandum of Conversation between Mrs. Roosevelt, Senator Austin, Mr. Ross, Mr. Winslow and Mr. Hendrick, 3 July 1947, in Box 4587, ER Papers.

and the Drafting Committee reported to the Commission only the rather inchoate observations made by individual members during that meeting³⁹.

Thus, by the time the full Commission reassembled for its second session in December 1947, it had before it three reports: a brief draft declaration of general principles favoured by the United States, a binding covenant essentially as submitted by the United Kingdom and almost random comments on measures for implementation⁴⁰.

At its second session that December, the Commission continued to work on all three fronts - declaration, convention (now called covenant) and measures for implementation - by dividing into three working groups. Although the session lasted only two weeks, the Commission made a good deal of progress refining the declaration. By the end of the session, they had a fairly finished draft ready for submission to governments for comment. Although it remained in less finished form (it was still essentially the United Kingdom draft), the draft Covenant was also submitted to governments for comment.

At its Third Session in June 1948, the Commission considered governmental comments which had been received. It turned out that such comments were rather few and rather tentative; the shortness of time and the cumbersome nature of most governmental bureaucracies combined with the low priority many governments gave to human rights to limit the number and completeness of responses⁴¹. Nevertheless, the Commission revised the draft and recommended it to the ECOSOC which, after a

³⁹ UN Doc E/CN.4/21, *Report of the Drafting Committee*, pp. 4-5.

⁴⁰ Green, p. 25 (see Note 23).

⁴¹ See UN Doc E/CN.4/82/Add.4, United Nations, Economic and Social Council, Commission on Human Rights, *Comments from Governments on the Draft International Declaration of Human Rights, Draft International Covenant on Human Rights and Measures for Implementation*, 27 April 1948.

brief discussion, recommended it to the General Assembly.

Thus when the General Assembly met in Paris in September 1948, it had before it the draft declaration as approved by the Commission on Human Rights some three months earlier. The Draft Declaration was referred to the Third Committee (Social, Humanitarian and Cultural) of which Malik was the Chair and where Mrs. Roosevelt represented the United States. Cassin and a number of other Commission members also represented their countries on the Third Committee.

The careful work of the Commission did not prevent the Third Committee from debating the document at length. In fact it held eighty-five meetings on the Declaration plus another twenty meetings of its various sub-committees⁴². Although many issues already debated in the Commission were reargued and numerous amendments were offered, voted upon, and, in several cases, adopted, the document which finally emerged from the Third Committee on December 6 was strikingly similar in style and wording to the Commission draft.

After a dramatic debate, although brief when compared to that of the Third Committee, and only one successful amendment, the General Assembly adopted the Universal Declaration of Human Rights on 10 December 1948 by a vote of 48 to 0 with 8 abstentions. The abstentions came from the nations of the «Communist bloc» plus South Africa and Saudi Arabia. The reasons for these abstentions will become clear later. Mrs. Roosevelt, in particular, had worked especially hard to secure unanimity, personally lobbying many

⁴² See Third Committee, *Summary Records*. See also Malik's summary of the Third Committee's work in United Nations, Official Records of the Third Session of the General Assembly, Part I, Plenary Meetings of the General Assembly, *Summary Records of Meetings, 21 September-12 December, 1948*. Paris: Palais de Chaillot, p. 860 (Hereafter, General Assembly, *Summary Records*).

wavering delegates⁴³ and, after the vote, the delegates paid her the highly unusual tribute of a standing ovation.

IV. DEFINING HUMAN RIGHTS

When John P. Humphrey and his staff in the Secretariat set about fulfilling their instruction to prepare a documented outline from which the Commission on Human Rights could work, he and the Commission inaugurated an intellectual discussion of global dimensions which continues to this day. There had been discussions of the content of human rights before. Indeed, wars had been

⁴³ Porter McKeever, who worked with her at the United States Mission to the UN in those years, tells the interesting story of Mrs. Roosevelt's discovery that the Pakistani representative to the Third Committee intended to vote against the Declaration because she believed the provision for a right to change one's religion was contrary to the dictates of Islam -- a view which, in fact, led the Saudi Arabian delegate to abstain in the final vote. Mrs. Roosevelt raised the question with Sir Mohammed Zafrullah Khan, the Chair of the Pakistani delegation, who asserted that, although that view was technically correct, the Koran also taught that hypocrisy was a more serious sin; persons should therefore not profess a religion in which they did not believe. Pakistan voted for the Declaration. See McKeever interview, 24 May 1979, Eleanor Roosevelt Oral History Project. Sir Mohammed Zafrullah Khan quoted the Koran in the General Assembly debate: "Let he who chooses to believe, believe, and he who chooses to disbelieve, disbelieve", and he told the delegates. "it formally condemned not lack of faith but hypocrisy". General Assembly, *Summary Records*, p. 890. See also Joseph P. Lash, *Eleanor: The Years Alone*. London: Andre Deutsch, 1973, p. 79. Herbert Evatt, the Australian President of the General Assembly, singled out Mrs. Roosevelt for particular praise noting it was "particularly fitting that there should be present, on that occasion, the person who, with the assistance of many others, has played a leading role in that work, the person who had raised to even greater heights even so great a name: Mrs. Roosevelt, the representative of the United States of America". General Assembly, *Summary Records*, p. 934.

fought to establish a particular notion of human rights. But these earlier debates had been among people who shared a common culture, held common values and lived in some degree of geographic proximity to one another. They sought to find different strands in their common culture to support varied emphases in human rights. What Humphrey and the Commission sought to do was vastly different and far more complex. They sought to find a common conception of human rights that would command acceptance despite huge differences in culture, political systems, geographic location and economic circumstance. In fact, some considered it to be the main virtue of the Universal Declaration that it answered affirmatively and positively the fundamental question of whether it was possible to agree on a universal standard in the human rights area⁴⁴. Herbert Evatt, the Australian President of the General Assembly at the time, expressed such a view when he said, «For the first time in history, the international community as a whole has spoken its collective mind about the fundamental freedoms and rights for which individual nations have fought and suffered and died through the centuries»⁴⁵. Finding that collective mind and reaching that agreement, however, were not easy tasks.

⁴⁴ See, for example, a draft memorandum titled "Study on Human Rights Covenants by Consultative Council of Jewish Organizations" in Files of Oscar Schachter, Director, General Legal Division, United Nations, Box 52, United Nations Archives, New York. See also the comments of René Cassin in Third Committee, *Summary Records*, p. 62.

⁴⁵ Herbert V. Evatt, "The World's Most Powerful Influence for Peace", *United Nations Bulletin*. 1 January 1949, p. 2. See also the comments of the British delegate in the General Assembly debate, cited in Hersch Lauterpacht, "The Universal Declaration of Human Rights", *British Year Book of International Law 1948*. London: Oxford University Press, 1948, p. 371.

THE BELIEF IN CONSENSUS

Many of those involved, especially those whose background was in Western Europe or the United States, began with the assumption that human rights were clear cut concepts on which there was widespread agreement. Indeed, there was relatively little discussion of the substantive content of human rights during the US Government's preparatory work for the United Nations Charter. It was quickly agreed that human rights referred to such familiar concepts as political liberties and judicial guarantees subsumed later under the now more familiar phrase civil and political rights. Economic security rights occasioned some discussion growing out of Franklin Roosevelt's formulation of «Freedom from Want» as one of the «Four Freedoms» back in 1941 and there was some brief debate over a proposed right to education because it touched the American belief in the separation of church and state. Most of the human rights discussion at that time, however, revolved around questions of international implementation rather than substantive content⁴⁶.

Another indication of presumed consensus may be found in an exercise conducted in December 1943, by the Universities Committee on Post-War International Problems, in co-operation with the World Peace Foundation. It assembled groups of faculty from forty-six colleges and universities in the United States to discuss an analysis of post-war international human rights prepared by Professor Quincy Wright, the distinguished political scientist from the University of Chicago. The results of those discussion groups were analyzed by Charles A. Baylis in *The Public Opinion Quarterly*. Baylis found a consensus on the substantive character of human rights, a consensus which largely mirrored Western concepts of civil and political rights. While Baylis reported these

⁴⁶ Russell, pp. 324-326.

informed citizens as recognizing distinctions between various types of rights such as universal and relative or negative (essentially civil and political) and positive (essentially economic) rights, distinctions which were to become far more familiar later on, he found a consensus that only those familiar to Western liberal thought could command enough support for immediate international action. Others would require much longer to achieve; immediate international implementation in those areas would have to be restricted to programs of education and propaganda⁴⁷.

One of the few attempts prior to the work of the United Nations Commission on Human Rights to develop a broader consensus on content was that undertaken under the auspices of the American Law Institute. In 1942, the Institute appointed a committee of lawyers and political scientists from several different countries representing many different cultural and philosophical systems. It included persons from Germany, France, Italy, Poland, India, Great Britain, Spain, China, Canada, and Panama, as well as the United States. There were also persons familiar with Syrian, Lebanese, Chinese and Soviet thought and experts on international law. The Committee, chaired by William Draper Lewis, Director of the American Law Institute, worked for nearly two years to produce a *Statement of Essential Human Rights*, the statement Humphrey described as the best of those he had to work with when developing his draft⁴⁸. Although the Institute decided it should not formally champion the draft, it was taken up by the Panamanian Government, whose former president had been a member of the Committee. Panama tried unsuccessfully at San Francisco to have this draft incorporated into the Charter and again to have it adopted at the first session of the General Assembly.

⁴⁷ Charles A. Baylis, "Towards an International Bill of Rights", *The Public Opinion Quarterly*, 8:2. Summer, 1944, pp. 244-253.

⁴⁸ Humphrey, p. 43 (see Note 4).

The draft consists of eighteen short articles enunciating familiar freedoms of religion, opinion, speech, assembly and association, freedom from wrongful interference, arbitrary detention, discrimination on grounds of race, religion, sex and from retroactive laws, as well as rights to fair trial, ownership of property and participation in government. It also includes economic rights such as rights to education, work, reasonable conditions of work, food and housing and social security. Article 18 incorporates a very interesting notion that these rights are limited by the rights of others and the «just requirements of the democratic state»⁴⁹. A preamble adorns a longer version which includes commentaries on each article. It is worth quoting because it reflects certain philosophical assumptions which were to become issues during the various debates in the Human Rights Commission:

Upon the freedom of the individual depends the welfare of the people, the safety of the state and the peace of the world.

In society complete freedom cannot be attained; the liberties of the one are limited by the liberties of others, and the preservation of freedom requires the fulfilment by individuals of their duties as members of society.

The function of the state is to promote conditions under which the individual can be most free.

To express those freedoms to which every human being is entitled and to assure that all shall live under a government of the people, by the people, for the people, this declaration is made.

⁴⁹ The text of the Statement was published and distributed by the American's United for World Organization in 1945. It is printed in UN Doc A/148, 24 October 1946, *Statement of Essential Human Rights Presented by the Delegation of Panama*.

There was some disagreement within the Committee appointed by the American Law Institute and it was unable to achieve complete consensus, a fact which gave the Institute itself pause and contributed to its decision to refrain from putting the draft forward with Institute endorsement⁵⁰.

By the time the United Nations Commission on Human Rights was organized, the belief in a consensus based largely on culturally specific assumptions remained strong although the effort by the American Law Institute Committee had begun to reveal some of the problems of realizing such a consensus.

FUNDAMENTAL DIFFERENCES OF CULTURE AND VALUES

Natural Law versus Positivism: Early on in the deliberations of the Commission, substantive differences began to emerge more clearly. One of the most persistent of these problems involved the basis on which rights could be claimed. Western notions of rights grew out of a natural law tradition which held that human beings had rights because they were so endowed by nature and, some said, nature's God. This was, of course, the philosophical presupposition which lay behind the American Declaration of Independence - men are «endowed by their Creator with certain unalienable Rights...». Whether one included the more explicitly religious character of this argument or not, it still involved basing rights on some supra-national and extra-human phenomenon. This notion of human rights reflected one of the dominant interpretations of the appropriate grounding for international law,

⁵⁰ See also American Law Institute, *Proceedings*, 32, 1943-44, pp. 32-34. The minutes of the Committee (1942-43) and other materials used by the Committee -- a rich source of early ideas -- may be found in DAG-18/2.1.1-1 and DAG-18/2.1.1-2, UN Archives, New York.

one which was elaborated by a bevy of Eighteenth Century European philosophers who were cited repeatedly in the debates over the Universal Declaration.

A contrasting view of the basis for claiming rights was found in the more recent notion of positivism which held that rights (and, indeed, law itself) are determined by the actions and behaviour of human beings and, by extension, of states⁵¹. In this view, representing the triumph of rationalism, states and human beings were unconstrained by extra-human law, but voluntarily and rationally entered into self-limiting behaviour in order to maximize their opportunities for national- or self-fulfilment. Human rights, like international law, could be discovered, therefore, by examining the limits states placed on their own actions.

In the deliberations of the Commission, this fundamental philosophical disagreement was reflected in the argument over the proposal to include in the preamble some reference to God or nature as the source of the rights proclaimed in the Declaration. The Dutch championed this view and tried in the Third Committee debate to amend the draft declaration in this way. Even in the General Assembly debate, the Dutch delegate, Dr. J. H. van Roijen, regretted that «man's divine origin and immortal destiny had not been mentioned in the declaration, for the fount of all those rights was the Supreme Being, who laid a great responsibility on those who claimed them. To ignore that relation was almost the same as severing a plant from its roots, or building a house and forgetting the foundation⁵²«. Although the Dutch proposal received substantial support, especially from several European countries, it was resisted by a number of others, both those which took a positivist stance and those non-Western countries which viewed

⁵¹ A brief summary of these different perspectives may be found in Michael Akehurst, *A Modern Introduction to International Law*, 6th edition. London: Allen and Unwin, 1987, pp. 13-15.

⁵² General Assembly, *Summary Records*, p. 874. See also Third Committee, *Summary Records*, pp. 755-56.

such natural law manifestations as emblematic of Western cultural values.

Liberalism versus Marxism: A second and, in some ways, more difficult conflict emerged between the representatives of Western liberalism and those of Marxist states. It was joined at at least three levels: 1) philosophical, 2) historical, and 3) practical. At the philosophical level, Marxism's notion of rights was group based and suspicious of what it saw as the alienating and fragmenting individualism of Western liberalism. It viewed economic access and well-being as an essential prerequisite to the effective enjoyment of political and civil rights, an ordering which Western liberalism just reversed. Moreover, Marxists believed that human rights could only be achieved within the framework of societal needs and rights; human rights would only exist when the rights of states were insured for states were the principal instruments for the achievement of human rights. And Marxists considered the Western emphasis on civil and political rights to be nothing more than bourgeois rights, i. e., rights which could be exercised, at best, by the capitalist class and which, at worst, could be used as an instrument of oppression against the working class. Moreover, Marxists believed that the state, representing society as a whole, had a special obligation to insure the observance of rights and to insure economic welfare, something which was upsetting to classical liberal thought as interference with freedom.

At the historical level, Marxist countries argued that they had achieved a level of equality in access to economic resources which still eluded Western capitalist societies and which was a source of pride to them. They resented the Western emphasis on political and civil rights which they considered an attempt to mask inadequate performance in the area of economic equality. Representatives from Western Europe, the United States and Latin America, however, pointed to the denial of civil and political rights in Marxist countries to raise

objections to their proposals regarding the Universal Declaration.

