Universal Declaration of Human Rights (1948)
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Subject(s):
Equality before the law — Rights holders — NGOs (Non-Governmental Organizations)
Published under the auspices of the Max Planck Foundation for International Peace and the Rule of Law under the direction of Rüdiger Wolfrum.
A. Introduction

1 The Universal Declaration of Human Rights (‘UDHR’) was adopted by the United Nations General Assembly (‘UNGA’), meeting in Paris, on 10 December 1948, to a standing ovation (see also → Declaration; → United Nations [UN]; → United Nations, General Assembly). The vote was 48 votes in favour, with eight members abstaining: Byelorussia, Czechoslovakia, Poland, Saudi Arabia, South Africa, the Soviet Union, Ukraine, and Yugoslavia. Two Member States, Honduras and Yemen, were absent for the vote (see also → International Organizations or Institutions, Voting Rules and Procedures).

2 The Charter of the United Nations (→ United Nations Charter; ‘UN Charter’) contained various general commitments to → human rights, but it had not defined their content. The UN Charter’s → preamble referred to the ‘faith in fundamental human rights, in the dignity and worth of the human person, [and] in the equal rights of men and women’ held by the → peoples of the UN (see also → Human Dignity, International Protection; → Women, Rights of, International Protection). It also spoke of determination to ‘promote social progress and better standards of life in larger freedom’ (→ Standard of Living, Promotion of). Art. 1 UN Charter declared that one of the purposes of the UN was to ‘achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion’ (see also → Equality of Individuals). The UN Charter also committed the UNGA to ‘initiate studies ... for the purpose of ... assisting in the realization of human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion’ (Art. 13 UN Charter). The UN was required to promote ‘universal respect for, and observance of, human rights and fundamental freedoms for all without distinction’ on the same four grounds (Art. 55 UN Charter) and the Economic and Social Council (→ United Nations, Economic and Social Council [ECOSOC]) was empowered to ‘make recommendations for the purpose of promoting respect for, and observance of, human rights and fundamental freedoms for all’ (Art. 62 UN Charter). The UN Charter also extended the references to human rights to colonies (→ Colonialism) and other → non-self-governing territories (Arts 73 and 76 UN Charter).

3 Art. 68 UN Charter foreshadowed the creation of a permanent commission on human rights (→ United Nations Commission on Human Rights/United Nations Human Rights Council; → United Nations, Sub-Commission on the Promotion and Protection of Human Rights). Eleanor Roosevelt, widow of the United States (‘US’) President Franklin D Roosevelt, and an American delegate to the UN, was appointed to chair a group, known as the Nuclear Committee, to plan the UN Commission on Human Rights (‘UNCHR’). The Nuclear Committee recommended that the UNCHR’s first task be to prepare an international bill of human rights. The UNCHR was established in 1946 by the ECOSOC with a membership of 18 States, rather than 18 independent experts as proposed by the Nuclear Committee. The UNCHR held its first meeting in January 1947 with Mrs Roosevelt elected as chair. The UNCHR set up a Drafting Committee for the international bill of human rights, again chaired by Eleanor Roosevelt. Its most influential members included René Cassin (France), an academic and legal adviser to the Free French during World War II, and later Nobel Laureate; Peng-chun Chang (China), a philosopher and playwright; Charles Malik (Lebanon), an academic philosopher; Hansa Mehta (India), a politician and social worker; Carlos Romulo (Philippines), a journalist; and Hernán Santa Cruz (Chile), a judge and jurist. John Humphrey (Canada), Director of the UN Secretariat’s division on
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human rights, led the support team for the drafting of the UDHR and played a significant role in its development.

B. Drafting the Universal Declaration

The drafting process of the UDHR was intense. It began at the UNCHR's first meeting in January 1947 when a small group (Chairman Eleanor Roosevelt, Vice-Chairman Peng-chun Chang, and Rapporteur Charles Malik) prepared a preliminary draft of an 'international bill of rights'. The group was later enlarged to eight when members of the UNCHR sought greater involvement in the drafting, and the ECOSOC appointed Australia, Chile, France, the Soviet Union, and Great Britain to join the initial three. John Humphrey and the UN Secretariat were charged with preparing a draft outline of the bill of rights to present to the first meeting of the Drafting Committee in June 1947. Humphrey's draft of 48 rights drew extensively on existing statements of rights in national constitutions and laws as well as submissions about rights that had been made to the UN by State[s], groups (Non-governmental Organizations), and individuals (Individuals in International Law). He later reported that he was particularly influenced by drafts earlier prepared by the American Law Institute and the Inter-American Juridical Committee of the Organization of American States (OAS) (Humphrey 31–32). Both of these documents had drawn on a wide spectrum of legal traditions in attempting to identify internationally agreed statements of rights. Apart from these sources, Humphrey borrowed a provision relating to the rights of people belonging to ethnic, linguistic, and religious minorities (Minorities, International Protection) from a draft bill of rights drawn up by Hersch Lauterpacht in 1945 and he inserted a right to legal personality, which he regarded as his own 'invention' (Humphrey 31–32). The UN Secretariat's outline draft of 'every conceivable right' of interest to the Drafting Committee included civil and political rights familiar to European and American lawyers, such as rights to life (Life, Right to, International Protection), liberty (Liberty, Right to, International Protection) and property (Property, Right to, International Protection), as well as economic and social rights found in Latin American, Scandinavian, and Soviet constitutions, such as the right to work (Work, Right to, International Protection). The final article in the UN Secretariat's outline asserted considerable legal status for the rights it contained. It stated: 'The provisions of this International Bill of Rights shall be deemed fundamental principles of international law and of the national law of each of the Member States of the United Nations. Their observance is therefore a matter of international concern and it shall be within the jurisdiction of the United Nations to discuss any violation thereof' (Art. 48 Report of the Drafting Committee on an International Bill of Human Rights: Draft Outline of an International Bill of Human Rights).