And at the practical level of international politics, these conflicts of philosophy and historical emphasis were mobilized in the service of an emerging cold war. The Western powers, especially the major Western powers, increasingly saw in human rights issues a major weapon to be used in the cold war with the Soviet Union and the Soviet Union came to see the human rights debate at the United Nations at least partly as a Western attack. And the Soviets often gave as good as they got.

Rarely was this perspective made clearer than in the speech Mrs. Roosevelt delivered at the Sorbonne in September 1948⁵³. The speech, delivered in French, was largely written for Mrs. Roosevelt by the US Department of State. It received wide attention in Europe and was described by one American analyst as «a cold war speech designed to show the world that the United States, not the Soviet Union, was the real champion and exemplar of human rights and that this was what the cold war was all about⁵⁴». The debate was carried back into the General Assembly debates where Western delegates, including Mrs. Roosevelt, attacked Soviet violations of civil and political rights and the Soviet Union and its allies not only defended their record on these issues but attacked the United States and other Western countries for high rates of unemployment, unequal access to education and inadequate leisure for workers which, they alleged, violated rights to work, leisure and education.

An indication of the fundamental nature of these differences arose during the First Session of the Commission in January 1947. Commenting on a draft submitted by the American Federation of Labor, the Yugoslav representative, Dr. Ribnikar, argued that new economic

⁵³ Eleanor Roosevelt, "The Struggle for Human Rights", *Department of State Bulletin*. 10 October 1948, pp. 457-466.

⁵⁴ A. Glenn Mower, Jr., *The United States, the United Nations and Human Rights: The Eleanor Roosevelt and Jimmy Carter Eras*. Westport, Conn: Greenwood Press, 1979, p. 35.

conditions in the modern era had given rise to a new collective spirit which meant that the social ideal or goal was for the interests of society and the individual to be identical. Both Malik and Miss Sender, the Representative of the American Federation of Labor, were quick to take issue with Dr. Ribnikar. Asserting that his perspective was a recipe for tyranny, they defended the individual political and civil basis of rights⁵⁵. The Soviets were neither persuaded nor deterred; Andrei Vyshinsky, a leading Soviet international lawyer whose clash with Mrs. Roosevelt on the issue of refugees in the first General Assembly session had become something of a UN legend, returned to the theme in the General Assembly debate on the Declaration, asserting that in the Soviet system, «The State and the individual were in harmony with each other; their interests coincided⁵⁶ «.

During the Commission's work, these philosophical, historical and political differences created perhaps fewer difficulties than might have been anticipated. The Soviet representatives were changed rather frequently, sometimes did not participate fully in the deliberations and generally did not appear to attach very much importance to the work of the Commission. They did, however, offer both general and specific amendments to various drafts of the Declaration. With few exceptions, their recommended changes were defeated overwhelmingly by the majority of the Commission members; subsequent efforts met the same fate in both the Third Committee and the plenary session of the General Assembly.

Generally, amendments offered by the Soviets and their allies were designed to achieve or support several principles related to their own philosophical, historical and political perspectives. For example, in the Third Committee debate on the Commission draft in the fall of 1948, Mr. Modzelewski of Poland urged that the Declaration should include the following principles: 1) that the

⁵⁵ Hendrick, "An International Bill ...", p. 197 (see Note 27).

⁵⁶ General Assembly, *Summary Records*, p. 929.

granting of political rights are useless unless social and economic rights are guaranteed; 2) that the granting of rights should be dependent on the fulfilment of obligations; 3) that rights should be granted to all people including those in trust or non-self-governing territories; 4) that the adoption of the Declaration should not entail any interference in the domestic jurisdiction of sovereign states; and 5) that freedom of speech and expression should not be extended to fascists⁵⁷.

It should not be thought that differences over the appropriateness of economic and social rights were exclusively between Marxist societies and Western liberalism. Many Western socialists and representatives of what we later have come to call third world countries also attached high importance to incorporating some version of economic and social rights into a declaration. Indeed, in this effort, many of them took Franklin Roosevelt's notion of « Freedom from Want » as their text. The official US position tended to be the most conservative, viewing economic and social rights as nothing more than statements of goals and aspirations, not as rights in the sense of creating certain claims for governmental action⁵⁸. Marxist states tended to be the most radical, emphasizing the primacy of economic and social rights over civil and political rights and placing the rights of States at least on a level of equality with individual rights. But the issues of the appropriate emphasis on economic and social rights and the rights and responsibilities of States were argued with varied nuances and emphases by many representatives in the Commission and in the Third Committee. The argument

⁵⁷ Third Committee, *Summary Records*, pp. 46-47. See also the summary of the comments by the Soviet representative, Mr. Pavlov, in *ibid.*, pp. 57-59.

⁵⁸ See, for example, Mrs. Roosevelt's speech on the night the Universal Declaration was adopted. Eleanor Roosevelt, "General Assembly Adopts Declaration of Human Rights: Statement by Mrs. Franklin D. Roosevelt", *Department of State Bulletin* 19, 19 December 1948., p. 751.

foreshadowed important differences of emphasis which would continue to spark debate throughout the process of drafting the two major human rights covenants and beyond.

Western versus Non-Western: Drafting the Universal Declaration revealed broad philosophical differences about the appropriate content of human rights. It should be noted, however, that the differences debated at that time and the perspectives which informed the final version of the Declaration were essentially drawn from the European philosophical tradition. Natural law and positivist traditions as well as those of the Marxists were all firmly rooted in the evolution of European philosophy and law. Non-European traditions of law and philosophy as they might suggest alternative or supplementary ideals of human rights rarely intruded into the deliberations. Even those members of the Commission who represented non-European countries were, themselves, largely educated in the European tradition, either in Europe or the United States or in the institutions established in their own countries by representatives of European colonial powers. Although there were occasional references to relevant ideas in non-European traditions such as Confucian or Islamic thought, the European frame of reference was overwhelmingly dominant in the deliberations from which the Universal Declaration emerged⁵⁹.

⁵⁹ For a somewhat more extended discussion of the problems of cultural and philosophical differences in defining human rights, see my "Human Rights in Divergent Conceptual Settings: How do Ideas Influence Policy Choices?" in David Cingranelli (ed.), *Human Rights: Theory and Measurement*. London: Macmillan, 1988, pp. 41-59, esp. 42-45. For a different perspective, see Jack Donnelly, "Human Rights and Human Dignity: An Analytical Critique of Non-Western Conceptions of Human Rights", *American Political Science Review*, 1982, pp. 303-316. See also Jack Donnelly, *Universal Human Rights in Theory and Practice*. Ithaca and London: Cornell University Press, 1989 and the work of Alison Dundes Renteln, especially her "The Unanswered Challenge of Relativism and the

Thus, the third world perspectives which subsequently came to dominate the United Nations system were fundamentally unrepresented in the process of drafting the Universal Declaration. Of course, many of the «new» states which joined the United Nations after the adoption of the Declaration in 1948 would embrace it and, in a significant number of cases, incorporate it by reference in their own constitutions. And many regional organizations outside Europe would also incorporate the Declaration by reference in various treaties and resolutions. Still, the change in the UN majority helps explain the shift in emphasis as between the Universal Declaration and subsequent United Nations human rights statements and resolutions, a shift perhaps most notable in passages dealing with property rights.

DEBATING SPECIFIC RIGHTS

In addition to the broad differences which informed the general debate over the Declaration, many of the specific articles generated substantial disagreements over substance and wording. Indeed, each and every article was debated at length in the Commission, its Drafting Committee and in the Third Committee⁶⁰.

For example, Article 1 of the Declaration as finally adopted reads: «All human beings are born free and equal

Consequences for Human Rights", *Human Rights Quarterly*, 7, 1985, pp. 514-540 and her "Relativism and the Search for Human Rights", *American Anthropologist*, 90, 1988, pp. 56-72. Two important non-Western contributions to this discussion may be found in R. Pannikar, "Is the Notion of Human Rights a Western Concept?" *Diogenes*, 120, 1982, pp. 75-102 and S. P. Sinha, "Human Rights: A Non-Western Viewpoint", *Archiv für Rechts -- und Sozialphilosophie*, 67, 1981, pp. 76-91.

⁶⁰ Unless otherwise indicated, the discussion of the debate on specific articles is documented in Third Committee, *Summary Records*, pp. 32-790, 847-890.

in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood». It raised a number of problems throughout the drafting process. For one thing, the question of the natural law basis of human rights was raised by the question, «endowed by whom?» After substantial debate, including proposals to insert «by nature» or references, with varying degrees of specificity, to the deity, it was decided to finesse the whole question by simply asserting human endowment.

Some feminists felt that the phrase, «all human beings», did not sufficiently assert that the rights detailed in the Declaration belonged equally to women and men. They feared that, in some countries, at least, the omission of explicit reference to women would permit leaders from cultures based on male dominance to continue to read rights as something belonging to men only⁶¹. Other delegates, including Mrs. Roosevelt, insisted that the reference to all human beings clearly included women, a view reinforced by the non-discrimination provision in 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».

Some representatives felt that Article 1 asserted a belief rather than a right and should, therefore, be incorporated into the preamble rather than into the body of the document.

The non-discrimination provisions of Article 2 also occasioned considerable debate, mainly over the inclusion or exclusion of some particular status from the listing of grounds for discrimination. Some countries, notably South Africa, argued that non-discrimination should apply only to certain fundamental rights, a category which, in their view excluded a number of rights incor-

⁶¹ See, for example, the comments of Mrs. Bodil Begtrup of Denmark in General Assembly, *Summary Records*, p. 892.

porated into the Declaration, among them the right to participate in government.

The second paragraph of Article 2, applying the non-discriminatory clause regardless of the dependent status of the country or territory to which a person belonged, raised a number of problems. In the first instance, some representatives took the view that at least some of the rights specified in the Declaration should not necessarily apply to residents of colonies or trust territories⁶². Others raised constitutional problems for federal systems arguing that central governments as members of the United Nations might not have constitutional authority to implement some of these rights in their constituent political units⁶³.

Article 3 providing for the right to life, liberty and the security of person raised questions of when life began and the conditions, if any, under which the State had the right to impose a death penalty or to restrain liberty.

Article 4 prohibiting slavery and servitude prompted concern over the issue of «voluntary» servitude. The debate over this question put into sharp relief the problem of finding language which would mean the same thing to people whose native tongues differed so much.

Even this brief recitation will suffice to illustrate the complexities and difficulties in drafting the language of the Declaration. Similar comments could be made reflecting the debate on every article in the Declaration. It may be more useful, however, to focus on several articles which raised very important and rather controversial issues especially those which reflected the funda-

⁶² Interestingly, the British proposed the only successful amendment to the Third Committee draft when it came before the Plenary of the General Assembly. That amendment removed a separate article assuring the applicability of rights in non-self-governing territories and inserting it, instead, as a second paragraph in Article 2. See General Assembly, *Summary Records*, p. 803.

⁶³ See, for example, the comments of Lester Pearson of Canada in *ibid.*, pp. 899-900.

mental divisions outlined above. Articles 16, 17 and 18 dealing, respectively, with marriage, property and religion raised these questions as did Articles 23 (right to work) and 26 (education). Article 29 dealing with duties and state responsibilities also raised fundamental questions.

Marriage: The marriage provisions of Article 16 touched on some of the most central issues of cultural traditions for most societies define and regulate marriage in very detailed and varied ways by both law and custom. Indeed, few customs are as central to the maintenance and perpetuation of a given culture as those surrounding the institution of marriage. To assert, as the final version of the Declaration does, that men and women have the right to marry without limitation «due to race, nationality or religion», that they are entitled to equal rights in marriage, that both intending spouses must freely and fully consent to the marriage, and that the family is «the natural and fundamental group unit of society and is entitled to protection by society and the State», undercuts some deeply rooted cultural beliefs in almost every society in the world.

Beliefs in racial or religious constraints on the choice of marriage partners were - and are - widely prevalent in Europe and America as well as in many parts of what we now call the third world. It has not been particularly unusual to find such constraints embodied in law. Indeed the non-discrimination clause of Article 16 was not included in the draft submitted by the Commission but was added through an amendment proposed by Mexico.

Many societies have practiced arranged marriages in such a way as to limit - if not to eliminate - the consent of the intending spouses. The notion that the wife should properly be treated in a manner different from the husband is a view not only widely held but often sanctioned by principles of law and religion. Finally, although the view that the family is «the natural and fundamental

group unit of society» was not substantially challenged in the debates of the 1940s (as it might be today by gay rights activists and others), there was real doubt about the wisdom of assigning to the State a responsibility for protecting the family unit⁶⁴, a provision added to the Commission draft as a result of an amendment proposed by the Soviet Union. There was also considerable discussion of the desirability of a more explicit expression of a right to divorce and to equal treatment of men and women in divorce and a Soviet amendment to this effect was initially adopted by the Third Committee. In the end, however, the less explicit version asserting equal rights «as to marriage, during marriage and at its dissolution» prevailed.

Although many of the other rights embodied in the Declaration contradicted standard practice in many societies, those practices, including such things as torture, restriction of freedom of speech, the press, etc., were not practices which would be defended in principle or justified by reference to religion or law - at least not in the same way as the cultural values surrounding marriage regulations. A passage from the Official Summary of the comments by the Saudi Arabian delegate during the Third Committee debate on this Article illustrates the point:

In Saudi Arabia, marriage constituted a sort of social contract defined by law and that system had successfully survived some fourteen centuries. A Moslem woman could own, inherit and dispose of property, and that without her husband's consent. In the event of a divorce, she automatically received a sum of money which the husband had agreed to pay before their marriage was celebrated. Her material fate did not depend therefore on the decision of a tribunal, a decision often long delayed in come

⁶⁴ See, for example, the comments of the Dutch delegate in Third Committee, *Summary Records*, p. 368.

countries. Those two instances were sufficient illustration of the extent to which Islamic law was explicit on the smallest details of marriage.

He wished, in that connexion, to emphasize the fact that apparently the authors of the draft declaration had, for the most part, taken into consideration only the standards recognized by western civilization and had ignored more ancient civilizations which were past the experimental stage, and the institutions of which, for example, marriage, had proved their wisdom down through the centuries. It was not for the Committee to proclaim the superiority of one civilization over all others or to establish uniform standards for all the countries of the world⁶⁵.

Religion: Similar, although perhaps even more intensely felt, questions involving differing cultural perspectives were raised during the debate on what became Article 18 guaranteeing freedom of religion. Two issues dominated the comments of the members of the Commission and the Third Committee - the assertion of a right to manifest religion or belief and a right to change one's religion. Both were kept in the final draft but not without pointed debate in the first instance and not without provoking abstention in the final General Assembly vote in the second.

As might be expected, the right to freedom of religion aroused the intense interest of a number of religious groups. Some of them were keen to shape the expression of this right in particular ways. The right to manifest religion or belief was a reworking and expansion of a right to worship which had appeared in some earlier drafts. The effort to enlarge and specify the right to worship can be seen in a letter from one of the most active NGO representatives, O. Frederick Nolde of the World Council of Churches, to Eleanor Roosevelt. He urged

⁶⁵ Ibid., p. 370.

that the declaration recognize a right to «corporate» worship, a right to act socially on religious conviction, and a right to religious «observance» rather than simply worship⁶⁶.

The resulting broader expression of a right to manifest religion or belief prompted some delegates - notably some from the Arab Middle East and some from the Far East - to question whether such a provision might not be interpreted as guaranteeing the right of proselytizing missionaries to undertake whatever activities seemed appropriate to them. Some delegates then recalled the abuses of the medieval crusades and other more recent missionary activity in the Far East.

More serious was the Saudi objection to the right to change one's religion. The Saudi representative considered that the guarantee of such a right represented an infringement upon the cultural principles of Islamic states. Saudi sponsored amendments to delete this provision were repeatedly defeated by substantial majorities. And, in the end, as we have seen, the Saudis found the insistence on a right to change one's religion so significant as to require their abstention from the final General Assembly vote.

Property: Another sort of cultural and political difference was highlighted in the debate over the right to own property (Article 17). The simple and rather abbreviated language of the Commission draft left a number of questions unresolved. Most of these revolved in one way or another around the potential social uses of property. The Soviet Union in particular and some other countries as well made several attempts to insert language which would suggest broader principles of public purposes of property. Most notably, the Soviets sought to qualify the right to own property with a reference to the legal principles of each state and, in the second paragraph of what

⁶⁶ Letter, O. Frederick Nolde to Eleanor Roosevelt, 10 December 1947, in Box 4587, ER Papers, Roosevelt Library.

became Article 17, to prohibit «illegal» rather than «arbitrary» deprivation of property. Although several Western delegates expressed sympathy for aspects of Soviet goals on these points, language could not be found which would command majority support and the Commission draft was adopted without amendment.

Economic and Social Rights: Articles 22-26 of the Universal Declaration introduce yet another series of issues for they deal with what have come to be called economic and social rights - rights to social security, to work, to rest and leisure, to an adequate standard of living, health care, food, clothing, housing, etc., and to education. These «new» concepts of rights were in many ways more troublesome than those about which the delegates were more accustomed to arguing. To take but one article from this group for discussion, the issue of a right to work (Article 23) was so confusing that the Third Committee initially failed to adopt any article whatsoever⁶⁷. After lengthy procedural debate, the Committee found a way to adopt the article after all⁶⁸.

Controversy arose less over the general principle of a right to work than over subsidiary points. One of those points involved the right to form trade unions. Some delegates felt that such a guarantee was unnecessary since it was already provided in the general provision of freedom of association (Article 20). For others, the question was one of a closed shop in which trade union membership was required of workers as a condition of employment. In the end, the right to join a trade union was made explicit but a right to refrain from joining was omitted in deference to closed shop advocates.

A separate issue was raised by another section of Article 23 which provided, in its final version, that each worker «has the right to just and favourable remuneration ensuring for himself and his family an existence worthy

⁶⁷ Third Committee, *Summary Records*, p. 539.

⁶⁸ *Ibid.*, p. 689.

of human dignity, and supplemented, if necessary by other means of social protection». Many delegates felt that there were a number of problems with this section. Among other things, it was argued that the language was so vague and imprecise as to raise serious problems of interpretation, that this placed an obligation on government to provide supplemental social protection, and that the notion of gaging remuneration by its adequacy to meet the needs of family came dangerously close to remuneration for need rather than work, a concept rather Marxist in character. In the end, most delegates found the notion of a right to work so compelling that they dared not let their unhappiness with particular aspects of the article lead to the kind of negative vote which had nearly prevented inclusion of this right in the Declaration. The Article was adopted in the Third Committee by 39 to 1 with 2 abstentions. The United States cast the lone negative vote (while Canada and China abstained). Mrs. Roosevelt explained with some embarrassment that her government was too worried about the issues mentioned above⁶⁹. Similar concerns about new governmental obligations in the economic and social field worried capitalist countries, especially the United States, when the other economic rights articles were debated and adopted.

Education: Article 26 provided for a right to education - another one of the economic and social rights. By the time the Commission draft was amended several times, this article had dealt with a number of controversial issues. First there was the complex issue of compulsory education, included on the grounds that children had a right to fundamental education regardless of possible

⁶⁹ Ibid., p. 690. Interestingly, Mrs. Roosevelt, herself, was probably more sympathetic to these provisions than was the government she represented. Years later she remembered herself as warmly embracing this as a new governmental obligation. See my "Contributions of Eleanor and Franklin Roosevelt. . . ", pp. 35-37.

desires of their parents or others in the society to abridge such a right. On the other hand, many delegates wanted to protect what they saw as parental rights in the matter of their children's education; they included a provision that parents have a right to «choose the kind of education that shall be given to their children».

The Commission had included in its draft a statement of the purpose of education which, it said, should be «directed to the full development of the human personality, to strengthening respect for human rights and fundamental freedoms and to combating the spirit of intolerance and hatred against other nations and against racial and religious groups everywhere⁷⁰«. To this, the Third Committee added, on a joint Mexican and United States amendment, the aim to promote «the activities of the United Nations for the maintenance of peace⁷¹«. The Third Committee also amended the Commission text to alter the language of some of the other stated purposes of education.

Duties: Finally, the debate over what became Article 29 of the Universal Declaration reminded the delegates of some of the fundamental differences in perspective which had informed the entire debate. That Article expressed the claims of society against which the rights of the individual had to be balanced and proclaimed the duties the individual owed to the society of which he or she was a part. In this sense, it involved an expression of the limitations on the rights outlined in the earlier Articles. It was a delicate matter to find language which would enunciate the societal needs which all delegates recognized without going so far as to justify improper societal or State infringement on the rights of the individual.

⁷⁰ UN Doc E/800, Economic and Social Council, Commission on Human Rights, *Report to the Economic and Social Council on the Third Session of the Commission, Held at Lake Success, New York, From 24 May to 18 June, 1948*, 28 June 1948, p. 11.

⁷¹ Third Committee, *Summary Records*, p. 604.

Concern over the place of duties in the Declaration had surfaced early in the deliberations over the document. The Secretariat Outline led off in Article 1 with a statement of duties: «Everyone owes a duty of loyalty to his State and to the (international society) United Nations. He must accept his just share of responsibility for the performance of such social duties and his share of such common sacrifices as may contribute to the common good». A second draft article read, «In the exercise of his rights everyone is limited by the rights of others and by the just requirements of the State and of the United Nations⁷²«. Several members of the Drafting Committee were disturbed by the apparent emphasis being given to duties to the State but none was more outspoken than Charles Malik. Almost as soon as the Drafting Committee began to examine the Secretariat Outline, he declared it «odd» that limitations on human rights and freedoms should be placed at the beginning⁷³. Returning to the same issue at the next meeting of the Drafting Committee, Malik characterized the initial statement in the draft Article 1 as «astounding» and:

... pointed out that it might be questioned whether an individual owed such a duty of loyalty regardless of the characteristics of his State. In considering a Bill of Rights, he went on, it was odd that men ought first be told that their freedom is limited. If this were done it would be a Bill not of Human Rights but of what man owes society. It was precisely because the balance had been tipped

⁷² See UN Doc E/CN.4/AC.1/3, Commission on Human Rights, Drafting Committee, *Draft Outline of International Bill of Rights (Prepared by the Division of Human Rights)*, 4 June 1947.

⁷³ UN Doc E/CN.4/AC.1/SR.2, 13 June 1947, Commission on Human Rights, Drafting Committee, First Session, *Summary Records of Second Meeting*, p. 9 in Box 4595, ER Papers.

against the individual and in favour of society that human rights had been violated⁷⁴.

In the end, expression of duties was placed near the end of the document and the idea of duties owed to the State was eliminated in favour of a more palatable duty to one's community. Article 29 declared that «Everyone has duties to the community in which alone the free and full development of his personality is possible». Limitations on rights were incorporated into this article rather than given the added prominence of a separate article and more cautious language was found than appeared in the original Secretariat Outline. The second paragraph read: «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».

Finding the delicate balance of language was complicated by the divergent philosophical views of the delegates. At one extreme, Soviet and other Marxist delegates began with the assumption that individuals only achieve their full potential within the framework of the collectivity, that the connection between the individual and society had to be the foundation of any concept of rights, and that, therefore, it was crucial in any Declaration to give due and adequate attention to the rights of the State. At the other extreme were delegates who were very nervous about appearing to give the State or the collectivity any handle to restrain individual rights for fear that, based on the lessons of history, such a handle would be abused. The New Zealand delegate, Mrs. Newlands, for example, thought concepts of morality and public order far too vague to be used to justify limitations

⁷⁴ UN Doc E/CN.4/AC.1/SR.3, 13 June 1947, Commission on Human Rights, Drafting Committee, First Session, *Summary Records of Third Meeting*, p. 9, in Box 4595, ER Papers.

on individual rights. She preferred only the concept of general welfare⁷⁵. And René Cassin successfully proposed inserting the word *justes* (initially rendered as «legitimate» in English but finally translated as «just» to suggest something more profound than the more legalistic term) before stating the requirements which would permit limiting individual rights⁷⁶.

«RIGHTS» OMITTED FROM THE DECLARATION

Several items were debated by the Commission and the Third Committee even though they did not, in the end, find their way into the Declaration. Four of these require our brief attention here - the right of petition, the protection of the rights of minorities, the issue of the applicability of the declaration to dependent or partly dependent territories, and the right to resist oppression.

Petition: The right of petition, so important in the constitutional history of several members, had been under consideration by the UN Human Rights Commission almost from the beginning. The issue was thrust upon it partly because people from various parts of the world, given hope by the news that the United Nations had created a Commission on Human Rights, sent to it petitions expressing their grievances. The full story of the Commission's approach to petitions - a story of caution, timidity and missed opportunities - is beyond the scope of this paper. Here we are concerned only with the question of whether or not to incorporate a right of petition into the Universal Declaration.

The Commission had included in its report a draft article on the right of petition with the sole comment that the Commission had not discussed this draft article since measures of implementation were not discussed at the

⁷⁵ Third Committee, *Summary Records*, p. 645.

⁷⁶ *Ibid.*, p. 643.

Third Session of the Commission. That draft provided for the right of persons to address petitions for redress of alleged human rights abuses to «the public authorities of the State of which he is a national or in which he resides, or with the United Nations»⁷⁷.

The debate provoked by this draft and suggested amendments revealed a number of divergent perspectives. Some delegates, including Mrs. Roosevelt, considered petition intimately tied to matters of implementation and, therefore, appropriate to subsequent consideration rather than inclusion in the Declaration. Another perspective was represented by the Soviet Union, Mexico and other countries which argued that any provision suggesting a right of petition to the United Nations would undermine the principle of national sovereignty and violate provisions of non-interference in matters essentially within the domestic jurisdiction of member states contained in Article 2 of the Charter. On the other hand, Cassin and Perez Cisneros of Cuba argued strongly that the right of petition was an essential human right. Although it turned out to be impossible to add such an article to the Declaration, a Cuban amendment to that effect was adopted by the Third Committee as an addition to the basic resolution mandating further work on implementation⁷⁸.

Rights of Minorities: The possibility of including an article on the rights of minorities in the Universal Declaration raised a number of complicated problems. It is somewhat ironic that no such article was ultimately incorporated into the Declaration because League of Nations work in this area provided some of the precedent on which the Commission built. Nevertheless, both the Commission and the Third Committee found the balance

⁷⁷ UN Doc. E/800, *Report to the Economic and Social Council on the Third Session of the Commission*, p. 12.

⁷⁸ Third Committee, *Summary Records*, p. 694-715.

of the argument required further consideration before any provisions on minority rights could be adopted.

In part, the issue was deferred because it was felt that the fundamental rights of individual members of minority groups were included in the Declaration because those individuals were a part of the «everyone» to whom the Declaration applied. Additional rights which might be claimed as members of a minority raised the complicated question of collective versus individual rights and most members of the Commission felt full consideration of that issue would require additional deliberation. Moreover, ECOSOC had created a special Sub-commission on the Prevention of Discrimination and the Protection of Minorities and many delegates felt that the inclusion of a statement on minorities in the Universal Declaration at this stage would prejudice the work of that body. Although the Soviet Union was particularly forceful in arguing for incorporating protection of minorities into the Declaration, the Third Committee voted to defer the issue for further deliberation⁷⁹.

Dependent Territories: Yugoslavia proposed an additional article to make even more explicit that the rights detailed in the Declaration would apply to persons who resided in trust or dependent territories. Although substantial East-West propaganda surfaced in the discussion of this proposal, especially attacks on Western colonialism, the majority decided the substance of the proposal was covered in the language of Article 2 of the Declaration and did not require an additional article. Interestingly, however, it was during the debate on the Yugoslav proposal that René Cassin suggested that the intent that the Declaration should apply to everyone everywhere in the world could be made clearer by changing the title of the document from International Declaration of Human

⁷⁹ Ibid., pp. 732-736.

Rights to Universal Declaration of Human Rights, a suggestion ultimately and enthusiastically adopted⁸⁰.

Right to Resist Oppression: Proposals by Cuba and Argentina to incorporate some reference to a right to resist oppression were ultimately withdrawn in recognition of the complex issues they raised. Similar proposals had been made at the Bogota Conference of Latin American States which had produced the Human Rights Declaration envisioned at the Mexico City Conference in 1945. There, too, however, they had been referred for further deliberation. Finally, it was decided to incorporate a brief reference to resistance to oppression in the Preamble of the Universal Declaration rather than as a separate article. Thus the Preamble contains the assertion that «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».

Probably no other document of any kind, certainly no other statement of human rights, has ever been debated so extensively and intensively by such a diverse group of people representing such varied cultures and backgrounds. It was a remarkable achievement to have merely reached such wide agreement on such a text. But the delegates and the peoples they represented were interested not only in reaching agreement on a text but in strengthening the resources available to those struggling to assert their human rights. We now turn to an examination of the impact of their work.

V. THE IMPACT OF THE DECLARATION

Much of the impact of the Universal Declaration of Human Rights is difficult to assess because it involves changed behaviour and heightened consciousness. But we

⁸⁰ Ibid., pp. 742.

can usefully examine the expectations of those who drafted the Declaration and some of the changes in human rights which can be traced to it.

CONTEMPORANEOUS ASSESSMENTS OF LEGAL AND MORAL STATUS

For the most part, those involved in drafting the Universal Declaration of Human Rights believed it to have no legal standing. They thought themselves involved in an exercise of moral suasion which was also the first step toward a legally binding set of agreements. Although she expressed the now oft quoted hope that the Declaration would be a kind of «Magna Carta for Mankind», Mrs. Roosevelt consistently voiced the United States' view that the legally binding work on human rights would follow the moral imperatives stated in the Universal Declaration. Her view was shared by most other delegates and they repeatedly said so in the debates of the Commission, the ECOSOC, the Third Committee and the General Assembly. It was not that they did not intend to engage in an exercise with meaning in international law. Like Mrs. Roosevelt, they had every intention that their efforts would ultimately result in statements having legal force. The initial declaration, however, was simply a statement of goals and aspirations rather than a legally binding document. Indeed, the very text of the document itself seemed to embrace such an interpretation when it announced that the General Assembly proclaimed the Declaration as a «common standard of achievement» toward which all individuals and societies would constantly «strive» by «progressive measures». This is the language of moral rather than legal obligation.

Language stressing moral over legal obligation did not work its way into the final draft without the concerted effort of a number of governments to limit as far as possible any suggestion that the Declaration would

enunciate principles legally enforceable by the United Nations or under broader international legal jurisdiction. Early on, for example, Humphrey noted in a memo to his boss in the Secretariat, Henri Laugier, that the idea that the Human Rights Commission might receive petitions of a general nature posed no problems, but that any suggestion that it might receive specific complaints raised serious questions under Article 2(7) of the Charter unless the complaint involved something which was deemed to be a threat to international peace and security within the meaning of the Charter⁸¹.

The United States Government in particular wanted to avoid any possible suggestion that the Declaration would be internationally enforceable in a legal sense. On 20 November 1947, her State Department aide, James P. Hendrick, sent a handwritten note to Mrs. Roosevelt after a working session with Robert A. Lovett, then Acting Secretary of State:

Mr. Lovett had a very real objection to the implication which he got from the [draft] declaration that all the rights therein contained were immediately enforceable. I had the choice of trying to force him to swallow the declaration in its present form, in view of the many persons who had worked on it and approved it, or of trying to meet his objection by a very simple change in the preamble of the declaration. It occurred to me that if he raised the objection (and indeed others have raised it in the past) his fresh viewpoint might well be typical of the

⁸¹ Humphrey memorandum to Laugier, 28 August 1946, in Box 52, Oscar Schachter Files, UN Archives. Additional comments relevant to the specific issue of petitions and the general questions of the legal authority of the United Nations in the human rights area are to be found in Humphrey memorandum to Laugier, 2 October 1946 in File 605-1, Central Registry File, RAG-1/73, UN Archives in which he takes issue with a legal opinion on the Human Rights Commission written by Wellington Koo.

intelligent public whom primarily we want to satisfy. In addition it seemed desirable to obtain as whole-hearted support from him as we could get. So I yielded, and the preamble of the declaration now calls on UN members to 'promote' these rights rather than 'enforce' them.

I hope you will agree this was the wisest course; but I also hope that if you disagree you will call up Dean Rusk and tell him exactly how you feel. If you feel strongly, I believe that Mr. Rusk can get this position changed back again⁸².

Alice M. McDiarmid, Assistant in the Division of International Organization Affairs at State, followed with a more formal instruction the next day:

In the view of the Acting Secretary of State the Declaration of Human Rights should not be so phrased as to give the impression to individual citizens or governments that there is a contractual obligation on the part of governments or of the United Nations to guarantee the human rights enumerated in the Declaration. In fact the Declaration is largely a statement of aspirations rather than established facts⁸³.

And a revised draft of the Declaration was attached to reflect this view⁸⁴.

Legal scholars generally agreed that a Declaration adopted by the General Assembly alone without formal

⁸² Hendricks letter to Eleanor Roosevelt, 20 November 1947, in "Geneva and Human Rights" File, Box 4587, ER Papers.

⁸³ McDiarmid memorandum to Eleanor Roosevelt, 21 November 1947, in "Geneva and Human Rights" File, Box 4587, ER Papers.

⁸⁴ The reader will recall that a similar question arose in San Francisco about the language in the human rights sections of the Charter -- and that it was resolved in a similar way. See above.

ratification by governments could not create - or even define - legal obligation. One of the most prominent legal minds of the day found in its alleged legal impotence a reason to disdain the Declaration. In his influential report to the Conference of the International Law Association in Brussels in September 1948, Sir Hersch Lauterpacht made this scathing indictment:

A declaration of this nature might possess a moral value if it sprang from bodies whose business it is to propagate views and to mould opinion. When coming from such a source the word of enlightenment and exhortation may be as potent as a deed. When emanating from Governments it is a substitute for a deed. What the conscience of mankind expects from Governments is not the proclamation of the idea of the rights of man or even the recognition of the rights of man. What the conscience of the world expects from that quarter is the active protection of human rights and the assumption for that purpose of true and enforceable obligations⁸⁵.

At the time, then, most observers - scholars as well as diplomats - shared the view that the Declaration created only moral and not legal obligations. Indeed, when the Human Rights Commission created three working groups at its December 1947 session, the Working Group on Implementation reported its conclusion that:

... the question of implementation had much more to do with the Convention than with the Declaration. The latter indeed was in the last analysis to take the form of a recommendation by the General Assembly of the United Nations, and was consequently not legally binding in the strict sense of the term. It therefore appeared to the Working Group a manifest

⁸⁵ Quoted in Lauterpacht, p. 372.

impossibility to contemplate measures for the fulfilment of an obligation that was not one⁸⁶.

Even in these early stages, however, some were suggesting that there were subtle but profound legal implications in the Universal Declaration. It may not be surprising that some of the Latin American States which had unsuccessfully urged more compelling language were among those arguing for a more radical interpretation of the Declaration.

The Panamanian representative, for example, argued that Article 2(7) of the Charter did not prevent the Declaration from being applicable under international law. As he saw it, the Charter itself, by naming human rights as an international concern and assigning the United Nations certain human rights responsibilities, had defined human rights as an international matter - not one that fell «exclusively [sic] within the domestic jurisdiction» provisions of the Charter⁸⁷. Carrying this line of reasoning one step farther even while accepting the technical validity of the assertion that only a covenant would be legally binding, the Chilean representative suggested that any violation of the Declaration would be a violation of the UN Charter itself because it would involve a violation of one of the principles of the United Nations. The Declaration merely stated explicitly, he argued, rights granted by the Charter⁸⁸. In this view, it was the Charter that had internationalized human rights; the Declaration was simply an elaboration, a catalogue, a directory of the rights granted in the international convention that was the Charter of the United Nations.

A few others seemed to agree, at least in part. Count Carton de Wiart of Belgium suggested that while the

⁸⁶ UN Doc E/CN.4/53, 10 December, 1947, Commission on Human Rights, Second Session, *Draft Report of the Working Group on Implementation*, p. 2, in Box 4595, ER Papers.

⁸⁷ Mr. de Leon of Panama in Third Committee, *Summary Records*, p. 43.

⁸⁸ Mr. Santa Cruz of Chile in *Ibid.*, p. 50.

Declaration had unprecedented moral value, it also had «the beginnings of a legal value⁸⁹«. Professor Cassin, a leading international lawyer in his own right, seemed unwilling to view the Declaration as something of only moral value. He too suggested it would have some legal standing if for no other reason than that it was the first declaration by an international group having its own «legal competence⁹⁰«. Moreover, he told the General Assembly:

... while it [the Declaration] was less powerful and binding than a convention, it had no less legal value, for it was contained in a resolution of the Assembly which was empowered to make recommendations; it was the development of the Charter which had brought human rights within the scope of positive international law. That being so, it could not be said that the declaration was a purely theoretical instrument. It was only a potential instrument; but that fact in no way detracted from the binding force of the provisions of the Charter⁹¹.

In contrast to the Latin Americans and Professor Cassin who seemed to be looking for interpretations which would increase the potency of the Declaration, the South African Government found such interpretations both persuasive and troubling. South Africa consistently tried to pare down the rights listed in the declaration arguing that only those which were universally embodied in already existing constitutions and legal systems should be included. When the Human Rights Commission submitted a draft of the Declaration to member states for comment early in 1948, South Africa responded with a strong criticism of the text asserting that it was sloppily drafted and incorporated many asserted rights which were not

⁸⁹ General Assembly, *Summary Records*, p. 880.

⁹⁰ Cassin in Third Committee, *Summary Records*, p. 62.

⁹¹ General Assembly, *Summary Records*, p. 866.

widely recognized. Only «fundamental» rights should be included, they argued, and «fundamental» should be defined narrowly. The major reason for this position was the South African Government view of the legal and political importance of the Declaration:

It seems to be realized that a declaration of this nature, if passed by the Assembly, would not create legal rights and obligations. That is why, perhaps, it has been drawn with so little regard for precision and particularity, or for the true scope of fundamental rights and freedoms. But it will undoubtedly be invoked as a source of moral rights and obligations, and may therefore lead not only to intensified internal unrest and agitation, but also to repeated embarrassment and agitation before the United Nations and their various organs. It is of the greatest importance, therefore, that it should not be passed in a form so completely unacceptable⁹².

The South African representative repeated the same position in the Third Committee debates⁹³; these concerns clearly prompted his Government's abstention in both the Third Committee and the General Assembly. In the General Assembly debate, the South African interpretation was carried a step farther, linking the Chilean interpretation to South African worries. If the interpretation was accepted that the Declaration was «an authoritative definition of fundamental rights and freedoms which had been left undefined in the Charter», those States which voted in favour of the Declaration «would be bound in the same manner as if they had signed a convention embodying those principles...⁹⁴».

⁹² See UN Doc E/CN.4/82/Add.4, *Comments from Governments*.
⁹³ Third Committee, *Summary Records*, p. 39.

⁹⁴ Mr. Andrews of South Africa in General Assembly, *Summary Records*, p. 910.

Professor Humphrey, the Canadian legal scholar who was Director of the Human Rights Division of the Secretariat, took something of a middle position. While he accepted the technical accuracy of the view that a resolution of the General Assembly, by itself and absent of any ratification by Member States, could not create legal obligations, he also believed that the Declaration had important legal potential and that Governments, like the United States and others, which asserted the non-binding nature of the Declaration at every possible opportunity both overstated the case and did a disservice to the cause of human rights⁹⁵.

EVOLUTIONARY DEVELOPMENT OF LEGAL STANDING

Although few asserted at the time of its adoption by the General Assembly that the Declaration was legally binding in any comprehensive sense, in the intervening period it has come to be widely regarded as legally binding on all States. Three main instrumentalities contributed to this development. First, many States drafting constitutions since 1948, especially a number of African States newly independent of colonial status, have incorporated the Universal Declaration by reference into their constitutions. Second, regional intergovernmental organizations, both specifically human rights organizations and more general ones, have incorporated the Universal Declaration by reference into their charters or endorsed it in resolutions of one sort or another. Finally, the United Nations, itself, and many of its specialized agencies, have repeatedly invoked the Declaration in resolutions and declarations. In fact, Humphrey notes that all the States which abstained in the General Assembly vote of 10 December 1948, except South Africa, have now voted

⁹⁵ See Humphrey, pp. 73-74 (see Note 4).

for General Assembly resolutions or declarations which obligate States to observe the Universal Declaration⁹⁶.

Many, probably most, international lawyers view the repeated invocation of the Universal Declaration by such groups as evidence that it has now become international customary law, binding on all States in a legal sense⁹⁷. That international lawyers view the Declaration as legally binding has not meant, of course, that it has been uniformly observed. In fact, Humphrey seems clearly and regrettably accurate when he observes, «There is unfortunately little reason for thinking that human rights, with the possible exception of economic, social and cultural rights and the rights of certain classes of people not to be discriminated against, are better respected now than they were before 1948⁹⁸ «.

VI. CONCLUSION

In the more than 40 years since Eleanor Roosevelt, P. C. Chang, Charles Malik, René Cassin, John Humphrey and others struggled to frame a declaration that would have universal validity and command global allegiance, many things have changed. The United Nations majority shifted from a Western liberal one to third world predominance. The cold war strengthened, then eased, strengthened and eased once more, and, finally, faded away. The United Nations, once marginalized by cold war rivalries, has once again begun to play a central role in the global arena. A network of communication has developed to link human rights activists in ways that create a truly international human rights community. Part of the work of the NGOs which prodded the American

⁹⁶ Ibid., pp. 75-76. Green, pp. 35-36, provides some specific examples of the incorporation of the Declaration into various national and international documents.

⁹⁷ Humphrey, pp. 75-76 (see Note 4).

⁹⁸ Ibid., p. 76.

planners of post-war international organization, part of the work of Eleanor Roosevelt both at the UN and after was to place human rights on the international agenda. Their effort has been rewarded by an almost unimaginable expansion of attention to human rights throughout the world. That item is on the international agenda as never before.

Still, in spite of all those changes - indeed, perhaps because of them - the achievement of those who drafted and adopted the Universal Declaration seems even more impressive. In just 30 months in the midst of recovery from war, the birth of the cold war, the early experiment of the United Nations especially in the economic and social field, they forged agreement on a text which transcended differences in language, nationality and culture - not fully, of course, but to an extent unprecedented in international relations. Some sense of how remarkable their achievement was can be gained by reflecting for a moment on the fact that it was to take another 18 years to forge agreement on the main human rights covenants and another 11 years beyond that before sufficient states had ratified to have them come into effect. Moreover, now, more than 40 years after the adoption of the Declaration, a number of prominent countries, including the United States, have yet to ratify one or more of the United Nations Human Rights Covenants. Work on implementation has been sporadic and piecemeal at the United Nations and only a little more successful in some regional contexts.

The story of their work brings us to several conclusions. First, theirs was a effort unusually cooperative in the international context. In spite of personal and cultural differences, they worked together, drafting and reworking each other's drafts, tinkering with language to accommodate differing points of view, examining their own cultures and concepts illuminated by other visions. They were all the authors of the Declaration and they were all remarkable individuals.

But, in many ways, Mrs. Roosevelt was the most remarkable of them all. Of her, perhaps, less was expected for she was not learned in philosophy or law but she brought to her work two indispensable qualities which no one else could have brought and which were probably essential to the successful completion of the work on the Declaration: an international stature in political and humanitarian circles which gave prominence to the work of the Commission and a skill and drive in managing both the Commission and her own Government without which the Declaration would almost certainly have been delayed if not scuttled altogether.

While the legal authority of the Declaration continues to grow, violations of human rights by States with increasing access to new and more advanced technical methods of cruelty and surveillance continue to provoke revulsion among those who share Mrs. Roosevelt's vision of a freer and more compassionate world. But perhaps Mrs. Roosevelt, herself, provided the best clue to the most important impact of the Declaration. She liked to remind audiences that the quest for global human rights had to begin at home - in every village and city everywhere in the world. She would ask rhetorically:

Where, after all do universal human rights begin? In small places, close to home - so close and so small that they cannot be seen on any maps of the world. Such are the places where every man, woman and child seeks equal justice, equal opportunity, and equal dignity, without discrimination. Unless these rights have meaning there they have little meaning anywhere.

Perhaps the most important effect of the Universal Declaration of Human Rights is found not in its legal status nor even in its precise language or the rights it lists or omits, but in the symbol it provides for the thousands of people in villages and cities throughout the world who struggle to make human rights a reality in their own

communities. They can know from the work of those remarkable men and women more than 40 years ago that the best minds and noble spirits of the international community share in their struggle.

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PRINCIPAL INTERNATIONAL INSTRUMENTS ON HUMAN RIGHTS

1. BINDING INTERNATIONAL INSTRUMENTS

(a) Universal instruments

(b) Regional instruments

(i) Council of Europe

(ii) Organization of African Unity

(iii) Organization of American States

2. INTERNATIONAL DECLARATIONS ON HUMAN RIGHTS ADOPTED BY THE UNITED NATIONS OR UNESCO

1. BINDING INTERNATIONAL INSTRUMENTS

(a) UNIVERSAL INSTRUMENTS

GENERAL INSTRUMENTS

1. *International Covenant on Economic, Social and Cultural Rights* (1966), United Nations, *Treaty Series*, Vol. 993 p. 3. Entered into force on 3 January 1976.
2. *International Covenant on Civil and Political Rights* (1966), United Nations, *Treaty Series*, Vol. 999, p. 171. Entered into force on 23 March 1976.
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14. *International Convention against Apartheid in Sports* (1985). A/RES/40/64 G. Entered into force on 3 April 1988.

15. *ILO Revised Convention (N° 169) concerning Indigenous and Tribal People in Independent Countries* (1989). *Convention & Recommendations*, 1989. Entered into force on 5 September 1991.

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6. *Convention on the Prevention and Punishment of the Crime of Genocide* (1948), United Nations, *Treaty Series*, Vol. 78, p. 277. Entered into force on 12 January 1951.

7. *Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity* (1968), United Nations, *Treaty Series*, Vol. 754, p. 73. Entered into force on 11 November 1970.

8. *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (1984), A/RES/39/46. Entered into force on 26 June 1987.

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9. *Protocol amending the Slavery Convention signed at Geneva on 25 September 1926* (1953), United Nations, *Treaty Series*, Vol. 182, p. 51. Entered into force on 7 December 1953.

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21. *Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery* (1956), United Nations, *Treaty Series*, Vol. 266, p. 3. Entered into force on 30 April 1957.

22. *Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others* (1950), United Nations, *Treaty Series*, Vol. 96, p. 271. Entered into force on 25 July 1951.

23. *ILO Convention (N° 29) concerning Forced Labour* (1930), League of Nations, *Treaty Series*, Vol. 39, p. 55. Entered into force on 1 May 1932.

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Freedom of information:

25. *Convention on the International Right of Correction* (1952), United Nations, *Treaty Series*, Vol. 435, p. 191. Entered into force on 24 August 1962.

¹ The States Parties to the 1953 Protocol amending the Slavery Convention (N° 17) must be considered as Parties to this Convention (N° 18).

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26. *Convention relating to the Status of Refugees* (1951), United Nations, *Treaty Series*, Vol. 189, p. 137. Entered into force on 22 April 1954.

27. *Protocol relating to the Status of Refugees* (1967). United Nations, *Treaty Series*, Vol. 606, p. 267. Entered into force on 4 October 1967.

28. *Convention relating to the Status of Stateless Persons* (1954), United Nations, *Treaty Series*, Vol. 360, p. 117. Entered into force on 6 June 1960.

29. *Convention on the Reduction of Statelessness* (1961). United Nations, *Treaty Series*, Vol. 989, p. 175. Entered into force on 13 December 1975.

Workers:

30. *ILO Convention (No. 11) concerning the Rights of Association and Combination of Agricultural Workers* (1921), United Nations, *Treaty Series*, Vol. 38, p. 153-159 (No. 594). Entered into force on 11 May 1923.

31. *ILO Convention (No. 87) concerning the Freedom of Association and Protection of the Right to Organize* (1948), United Nations, *Treaty Series*, Vol. 68, p. 17. Entered into force on 4 April 1950.

32. *ILO Convention (N° 98) concerning the Application of the Principles of the Right to Organize and Bargain Collectively* (1949), United Nations, *Treaty Series*, Vol. 96, p. 257. Entered into force on 18 July 1951.

33. *ILO Convention (N° 122) concerning Employment Policy* (1964), United Nations, *Treaty Series*, Vol. 569, p. 65. Entered into force on 15 July 1966.

34. *ILO Convention (N° 135) concerning Protection and Facilities to be afforded to Worker's Representatives in the Undertaking* (1971), ILO, *Official Bulletin*, Vol. LIV (1971), N° 3. Entered into force on 30 June 1973.

35. *ILO Convention (N° 141) concerning Organisations of Rural Workers and their Role in Economic and Social Development* (1975), ILO, *Official Bulletin*, Vol. LVIII (1975) Ser. A, N° 1. Entered into force on 24 November 1977.

36. *ILO Convention (N° 151) concerning Protection of the Right to Organise and Procedures for Determining Conditions of Employment in the Public Service* (1978), ILO, *Official Bulletin*, Vol. LXI (1978). Ser. A, N° 1; entered into force on 25 February 1981.

37. *International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families* (1990), A/RES/45/158. Not entered into force as at 31 March 1994.

Women

38. *Convention on the Political Rights of Women* (1953), United Nations, *Treaty Series*, Vol. 193, p. 135. Entered into force on 7 July 1954.

39. *Convention on the Nationality of Married Women* (1957), United Nations. *Treaty Series*, Vol. 309, p. 65. Entered into force on 11 August 1958.

40. *Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages* (1962), United Nations, *Treaty Series*, Vol. 521, p. 231. Entered into force on 9 December 1964.

41. *Convention on the Elimination of All Forms of Discrimination Against Women* (1979), United Nations, *Treaty Series*, Vol. 1249, p. 13. Entered into force on 3 September 1981.

Children:

42. *Convention on the Rights of the Child* (1989), A/RES/44/25. Entered into force on 2 September 1990.

Combatants, prisoners and civilians:

43. *Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field* (1949), United Nations, *Treaty Series*, Vol. 75, p. 31. Entered into force on 21 October 1950.

44. *Geneva Convention for the Amelioration of the Condition of Wounded Sick and Shipwrecked Members of Armed Forces at Sea* (1949), United Nations, *Treaty Series*, Vol. 75, p. 85. Entered into force on 21 October 1950.

45. *Geneva Convention relative to the Treatment of Prisoners of War* (1949), United Nations, *Treaty Series*, Vol. 75, p. 135. Entered into force on 21 October 1950.

46. *Geneva Convention relative to the Protection of Civilian Persons in Time of War* (1949), United Nations, *Treaty Series*, Vol. 75, p. 287. Entered into force on 21 October 1950.

47. *Additional Protocol to the Geneva Conventions of 12 August 1949 relating to the Protection of Victims of International Armed Conflicts (Protocol I)* (1977). Entered into force on 7 December 1978.

48. *Additional Protocol to the Geneva Conventions of 12 August 1949 relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II)* (1977). Entered into force on 7 December 1978.

(b) REGIONAL INSTRUMENTS

(i) *COUNCIL OF EUROPE*

GENERAL INSTRUMENTS

49. *European Convention on Human Rights* (1950) - formally entitled *Convention for the Protection of Human Rights and Fundamental Freedoms*. Council of Europe, *European Treaty Series*, N° 5. Entered into force on 3 September 1953. Amended by:

- Protocol N° 3 (*European Treaty Series*, N° 45, entered into force on 21 September 1970);
- Protocol N° 5 (*European Treaty Series*, N° 55, entered into force on 20 December 1971);
- Protocol N° 8 (*European Treaty Series*, N° 118, entered into force on 1 January 1990).

50. *Declaration regarding Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms (Rights of Individual Petition)* (1950), Council of Europe, *European Treaty Series*, N° 5 (i). Entered into force on 5 July 1955.

51. *Declaration regarding Article 46 of the Convention for the Protection of Human Rights and Fundamental Freedoms (Jurisdiction of the Court) (1950)*, Council of Europe, *European Treaty Series*, N° 5 (ii). Entered into force on 3 September 1958.

52. *Additional Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms (1952)*, Council of Europe, *European Treaty Series*, N° 9. Entered into force on 18 May 1954.

53. *Protocol N° 2 to the Convention for the Protection of Human Rights and Fundamental Freedoms Conferring upon the European Court of Human Rights Competence to Give Advisory Opinions (1963)*, Council of Europe, *European Treaty Series*, N° 44. Entered into force on 21 September 1970.

54. *Protocol N° 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms Securing Certain Rights and Freedoms Other than those already Included in the Convention and in the First Protocol Thereto (1963)*, Council of Europe, *European Treaty Series*, N° 46. Entered into force on 2 May 1968.

55. *Protocol N° 6 concerning the Abolition of the Death Penalty (1983)*, Council of Europe, *European Treaty Series*, N° 114. Entered into force on 1 March 1985.

56. *Protocol N° 7 (recognition of new rights) (1984)*, Council of Europe, *European Treaty Series*, N° 117. Entered into force on 1 November 1988.

57. *Protocol N° 9 to the Convention for the Protection of Human Rights and Fundamental Freedoms improving the Procedure under the Convention (1990)*, Council of Europe, *European Treaty Series*, N° 140. Not entered into force as at 31 March 1994.

58. *Protocol N° 10 to the Convention for the Protection of Human Rights and Fundamental Freedoms (deletion of the two-thirds majority in article 32)* (1992), Council of Europe, *European Treaty Series*, N° 146. Not entered into force as at 31 March 1994.

59. *European Agreement relating to Persons Participating in Proceedings of the European Commission and Court of Human Rights* (1969), Council of Europe, *European Treaty Series*, N° 67. Entered into force on 17 April 1971.

60. *European Social Charter* (1961), Council of Europe, *European Treaty Series*, N° 35. Entered into force on 26 February 1965.

61. *Additional Protocol to the European Social Charter* (1988). Council of Europe, *European Treaty Series*, N° 128. Entered into force on 4 November 1992.

62. *Protocol amending the European Social Charter* (1991), Council of Europe, *European Treaty Series*, N° 142. Not entered into force as at 31 March 1994.

63. *Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data* (1981), Council of Europe, *European Treaty Series*, N° 108. Entered into force on 1 October 1985.

INSTRUMENTS CONCERNING SPECIFIC ISSUES

Genocide, war crimes, crimes against humanity:

64. *European Convention on the Non-Applicability of Statutory Limitations to Crimes against Humanity and War Crimes* (1974). Council of Europe, *European Treaty Series* N° 82, Not entered into force as at 31 March 1994.

65. *European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment* (1987), Council of Europe, *European Treaty Series*. N° 126. Entered into force on 1 February 1989.

INSTRUMENTS RELATING TO THE PROTECTION OF PARTICULAR GROUPS

Aliens, refugees, stateless persons:

66. *European Agreement on Transfer of Responsibility for Refugees* (1980). Council of Europe, *European Treaty Series*, N° 107. Entered into force on 1 December 1980.

67. *Convention on the Participation of Foreigners in Public Life at Local Level* (1992), Council of Europe, *European Treaty Series*, N° 144. Not entered into force as at 31 March 1994.

Workers:

68. *European Convention on the Legal Status of Migrant Workers* (1977), Council of Europe, *European Treaty Series*, N° 93. Entered into force on 1 May 1983.

Minorities:

69. *European Charter for Regional or Minority Languages* (1992), Council of Europe, *European Treaty Series*, N° 148. Not entered into force as at 31 March 1994.

(ii) ORGANIZATION OF AFRICAN UNITY

GENERAL INSTRUMENTS

70. *African Charter on Human and Peoples' Rights* (1981). Organization of African Unity. Entered into force on 21 October 1986.

INSTRUMENTS RELATING TO THE PROTECTION OF PARTICULAR GROUPS

Aliens, refugees, stateless persons:

71. *OAU Convention Governing the Specific Aspects of Refugee Problems in Africa* (1969), UN Doc. MHCR/131 (1969). Entered into force on 20 June 1974.

Children:

72. *African Charter on the Rights and Welfare of the Child* (1990). OAU. Not entered into force as at 31 March 1994.

(iii) ORGANIZATION OF AMERICAN STATES

GENERAL INSTRUMENTS

73. *American Convention on Human Rights* (1969), Organization of American States, *Treaty Series*, N° 36, p. 1 (OAS Official Records, OEA/SER A/16). Entered into force on 18 July 1974.

74. *Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights*, « Protocol of San Salvador » (1988). *OAS Treaty Series*, N° 69. Not entered into force as at 31 March 1994.

75. *Protocol to the American Convention on Human Rights to Abolish the Death Penalty* (1990). *OAS Treaty Series*, N° 73. Not entered into force as at 31 March 1994.

INSTRUMENTS CONCERNING SPECIFIC ISSUES

Genocide, war crimes, crimes against humanity:

76. *Inter-American Convention to Prevent and Punish Torture* (1985). *OAS Treaty Series*, N° 67. Entered into force on 28 February 1987.

Asylum:

77. *OAS Convention on Asylum* (1928), *International Conferences of American States, 1889-1928*, p. 434. Entered into force on 21 May 1929.

78. *OAS Convention on Political Asylum* (1933), *International Conferences of American States, 1st Supplement, 1933-1940*, p. 116. Entered into force on 28 March 1935.

79. *OAS Convention on Diplomatic Asylum* (1954), *International Conferences of American States, 2nd Supplement, 1942-1954*, p. 334. Entered into force on 29 December 1954.

80. *OAS Convention on Territorial Asylum* (1954), *International Conferences of American States, 2nd Supplement 1942-1954*, p. 345. Entered into force on 29 December 1954.

INSTRUMENTS RELATING TO THE PROTECTION OF PARTICULAR GROUPS

Aliens, refugees, stateless persons:

81. *Convention relative to the Rights of Aliens (1902)*. OAS Treaty Series, N° 32. Does not contain provisions regarding entry into force.

82. *Convention on the Status of Aliens (1928)*. OAS Law and Treaty Series, N° 34. Entered into force on 29 August 1929.

Women:

83. *OAS Convention on the Nationality of Women (1933)*, *International Conferences of American States, 1st Supplement, 1933-1940*, p. 106. Entered into force on 29 August 1934.

84. *Inter-American Convention on the Granting of Political Rights to Women (1948)*, *International Conferences of American States, 2nd Supplement, 1942-1954*, p. 229. Entered into force on 17 March 1949.

85. *Inter-American Convention on the Granting of Civil Rights to Women (1948)*, *International Conferences of American States, 2nd Supplement, 1942-1954*, p. 230. Entered into force on 17 March 1949.

2. INTERNATIONAL DECLARATIONS ON HUMAN RIGHTS ADOPTED BY THE UNITED NATIONS AND UNESCO

86. *Universal Declaration of Human Rights*, 10 December 1948.

87. *Standard Minimum Rules for the Treatment of Prisoners*, 30 August 1955.
88. *Declaration on the Promotion among Youth of the Ideals of Peace, Mutual Respect and Understanding between Peoples*, 7 December 1965.
89. *Declaration of the Principles of International Cultural Co-operation*, 4 November 1966.
90. *Declaration on Territorial Asylum*, 14 December 1967.
91. *Declaration on Social Progress and Development*, 11 December 1969.
92. *Declaration on the Rights of Mentally Retarded Persons*, 20 December 1971.
93. *Recommendation concerning Education for International Understanding, Co-operation and Peace and Education relating to Human Rights and Fundamental Freedoms*, 19 November 1974.
94. *Declaration on the Protection of Women and Children in Emergency and Armed Conflict*, 16 December 1974.
95. *Declaration on the Use of Scientific and Technological Progress in the Interest of Peace and for the Benefit of Mankind*, 10 November 1975.
96. *Declaration on the Rights of Disabled Persons*, 9 December 1975.
97. *Declaration on Race and Racial Prejudice*, 27 November 1978.

98. *Declaration on Fundamental Principles concerning the Contribution of the Mass Media to Strengthening Peace and International Understanding, to the Promotion of Human Rights and to Countering Racism, Apartheid and Incitement to War*, 28 November 1978.

99. *Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief*, 25 November 1981.

100. *Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 18 December 1982.

101. *Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty*, 25 May 1984.

102. *Declaration on the Right of Peoples to Peace*, 12 November 1984.

103. *United Nations Standard Minimum Rules for the Administration of Juvenile Justice (« The Beijing Rules »)*, 29 November 1985.

104. *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, 29 November 1985.

105. *Declaration on the Human Rights of Individuals Who are not Nationals of the Country in which They Live*, 13 December 1985.

106. *Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally*, 3 December 1986.

107. *Declaration on the Right to Development*, 4 December, 1986.

108. *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*, 9 December 1988.

109. *Basic Principles for the Treatment of Prisoners*, 14 December 1990.

110. *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*, 14 December 1990.

111. *United Nations Standard Minimum Rules for Non-custodial Measures (« The Tokyo Rules »)*, 14 December 1990.

112. *United Nations Guidelines for the Prevention of Juvenile Delinquency (« The Riyadh Guidelines »)*, 14 December 1990.

113. *Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care*, 17 December 1991.

114. *Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities*, 18 December 1992.

115. *Declaration on the Protection of All Persons from Enforced Disappearance*, 18 December 1992.

116. *Standard Rules on the Equalization of Opportunities for Persons with Disabilities*, 20 December 1993.

117. *Declaration on the Elimination of Violence against Women*, 20 December 1993.

**UNESCO AND THE
UNIVERSAL DECLARATION OF
HUMAN RIGHTS**

Janusz Symonides
Director of UNESCO's
Division of Human Rights, Democracy and Peace

The Constitution of UNESCO states that the purpose of the Organization «... is to contribute to peace and security by promoting collaboration among the nations through education, science and culture in order to further universal respect of justice, for the rule of law and for human rights and fundamental freedoms». UNESCO was born out of the assumption that political and economic arrangements are not sufficient to secure lasting peace which must be founded upon the intellectual and moral solidarity of mankind, as well as upon the full respect of justice and human rights. For this very reason, the principles set forth in the Universal Declaration of Human Rights of 1948 from the moment of its adoption have continuously inspired UNESCO's activities.

UNESCO was, in fact, actively involved in the drafting of the Universal Declaration. In 1947, at the request of the United Nations Commission on Human Rights, the Director-General sent a questionnaire to a number of personalities - philosophers and writers - in various Member States asking their opinion on theoretical problems posed by the Universal Declaration. Answers dealing with the general philosophy and procedures of human rights as well as with concrete issues were subsequently presented to the Commission.

The day after the adoption of the Universal Declaration of Human Rights on 11 December 1948, the UNESCO General Conference voted a resolution proclaiming that the importance of the Universal Declaration for all UNESCO activities, in particular for those dealing with education and international understanding. Moreover, the General Conference asked the Director-General to actively disseminate the information concerning the Universal Declaration within the Secretariat to ensure that all programme units be inspired by its provisions. A similar resolution was then adopted on 12 December 1948 by the Executive Board.

UNESCO, like other specialized agencies of the United Nations system, implements rights formulated in the articles of the Universal Declaration which fall within

its fields of competence. This applies, primarily, to Article 26 «Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages...»; Article 27 «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»; and 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».

As far as UNESCO's activities concerning human rights is concerned, great importance is also attached to Article 1: «All human beings are born free and equal in dignity and rights...» and Article 2 «Everyone is entitled to all the rights and freedoms... without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion...», for without a struggle against all forms of discrimination, all other rights to education, culture, scientific progress and information, would just remain empty of meaning.

In the forty-five or more years following the adoption of the Universal Declaration, UNESCO has undertaken numerous activities to achieve a full implementation of its articles. The General Conference has adopted a number of standard-setting documents and special procedures codifying and concretizing the rights proclaimed. The Organization has encouraged multidisciplinary research, operational activities and publications on many aspects of human rights and has been very active in the struggle against all forms of discrimination. Last but not least, through teaching and information, UNESCO has aimed at the creation of a culture of human rights and a climate conducive for their universal recognition and protection.

UNESCO'S STANDARD-SETTING INSTRUMENTS

THE RIGHT TO EDUCATION

In accordance with its mandate, UNESCO has adopted a number of normative documents, conventions and recommendations ensuring the enjoyment of the right to education for everyone. The best known among these is the Convention Against Discrimination in Education adopted on 14 December 1960 by the General Conference; it entered into force in 1962. This Convention which responds simultaneously to Articles 2 and 26 of the Universal Declaration, is not only directed at the elimination of discrimination in education but also concerns the adoption of measures aimed at promoting equality of opportunity and treatment in this field. However, the obligations of States Parties differ in both cases. Under Article 3 of the Convention, States Parties are obliged to undertake immediate measures to eliminate and prevent discrimination, whereas in relation to equality of opportunity, they apply a national policy, by methods appropriate to the circumstances and to national usage.

At the same time as the Convention the General Conference also adopted the Recommendation Against Discrimination in Education, thus meeting the difficulties which Member States may have, for various reasons and in particular owing to their federal structure, in ratifying the Convention.

The right to education is intimately linked with the right to teach. In 1966 an intergovernmental conference convened by UNESCO, with the participation of the International Labour Organisation, adopted the Recommendation Concerning the Status of Teachers. In its preamble it underlines that the right to education is a fundamental human right and recognizes the essential role of teachers in educational advancement and the importance of their contribution to the development of man and

modern society. Though the Recommendation deals mainly with preparation for the teaching profession, further education for teachers, employment and career, the rights and responsibilities of teachers, conditions for effective teaching and learning etc., it also formulates guiding principles and educational objectives and policy stressing, *inter alia*, that advances in education depend largely on the qualifications and ability of teaching staff in general and on the human, pedagogical and technical qualities of individual teachers.

In view, on the one hand, of the role of technical and vocational education in sustaining the complex structure of modern civilization and continued economic progress and, on the other, of the needs of Member States, in particular of developing countries, for guidance in planning and improving their educational systems, the General Conference adopted a first Recommendation Concerning Technical and Vocational Education in 1962. Due to rapid technological and educational changes and the increasing importance of this type of education, the General Conference decided to revise this Recommendation which, with appropriate changes, was adopted in 1974. In 1989 the General Conference adopted a Convention on Technical and Vocation Education which takes into account Convention N° 142 and Recommendation N° 150 adopted by the International Labour Conference in 1975, as well as the need for an international legal instrument for the reinforcement of international collaboration in the development of technical and vocational education.

The Third International Conference on Adult Education, meeting in Tokyo in 1972, urged UNESCO to explore the possibility of preparing a recommendation concerning the development of adult education. Four years later, in 1976, a Recommendation on this subject was adopted which underlines that, in the context of lifelong education, the development of adult education is necessary in order to achieve a more rational and more equitable distribution of educational resources between

young people and adults. Adult education must not be considered as an entity in itself but an integral part of a global scheme for life-long education and learning. Each Member State should recognize adult education as a essential, specific component of its education system and as a permanent element of its social, cultural and economic development policy.

UNESCO's activities for the implementation of the right to education are by no means limited to the preparation of normative documents. The Organization also undertakes operational programmes assuring access to education of refugees, migrants, women and the handicapped.

The fight against illiteracy is an absolute priority among the Organization's on-going activities, since collective development proceeds from the education given to each individual human being. The UNESCO Third Medium-Term Plan (1990-1995) contains Mobilizing Project 1 : Combating illiteracy, which stems from the fact that one decade before the end of the millennium close to 1,000 million human beings are still illiterate, of whom one-tenth aged between six and eleven do not go to school. The Approved Programme and Budget for 1994-1995 foresees a number of actions to support a more integrated implementation by UNESCO of the Plan of Action for the Eradication of Illiteracy by the Year 2000 and the Framework of Action which was adopted by the Jomtien World Conference on Education for All.

THE RIGHT TO PARTICIPATE IN CULTURAL LIFE

The first UNESCO standard-setting document, which formulates, though very generally, the right to culture, was the Declaration of the Principles of International Cultural Co-operation which was adopted by the General Conference in 1966. It states, *inter alia*, that every people has the right and the duty to develop its own culture, that international cultural co-operation should cover all aspects of intellectual and creative activities

relating to education, science and culture. In Article IV, 4, it underlines that international co-operation should «... enable everyone to have access to knowledge, to enjoy the arts and literature of all peoples, to share in advances made in science in all parts of the world and in the resulting benefits, and to contribute to the enrichment of cultural life».

Subsequently, the UNESCO Intergovernmental Conference on Cultural Policies of 1970 concluded that Article 27 of the Universal Declaration implies that it is the duty of those responsible for communities to provide all members with an effective means for participating in cultural life, and not merely to respect their right to participate.

The Recommendation on Participation by the People at Large in Cultural Life and Their Contribution to It, adopted by the 1976 General Conference, is the final result of a series of statements by intergovernmental conferences on cultural policies convened by UNESCO. It defines access to culture as those concrete opportunities available to everyone, in particular through the creation of the appropriate socio-economic conditions, for freely obtaining information, training, knowledge and understanding, and for enjoying cultural values and cultural property. Participation in cultural life means the concrete opportunities guaranteed for all - groups or individuals - to express themselves freely, to communicate, to act and to engage in creative activities with a view to the full development of their personalities, a harmonious life and the cultural progress of society. In answer to the question on what should be done by Member States to enable individuals to participate freely and fully in cultural creation and its benefits, the Recommendation stresses the need to democratize the instruments for cultural activity.

In 1980 the General Conference adopted the Recommendation Concerning the Status of the Artist inasmuch as artists play an important role in the life and evolution of society and UNESCO then organized a

series of symposia, studies and meetings for the purpose of determining the status of the artist in contemporary society. For the purpose of the Recommendation, «artist» means any person who creates or gives creative expression to, or re-creates works of art, who considers artistic creation to be an essential part of his or her life, who contributes in this way to the development of art and culture. The Recommendation defines the status of the artist, with particular reference to conventions governing copyright and the rights of performers.

In accordance with Article 27, paragraph 2, of the Universal Declaration: «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». To guarantee this right, UNESCO convened in 1952 the Intergovernmental Copyright Conference which adopted the Universal Copyright Convention, later revised in 1971 to meet the needs of developing countries. This Convention ensures the widest possible dissemination of creative works at the lowest possible cost, while safeguarding the authors' rights. UNESCO has also sponsored an International Convention for the Protection of Performers and Producers of Phonograms and Broadcasting Organizations (Rome, 1961) and a Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms (Geneva, 1971).

THE RIGHT TO PARTICIPATE IN SCIENTIFIC PROGRESS

Few of the standard-setting documents adopted by the General Conference are relevant to the promotion of this right. The Recommendation on the Status of Scientific Researchers adopted in 1974 underlines that each Member State should use scientific and technological knowledge for the enhancement of the cultural and natural well-being of its citizens and to further the ideals and objectives of the United Nations. Member States should

actively promote the interplay of ideas and information among scientific researchers throughout the world, which is vital to the healthy development of science and technology and, to this end, should take all necessary measures to ensure that scientific researchers can participate in international scientific and technological gatherings and travel abroad. Scientific researchers should be able to publish results of their work and enjoy appropriate legal protection, in particular the protection afforded by copyright law.

The question of academic freedom till now has been mainly discussed from the point of view of the professional status of various groups. In 1989, UNESCO, in co-operation with the World University Service, organized the International Seminar on Factors and Conditions Conducive to Academic Freedoms. Thus the way was opened for the preparation of a comprehensive normative instrument on academic freedoms to codify such rights, for example, *inter alia*, the freedom of scientific research, the right to publish, communicate and distribute results of research, the right to teach and the right to participate in international intellectual co-operation.

In 1992 UNESCO, in co-operation with the Raoul Wallenberg Institute for Human Rights and Humanitarian Law, organized a seminar on academic freedom in Lund, Sweden, where the concept of academic freedom and the rights and responsibilities in relation to the implementation of this concept were discussed. This seminar was followed by a UNESCO/CEPES (European Centre for Higher Education) Conference held in Sinaia, Romania, on academic freedom and university autonomy. In 1993 a seminar was organized by UNESCO and the Human Rights Centre of Poznan University in Poland, which elaborated a preliminary draft declaration on academic freedom, enumerating the rights of members of the academic community.

Over the last decade, UNESCO has done work on the human and cultural implications of scientific and technological progress and, at a conference organized by

UNESCO in Brasilia in 1985, participants urged the use of science and technology for peaceful ends, and rejected «any application that places the survival of humanity in jeopardy». Despite the limited number of standard-setting instruments dealing with the right to participate in scientific progress, it is nevertheless fully reflected in activities of the UNESCO Science Sector, in particular in Major Programme Area II: *Science for Progress and the Environment*.

THE RIGHT TO INFORMATION

Freedom of information is very rightly regarded as one of the prerequisites for the exercise of human rights and constitutes a very potent confidence-building measure. Article I, paragraph 2 (a) of the UNESCO Constitution, stipulates that the Organization will: «collaborate in the work of advancing the mutual knowledge and understanding of peoples, through all means of mass communication and to that end recommend such international agreements as may be necessary to promote the free flow of ideas by word and image».

In implementing the right to information, UNESCO strives to eliminate various barriers to the free movement of books, publications and other printed materials and four agreements have been worked out for this purpose. In 1948 the General Conference adopted an agreement for facilitating the international circulation of visual and auditory materials of an educational, scientific and cultural character. This agreement introduced exemption from all customs duties and quantitative restrictions for materials originating in the territory of any Contracting State. In 1950 the Florence Agreement on the Importation of Educational, Scientific and Cultural Materials was designed to abolish customs duties and remove the trade barriers which impede exchanges, not only of visual and auditory materials but also of several other items. Twenty-six years later a Protocol was added to this Agreement. Furthermore, under the provisions of the

Convention Concerning the Exchange of Official Publications of 1958, the Contracting States grant exemption from customs duties for both imported and exported material. A Convention Concerning the Exchange of Official Publications and Government Documents between States was also adopted in 1958 by the General Conference which facilitates the international exchange of official publications.

In 1972 the UNESCO Declaration of Guiding Principles on the Use of Satellite Broadcasting for the Free Flow of Information, the Spread of Education and Greater Cultural Exchange was adopted and in 1978 a Declaration on Fundamental Principles Concerning the Contribution of the Mass Media to Strengthening Peace and International Understanding, to the Promotion of Human Rights and to Countering Racialism, Apartheid and Incitement to War was agreed upon.

The UNESCO Third Medium-Term Plan (1990-1995) deals with the right to information in Major Programme Area IV : *Communication in the Service of Humanity*, the introduction of which explains that UNESCO's decision to call for the establishment of a new world information and communication order in its Second Medium-Term Plan, though quite acceptable to many people, it was nevertheless also interpreted by professional communicators as a more or less avowed ambition on the part of the Organization to undermine freedom of information and impede the free flow of messages, personalities and ideas. This resulted in a misunderstanding which tarnished the Organization's image. Major Programme Area IV was formulated as a faithful reflection of the new strategy. Throughout it aims at ensuring a free flow of information at international and national levels as well as its wider, more balanced dissemination, without any obstacle to the freedom of expression, and at strengthening communication capacities in developing countries, so that they may participate more actively in the communication process.

UNESCO'S CONTRIBUTION TO THE ELIMINATION OF ALL FORMS OF DISCRIMINATION

ELIMINATION OF RACISM AND RACIAL DISCRIMINATION

The UNESCO stand on racism has already been formulated in its Constitution. The Preamble stresses that «... the great and terrible war which has now ended was a war made possible by the denial of the democratic principles ... by the propagation, in their place, through ignorance and prejudice, of the doctrine of the inequality of men and races». Article I adds that human rights and fundamental freedoms «... are affirmed for the peoples of the world, without distinction of race, sex, language or religion, by the Charter of the United Nations».

In 1948 the United Nations Economic and Social Council urged UNESCO to adopt a programme for disseminating scientific facts designed to remove racial prejudice. In response to this appeal, UNESCO sponsored a vast programme of research on the scientific basis of race. In 1950, a group of eminent experts prepared a *Statement on Race*, followed in 1951 by a *Statement on the Nature of Race and Race Differences*. Both these statements emphasized that biological differentiation of races is without foundation and unequivocally rejected theories of racial superiority. Race is not so much a biological phenomenon as a «social myth». For this reason it would be better, when speaking of humankind, to drop the term «race» altogether and speak of ethnic groups. In 1964 a *Statement on the Biological Aspects of Race* was drafted. While recognizing that there are obvious physical differences between populations living in different geographical areas of the world, the 1964 text emphasized the predominance of historical, social and cultural factors over biological factors in the explanation of these differences. In 1967 UNESCO convened a multidisciplinary expert meeting with a much

broader representation specialists in the social and biological sciences which worked out the fourth *Statement on Race and Racial Prejudice* and thus contributed towards elucidating the genesis of racist theories and racial prejudice.

From the earliest years of the Organization's existence, many General Conference resolutions denounced discrimination, racism and racial prejudice. Thus, in 1950, the General Conference stressed the particularly dangerous character of racism. In 1954, it stated that «... discrimination as enumerated in Article 2 of the Universal Declaration of Human Rights ... is one of the greatest dangers to peace and to human dignity». In 1960, it noted that «... every display of racial intolerance or alleged national superiority ... constitutes a threat to international peace, security and understanding». Many other resolutions follow the same lines.

In 1978 the General Conference at its twentieth session solemnly adopted, by acclamation, the Declaration on Race and Racial Prejudice. While UNESCO's earlier statements on race had been drawn up by groups of experts and carried the authority of the outstanding specialists who prepared them, the Declaration was the outcome of a meeting of government representatives of Member States and, as a standard-setting document, it imposed on them obligations foreseen in the UNESCO Constitution. It states that all human beings belong to a single species and are descended from a common stock. The differences between the achievements of various peoples can only be attributed to geographical, historical, political, economic, social and cultural factors. Such differences can in no circumstances serve as a pretext for any rank-ordered classification of nations or peoples. Racial prejudice, historically linked with inequalities in power and reinforced by economic and social differences between individuals and groups, is totally without justification.

The Declaration proclaims the right of all individuals and groups to be different. However, diversity of life

styles and the right to be different may not in any circumstances serve as a pretext for racial prejudice. The Declaration not only qualifies apartheid as one of the most serious violations of the principle of equality in dignity and rights but goes further, stating that apartheid «... is a crime against humanity, and gravely disturbs international peace and security».

The State has prime responsibility for ensuring human rights and fundamental freedoms and it should take all appropriate steps to prevent, prohibit and eradicate racism, racist propaganda, racial segregation and apartheid. The Declaration calls upon international organizations to co-operate and assist, inasmuch as their respective fields of competence and means allow, «... in full and complete implementation of its principles».

During more than forty-five years of activity aimed at the elimination of racism and racial discrimination, UNESCO has organized numerous meetings and published a number of studies dealing with various aspects of the question. Probably one of the best known UNESCO studies is a booklet *The Race Question in Modern Science*, first published in the 1950s, which contained contributions from leading figures in the world of science.

THE STRUGGLE AGAINST APARTHEID

The position taken by UNESCO on racial problems has been unequivocal and brought about the decision of the Government of the Union of South Africa to withdraw from the Organization on 31 December 1956. In 1966 the General Conference requested the Director-General not to invite the Republic of South Africa to attend conferences or take part in other UNESCO activities, until such time as the South African Government abandoned its policy of racial discrimination. Then, in 1967, UNESCO published *Apartheid and Its effects on Education, Science, Culture and Information*, a second, updated edition of which appeared in 1972.

In 1970, the sixteenth General Conference called for positive action to support the African liberation movements and, to that end, invited the Director-General «... to send a mission to the Organization of African Unity and, after examination of its report by the Executive Board, evolve concrete programmes for assistance to (a) refugees from colonial territories and (b) other people striving to liberate themselves from colonial domination and all forms of apartheid». Subsequently programmes of assistance for the liberation movements of Namibia and South Africa were launched.

Assistance made available to national liberation movements has been primarily in the field of education and has consisted of granting fellowships and school stipends. UNESCO's assistance to the national liberation movements recognized by the OAU was extended in 1975 to the two South African liberation movements - the African National Congress (ANC) and the Pan-Africanist Congress of Azania (PAC), following requests on the part of these movements. Later UNESCO's assistance to African national liberation movements was focused on the ANC, the PAC and the South West Africa People's Organization (SWAPO), a Namibian liberation movement, which received UNESCO assistance in the field of training.

In addition to studies on the theoretical and ideological basis of apartheid, training programmes for South African and Namibian key personnel, especially to upgrade their knowledge in social sciences, were organized in Tanzania and Zambia and at the Institute of Social Studies, The Hague (Netherlands). Courses were also provided for South African graduate students on the repercussions of apartheid on the South African economy and the impact of apartheid on women. Furthermore, UNESCO has organized working groups on: women and apartheid, economics and apartheid, and culture and apartheid.

In co-operation with the Organization of African Unity (OAU), UNESCO published the following works:

Race, Class and the Apartheid State by Harold Wolpe; *Endgame in South Africa?* by Robin Cohen; *A History of Resistance in Namibia* by Peter Katjavivi. In addition, a strip cartoon *Fighting Apartheid: A Cartoon History* was prepared in co-operation with the International Defence and Aid Fund for Southern Africa in London.

In the framework of the Special Project - Contribution to the elimination of apartheid: towards an apartheid-free world, UNESCO continued promoting actions of solidarity against apartheid and improving the training of cadres from the liberation movements recognized by the OAU. Several meetings, devoted to the study of various political alternatives for an apartheid-free society, including problems of promoting a culture of peace and democracy in South Africa were organized.

Taking into account the positive changes which have taken place in South Africa, the Approved Programme and Budget for 1994-1995 contains a new Special Project: Contribution to the construction of a democratic, non-racial, apartheid-free society in South Africa. The purpose of this project, which involves all the Organization's areas of competence, is to help frame and implement policies which will permit the transition from a system of social organization based on racial discrimination to a system of pluralistic democracy. In this context, special attention is paid to the most vulnerable and disadvantaged population groups, including unschooled and marginalized youth, women, displaced persons and refugees, and rural populations.

IMPROVING THE STATUS OF WOMEN - TOWARDS THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN

Since its early years, UNESCO has been very active in combating all forms of inequalities based on sex within the Organization's fields of competence. Apart from the adoption in its standard-setting documents of numerous provisions aimed at the elimination of discrimination in

education, professional and public life, UNESCO has promoted highly valuable on-going research which has yielded fuller knowledge of the situation of women throughout the world and better understanding of the nature of existing inequalities. All its activities are based on an assumption that international organizations can contribute to the emancipation of women and girls through research, information, education and training.

The General Conference at its nineteenth session in 1976 adopted 19C/Resolution 16.1 which invited the Director-General to present to the Executive Board and to the General Conference, at two-yearly intervals, a special report describing the activities carried out by the Organization in its fields of competence as a contribution to improving the status of women. Up to the present five reports on this subject have been submitted: the first was presented to the General Conference in 1978 and the seventh in 1993. The Co-ordinating Unit for Activities Relating to the Status of Women was set up in 1984.

UNESCO activities relating to the status of women are mainly concentrated on the promotion of equality between women and men in different societies and in different fields, in particular in education, in cultural as well as economic and political life and in the field of communication and information.

UNESCO has sponsored studies and research on the universality of women's rights. An international meeting of experts in Baku (former USSR) in 1987, while noting that the principle of women's rights emerged in Europe in the eighteenth century, emphasized its universal scope. In 1988-1989, an extensive programme on one of the most worrying aspects of discrimination against women, female prostitution, was completed. A UNESCO meeting in Madrid in 1986 recognized prostitution as a flagrant violation of human rights. Among topics of research sponsored by UNESCO in 1992-1993, mention should be made of women's participation in social life, in public life, in development and in democratization processes.

As far as educational equality of men and women is concerned, UNESCO has organized a number of meetings dealing with the implementation in various regions of the world of the right of women to education. Bearing in mind that, with very few exceptions, illiteracy ratios are higher for women than for men, the Organization launched a number of operational activities known as literacy, functional literacy and civic education projects for women.

UNESCO is also conducting a series of research and action projects on the participation of women in cultural life and communication. A book on women and decision-making in the media, *The Invisible Barrier*, was published in 1987. Recently, studies on the contribution of the media to strategies for the advancement of women, on the role of women in mass media and on women's training in the communication professions were carried out. The Organization closely co-operates with two United Nations bodies, the Committee on the Elimination of Discrimination Against Women and the Working Group on Contemporary Forms of Slavery.

Efforts are being stepped up to promote equality between men and women in accordance with the objectives formulated by the Nairobi Forward-Looking Strategies for the Advancement of Women (Nairobi, 1985) and the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (1979).

UNESCO'S PROCEDURES FOR THE IMPLEMENTATION OF CONVENTIONS AND RECOMMENDATIONS CONCERNING HUMAN RIGHTS

SUBMISSION AND EXAMINATION OF THE REPORTS OF MEMBER STATES

In accordance with Article IV, paragraph 6 of UNESCO's Constitution, the General Conference receives and considers reports sent to the Organization by

Member States on actions taken upon the recommendations and conventions adopted by it. Member States submit their reports to the Organization «... at such times and in such a manner as shall be determined by the General Conference». The Rules of Procedure concerning recommendations to Member States and international conventions adopted by the General Conference at its fifth session and modified at its seventh and seventeenth sessions, stipulate that initial special reports relating to any convention or recommendation adopted shall be transmitted not less than two months prior to the opening of the first ordinary session of the General Conference following that at which such a recommendation or convention was adopted. The Rules of Procedure provide that the General Conference, in addition to the initial special reports, may further request Member States to submit, by prescribed dates, additional reports to include information on the laws, regulations and statistics regarding the State's educational, scientific and cultural institutions and activities.

Apart from the Constitution, several UNESCO conventions and recommendations contain provisions concerning reports. Thus article 7 of the Convention against Discrimination in Education provides that «States Parties to this Convention shall, in their periodic reports submitted to the General Conference of UNESCO on dates and in a manner to be determined by it, give information on the legislative and administrative provisions which they have adopted». At the present time the reports by the States Parties are drawn up on the basis of a detailed questionnaire prepared by the Committee on Conventions and Recommendations and adopted by the General Conference. The replies received by the Secretariat are analysed by the Secretariat and examined by the Committee. After examining the reports, the Committee on Conventions and Recommendations draws up a report for submission to the Executive Board, which transmits it with its comments to the General Conference.

The resolution for the implementation of the Declaration on Race and Racial Prejudice urges Members States»... to communicate to the Director-General all necessary information concerning steps they have taken to give effect to the principles set forth in the Declaration».

A joint ILO/UNESCO Committee of Experts on the Application of the Recommendation Concerning the Status of Teachers (adopted in Paris in 1966 by a special intergovernmental conference) was set up by the fourteenth session of the UNESCO General Conference and the 167th session of the Governing Body of the ILO. The Committee's terms of reference are to examine the reports received from governments on action taken by them on the Recommendation. Several of the Recommendation's provisions are directly connected with the exercise of human rights, particularly those relating to non-discrimination in the training and employment of teachers and the right of association of teachers.

CONCILIATION AND GOOD OFFICES PROCEDURE

To supplement and strengthen the system of implementation of the Convention against Discrimination in Education, the General Conference adopted on 10 December 1962 the Protocol instituting a Conciliation and Good Offices Commission to be responsible for seeking the settlement of any disputes which may arise between States Parties to that Convention. The Protocol, binding at present 30 States, entered into force on 24 October 1968.

The Commission instituted by the Protocol is permanent consisting of eleven members of high moral standing and acknowledged impartiality elected by the General Conference for a term of six years from a list of persons nominated by the States Parties. The members serve in their personal capacity. In their election, the General Conference endeavours to include persons of

recognized competence in the field of education and persons having judicial or legal experience, particularly of an international character. Consideration is also given to equitable geographical distribution of membership and to the representation of the different cultures as well as of the principal legal systems. If a State to the dispute has no member of its nationality, it may choose a person to sit on the Commission as an *ad hoc* member.

Initially recourse to the Commission was opened to States Parties to the Protocol. In accordance with Article 12, if a State Party considers that another State Party is not giving effect to a provision of the Convention, it may, by written communication, bring the matter to the attention of that State; the receiving State should then give an explanation within three months. If the matter is not settled to the satisfaction of both parties within six months, either State has the right to refer the matter to the Commission.

From the beginning of the sixth year after the entry into force of the Protocol, that is after 24 October 1974, the Commission was also made responsible for seeking the settlement of disputes between States which are parties to the Convention but not parties to the Protocol, if the States in question agree. However, it may deal with a case only after exhausting domestic remedies.

The Commission's mandate is, after obtaining all information, to ascertain the facts and make available its good offices to the States concerned with a view to an amicable solution of the matter. In every case it draws up a report which is sent to the States concerned and then communicated to the Director-General for publication. If a solution is found, the report is brief and confined to the facts and solutions reached. If not, the report indicates, in addition to the facts, recommendations of the Commission whose members are entitled to attach separate opinions.

PROCEDURE FOR THE IMPLEMENTATION OF THE CONVENTION FOR THE PROTECTION OF CULTURAL PROPERTY IN THE EVENT OF ARMED CONFLICT, WITH REGULATIONS FOR THE EXECUTION OF THE CONVENTION.

To the extent that, during a period of armed conflict, the protection of cultural property belonging to the cultural heritage of mankind is a prerequisite for the exercise of human rights in the cultural field, that the procedure for the implementation of this Convention can be considered as being intimately linked to other UNESCO procedures for the protection of human rights.

The Hague Convention of 1954 (with the Regulation) established a special procedure for its execution in which the Director-General of UNESCO was required, upon the entry into force of the Convention (7 August 1956), to compile an international list of persons nominated by the parties and qualified to carry out the functions of the Commissioner-General for Cultural Property. In the case where a party to the Convention is engaged in an armed conflict, it appoints a representative for cultural property situated in its territory and also entrusts a neutral State (Protecting Power) with the task of defending its interests in the country with which it is in conflict. Sometimes a Commissioner-General is appointed by joint agreement between the country to which he will be accredited and the Protecting Power acting on behalf of the opposing party. Commissioners-General chosen jointly from the international list of persons, in conjunction with representatives for cultural property and delegates of Protecting Powers, deal with all matters referred to them in connection with the application of the Convention. The Commissioners-General for Cultural Property are principally responsible for ensuring that the provisions of the Convention are observed. They have the right, with the agreement of the Parties to which they are accredited, to order an investigation or to conduct it

themselves, to make any representations to the Parties engaged in conflict or to the Protecting Powers which they deem useful for the application of the Convention. Last but not least the Commissioners-General may draw up reports on the application of the Convention and communicate them to the interested States and to their Protecting Powers. Copies of the reports are sent to the Director-General of UNESCO. The priority given to the reports as well as the fact that they are prepared by neutral, eminent persons with high moral authority, guarantee their impact on international public opinion which must be taken into account by the belligerents. The procedures for the application of the Convention on the initiative of the Director-General were implemented for the first time during the 1967 Middle East conflict.

COMMUNICATIONS (COMPLAINTS) PROCEDURE ESTABLISHED BY THE EXECUTIVE BOARD DECISION 104 EX/3.3.

The UNESCO General Conference at its nineteenth session in 1976 invited the Director-General and the Executive Board to study the procedures to be followed in the examination of cases and questions submitted to UNESCO concerning the exercise of human rights in its spheres of competence. A Working Party of the Executive Board prepared a study which became a basis for the Decision 104 EX/3.3 adopted by the Executive Board at its 104th session in 1978. In accordance with this decision, UNESCO does not play the role of an international judicial body or arbitrator but helps to reach solutions to particular problems concerning human rights by initiating consultations, in conditions of mutual respect, confidence and confidentiality.

In the exercise of its competence in the field of human rights, UNESCO is called upon to examine cases concerning violations of human rights which are individual and specific and questions of massive, systematic or flagrant violations of human rights. While cases are

generally examined in private meetings of the Committee on Conventions and Recommendations of the Executive Board, questions may be examined by the Executive Board and the General Conference in public meetings.

To be considered admissible, a communication has to meet a number of conditions set up in paragraph 14(a) of the decision. *Inter alia*, it must not be anonymous, must originate from a person or a group of persons who can be reasonably presumed to be victims of an alleged violation of human rights falling within UNESCO's competence in the fields of education, science, culture and information. It may also originate from any person, group of persons or non-governmental organizations having reliable knowledge of these violations. Communications which are manifestly ill-founded, offensive or based exclusively on information disseminated through the mass media are inadmissible.

The Director-General acknowledges receipt of communications and informs the authors of the communication about conditions governing its admissibility. After agreement has been obtained from the author of the communication for his or her name to be divulged and the communication has been transmitted to the government concerned, the communication, together with any replies from the government, are examined in private session by the Committee on Conventions and Recommendations in the presence of a representative of the government concerned, who may provide additional information and/or answer questions from members of the Committee. The Director-General notifies the author of the communication and the government concerned of the Committee's decision on the admissibility of the communication. Communications which warrant further consideration are acted upon by the Committee, with a view to bringing about a friendly solution designed to advance the promotion of human rights falling within the fields of competence of UNESCO. The Committee reports in a confidential document to the Executive Board, which may take whatever action it considers

appropriate, including endorsing a report and appealing to the government concerned to take measures to restore the necessary safeguards of human rights.

From 1978 to 1993, 423 communications coming from individuals as well as from such non-governmental organizations as Amnesty International, the International Association of Democratic Lawyers, the International Human Rights Law Group, the World Federation of Teachers' Unions, the Women's International Democratic Federation were examined by the Committee on Conventions and Recommendations. Almost half of the communications were declared inadmissible. Though the number of communications presented to UNESCO is relatively small, nevertheless the procedure is effective as it has led in the years 1978-1993 to the settlement of 247 cases.

EDUCATION FOR HUMAN RIGHTS

The Universal Declaration of Human Rights in its Preamble proclaims that every individual and every organ of society: «... shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure that universal and effective recognition and observance...». Article 26 of the Universal Declaration adds that: «Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms ».

UNESCO'S SPECIFIC MANDATE

It is quite natural that, among the members of the United Nations family a special role in the area of teaching of human rights is assigned to and fulfilled by UNESCO, as the promotion of human rights is inscribed in its Constitution. The United Nations Economic and Social Council, in its resolution 314 (XI) of 1950, invited UNESCO

to encourage and facilitate teaching about the Universal Declaration in schools and adult education programmes and through the press, radio and other media. The International Conference on Human Rights, which met in Tehran in 1968, called upon UNESCO to develop its programmes aimed at making children aware of respect for the dignity and rights of man and at ensuring that the principles of the Universal Declaration prevail at all levels of education, particularly in institutions of higher learning, where the future cadres are trained.

The specific role of UNESCO in the teaching of human rights has also been recognized by the United Nations Commission on Human Rights which, in 1971, urged it to examine the need to envisage a systematic study and development of an independent scientific discipline of human rights, taking into account the principal legal systems of the world with a view to facilitating understanding, comprehension, study and teaching of human rights at university level and, subsequently, at other educational levels.

It is worth noting that the first teaching aid *The Universal Declaration of Human Rights : A Guide for Teachers* was published by UNESCO as early as 1951 and translated into eight languages. Several years later UNESCO carried out, in co-operation with international non-governmental organizations, a survey of methods, materials and programmes of teaching about human rights. The results were published in 1952. In the following years an impressive number of books devoted to the teaching of human rights were prepared and disseminated by the Organization.

ASSOCIATED SCHOOLS PROJECT AND RECOMMENDATION OF 1974

In 1953 UNESCO launched the Associated Schools Project for International Co-operation and Peace (ASP). It started with 33 secondary schools in countries which were invited to organize social programmes and to under-

take experiments in teaching about foreign countries and peoples, human rights and the activities of the United Nations. Since then the ASP has expanded to cover more than 2,800 participating institutions in 114 countries in 1993. Many participating teacher-training colleges, primary and secondary schools concentrate their work on human rights. The results are disseminated in various UNESCO publications (including the bulletin, *International Understanding at School*, and the newsletter, *A Glimpse of the Associated Schools Project*) and discussed at various seminars and meetings.

At its eighteenth session in 1974, the General Conference adopted the Recommendation Concerning Education for International Understanding, Co-operation and Peace and Education Relating to Human Rights and Fundamental Freedoms. Human rights are understood as being «those defined in the United Nations Charter, the Universal Declaration of Human Rights and the International Covenants on Human Rights, that is the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights of 1966». The Recommendation calls upon Member States to take steps to ensure that the principles of the Universal Declaration of Human Rights and of the International Convention on the Elimination of All Forms of Racial Discrimination become an integral part of the developing personality of each child, adolescent, young person or adult, by applying these principles in daily education at all levels. Member States should encourage a wider exchange of textbooks, especially those concerning history and geography, and should take measures for the study and revision of textbooks and other educational materials to ensure that they are accurate, balanced, up-to-date, without prejudice, and enhance mutual knowledge and understanding between peoples. The Intergovernmental Conference on Education for International Understanding, Co-operation and Peace and Education Relating to Human Rights and Fundamental Freedoms, held in Paris in 1983, recommended

extending the scope of the 1974 Recommendation to the whole of the education system, including non-formal and higher education. In accordance with the decision taken by the General Conference during its twenty-third session in 1985, the permanent system of reporting on steps taken by Member States to apply the 1974 Recommendation was adopted. The first synthesis of national reports covering both the achievements and problems identified by Member States in promoting education for international understanding, co-operation and peace, and education for human rights and fundamental freedoms, was submitted to the General Conference at its twenty-fifth session in 1989. Questions linked with full and comprehensive implementation of the 1974 Recommendation are periodically discussed by the Consultative Committee.

THE INTERNATIONAL CONGRESS ON THE TEACHING OF HUMAN RIGHTS, VIENNA, AUSTRIA, 1978

The International Congress on the Teaching of Human Rights, held in Vienna from 12 to 16 September 1978, was an occasion for UNESCO to assemble for the first time more than one hundred experts: teachers, educators, activists and governmental officials from all over the world. For this very reason the Congress has to be seen as a landmark in the development of education relating to human rights and fundamental freedoms.

In its final document, the Congress stressed that human rights education and teaching should be based on the principles on which the Charter of the United Nations, the Universal Declaration of Human Rights, the International Covenants on Human Rights, and other international human rights instruments are based. The indivisibility of all human rights should be recognized. Human rights education and teaching must aim at: fostering the attitude of tolerance, respect and solidarity, providing knowledge about human rights and developing the individual's awareness of the ways and means by which

human rights can be translated into social and political reality. The Congress recommended: (a) the preparation of a six-year plan for human rights education; (b) conducting a preliminary study on the question of the desirability of preparing a UNESCO Convention on human rights teaching and education, and (c) setting up a voluntary fund for the development of knowledge of human rights through education and information.

A draft plan for the development of human rights teaching between 1981 and 1987 was prepared by a UNESCO experts meeting in 1979. It embraced a number of measures relating to teaching aids, curricula, programmes, as well as structures addressed to UNESCO, Member States and international organizations. A Voluntary Fund for the Development of Knowledge of Human Rights was created by the UNESCO Executive Board. During its twenty-fifth session in 1989, the General Conference adopted a decision that the preparation of an Integrated Plan for International Education on Peace and Human Rights (second phase) be concluded as soon as possible.

THE INTERNATIONAL CONGRESS ON HUMAN RIGHTS TEACHING, INFORMATION AND DOCUMENTATION, MALTA, 1987

A new milestone in the developing of human rights education was laid when the International Congress on Human Rights Teaching, Information and Documentation was organized by UNESCO in Malta from 31 August to 5 September 1987. This conference was prepared by an informal consultation in 1985, which underlined the importance of audio-visual materials in human rights education, as well as a need for wide exchanges of experiences, methods and teaching techniques.

The Congress adopted a series of recommendations noting the progress that had been made in the field of human rights education since the Vienna Congress. It should be noted that a complete system of human rights

teaching and education available to all citizens and all population groups and covering all levels of education, with the broad participation of various public organizations and media, should be established by Member States. The Congress recommended that the Director-General co-operate with Member States in the development of programmes of human rights teaching and education within the framework of formal and non-formal systems of education, and encourage the inclusion of human rights teaching at all levels of formal education as well as assist Member States in developing new educational methods and materials with a view to strengthening human rights education. Among other topics broadly discussed during the Congress were: teacher training and protection of teachers, research on human rights education; international co-operation and the role of non-governmental organizations as well as human rights information and documentation. The reports of the Director-General on the implementation of the Malta Recommendations were presented and debated during the twenty-fifth, twenty-sixth and twenty-seventh sessions of the General Conference.

THE INTERNATIONAL CONGRESS ON EDUCATION FOR HUMAN RIGHTS AND DEMOCRACY, MONTREAL, CANADA, 1993

The principle aim of the International Congress organized by UNESCO, in co-operation with the United Nations Centre for Human Rights and the Canadian Commission for UNESCO, from 8 to 11 March 1993 in Montreal was to summarize the activities undertaken since the Malta Congress of 1987, to analyse difficulties concerning education for human rights and to give a new impetus to its development. Taking into account the democratization processes which are actively being undertaken in different parts of the world, the inherent link between human rights and democracy were reflected in the title of the Congress. More than 250 specialists

from more than 60 countries, as well as representatives of intergovernmental and international non-governmental organizations attended the meeting.

Problems related to education for human rights and democracy at different levels - in primary, secondary and technical schools, institutions of higher education as well as in non-formal education - were discussed at length. The Congress adopted the World Plan of Action on Education for Human Rights and Democracy which determines the main aims of education in these fields and concrete methods for achieving them. It was envisaged to create a Committee which will follow-up the implementation of this World Plan. During the Montreal Congress a document devoted to academic freedom was also elaborated and approved.

INTERNATIONAL CO-OPERATION

In order to encourage an exchange of information on human rights teaching and liaison among members of human rights teaching and research communities, UNESCO publishes a bulletin *Human Rights Teaching*, presenting material on the organization of human rights education in various countries, on documentation, curricula, teaching materials and methods, on relations between human rights and other social and human sciences.

In order to honour institutions, organizations or individuals for outstanding work, the UNESCO Prize for the Teaching of Human Rights was created by the Executive Board in 1978. The first prize was awarded in 1978 to Mr Momtaz Soysal (Turkey) for his work in developing human rights teaching at university level. In 1979, UNESCO awarded the prize to Mr Paul Morren (Belgium), in 1981 to Mr Ali Sadeh Abou-Heif (Egypt), in 1983 to Mr Felix Ermacora (Austria), in 1986 to Mr Hector Fix Zamudio (Mexico), in 1988 to the Bolivian Permanent Assembly of Human Rights, in 1990 to Mr

Vaclav Havel, President of the Czech and Slovak Federal Republic and in 1992 to the Arab Institute of Human Rights in Tunisia.

This presentation of UNESCO's efforts to develop the teaching of human rights would not be complete without mentioning fruitful co-operation with numerous non-governmental organizations, international and national institutes and the whole community of teachers and researchers in this field. UNESCO, in co-operation with them, prepares teaching material, manuals and curricula and organizes the training of certain professional categories such as law enforcement personnel, journalists and the military. It assists in the organization of annual training courses and training schools on human rights all over the world - in Europe, Africa, Latin America and Asia. UNESCO has taken an active part in the preparation of the World Conference on Human Rights which took place in Vienna in June 1993 and in its work.

In response to a request from the Conference Secretariat to the specialized agencies to provide information in their field of competence, UNESCO contributed five documents relevant to the objectives of the Conference. Throughout the preparatory process, UNESCO not only prepared a number of written contributions and organized a series of meetings linked with the World Conference on Human Rights but also actively participated in the four sessions of the preparatory Committee and regional meetings, promoting its view on the organization and agenda of the World Conference as well as on substantial issues, in particular those linked with education human rights and democracy.

From UNESCO's point of view, one of the main results of the World Conference on Human Rights concerns the recognition of the importance of human rights education. The Conference in the *Vienna Declaration and Programme of Action* (Part II, paragraph 81) recommends:

« Taking into account the World Plan of Action on Education for Human Rights and Democracy, adopted in March 1993 by the International Congress on Education of Human Rights and Democracy of the United Nations Educational, Scientific and Cultural Organization, recommends that States develop specific programmes and strategies for ensuring the widest human rights education and the dissemination of public information, taking particularly account of the human rights needs of women ».

Similarly the proposal formulated by the Director-General before and during the World Conference on Human Rights concerning the proclamation by the United Nations of a Decade for Human Rights Education has been noted, The World Conference on Human Rights also requested that the proclamation of a United Nations Decade for Human Rights be considered.

In the development of human rights education, UNESCO is by no means alone among intergovernmental universal and regional organizations. It is accompanied and helped by the United Nations Centre for Human Rights in Geneva which is the co-ordinating body within the United Nations system, as well as by many specialized agencies and regional organizations.

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THE UNIVERSAL DECLARATION OF HUMAN RIGHTS

The Universal Declaration of Human Rights was adopted by the General Assembly of the United Nations on 10 December 1948.

In the aftermath of the Second World War, the authors of this Declaration wanted to transmit the following message: human rights must be universally respected in order to aid in the construction of peace.

The publication traces the history of the drawing up of the Universal Declaration of Human Rights and its implementation by UNESCO whose action in favour of human rights has been inspired by its articles.

This monograph, which is aimed at a wide public, will, we hope be of interest to all those who are concerned about respect for human rights.