Members of the Drafting Committee were overwhelmed by the comprehensiveness of the rights included in the UN Secretariat's draft. René Cassin was then assigned the task of moulding the document into a structured declaration, which he achieved over a single weekend. Cassin inserted a preamble and a general section on application of the enumerated rights, using a structure similar to the organization of the Code Napoléon. The 'general principles' identified by Cassin were designed to avoid association with the excesses of either free market individualism or socialist collectivism (Glendon 68). They included the proposition that '[a]ll men, being members of one family are free, possess equal dignity and rights, and shall regard each other as brothers' (Art. 1 Cassin draft), '[t]he object of society is to enable all men to develop, fully and in security, their physical, mental and moral personality, without some being sacrificed for the sake of others' (Art. 2 Cassin draft), 'each man owes to society fundamental duties which are: obedience to law, exercise of a useful activity, acceptance of the burdens and sacrifices demanded for the common good' (Art. 3 Cassin draft) and '[t]he rights and freedoms
hereinafter declared shall apply to all persons. No person shall suffer discrimination by
reasons of his race, sex, language, religion, or opinions’ (Art. 6 Cassin draft). Thirty-six
rights were then grouped into eight categories, such as personal freedoms (eg, rights of due
process), public freedoms (eg, freedom of conscience, belief, and opinion; → Religion or
Belief, Freedom of, International Protection), and social, economic, and cultural rights (eg,
rights to work and health; → Health, Right to, International Protection). The Cassin draft
largely contained the rights set out in the UN Secretariat draft, but introduced some new
provisions, including one that mothers and children have the right to ‘special attention, care
and resources’ (→ Children, International Protection). The Cassin draft stipulated that all
Member States of the UN had a duty to implement the enumerated rights in their legal
systems (→ Human Rights, Domestic Implementation).

6 The UNCHR Drafting Committee, meeting in June 1947, revised the Cassin version of the
UN Secretariat’s document, but there remained significant disagreement on a range of
issues. By the end of the session, draft articles for an international bill of rights, many
containing alternative text proposed by members, were sent to the full UNCHR meeting to
be held in December 1947. That meeting adopted a more settled draft, although
Byelorussia, the Soviet Union, the Ukraine, and Yugoslavia abstained from the vote. The
third and final UNCHR meeting dealing with the UDHR was held in New York in May and
June 1948, with the draft approved along the same voting lines as the previous meeting.
The draft was then presented to the Third Committee of the UN, which gave UN members
not represented in the UNCHR the chance to air their views. The draft UDHR was worked
through in exhausting detail over more than two months, with three weeks being spent on
the first two articles alone. Increasing → Cold War (1947–91) political tension led to
acrimonious debate in the Third Committee with Soviet accusations of Western racism and
colonialism pitted against Western attacks on Soviet abuses of civil and political rights. The
Third Committee made various changes to the UNCHR’s draft, for example the right to be
granted asylum was revised to the right to enjoy asylum (Art. 14 UDHR), but it emerged in
substance largely similar to the UNCHR’s June 1948 draft (see also → Asylum, Territorial).
The Third Committee decided to change the name of the document to the Universal, rather
than the International Declaration of Human Rights, to emphasize its global origins and
applicability. The Soviet bloc countries (see also → Warsaw Treaty Organization) abstained
from the vote on 7 December approving the draft, while Saudi Arabia and South Africa did
not vote at all on the text. The text of the UDHR then came before the UNGA in the evening
of 9 December. The Soviet Union attempted unsuccessfully to have the UDHR held over to
the UNGA’s next session to allow time to cure its major flaws in Soviet eyes: its
undermining of State → sovereignty and, paradoxically, its lack of implementation provisions
(Glendon 167). Thirty-four delegates spoke before the vote was taken just before midnight
on 10 December. The reasons for abstentions from the vote were varied: the Soviet Union
viewed the UDHR as flawed on the grounds that it did not apply to a society, such as the
Soviet Union, where ‘the State and the individual were in harmony with one another, [and]
their interests coincided’ (quoted in Morsink at 22). Other communist States criticized the
UDHR’s failure to condemn Nazism and fascism explicitly. Saudi Arabia abstained because
of the recognition in the UDHR of men and women’s equal rights to marry (Art. 16 UDHR)
and the right to change one’s religion (Art. 18 UDHR), the latter right inserted at Charles
Malik’s initiative. South Africa resisted the UDHR because of its implications for the system
of → apartheid (see also → Racial and Religious Discrimination), or separate development of
racial groups, then recently introduced.
7 Major, related, debates among the drafters of the UDHR were first, whether the document should simply set out human rights standards or whether it should also provide for the implementation of the designated human rights; and second, whether the document should be a resolution of the UNGA or a binding treaty (→ Treaties). On the first issue, the US supported the idea of a declaration of principles whose force would be primarily moral (see also → Soft Law), while Australia proposed a strong judicial enforcement mechanism, an international court of human rights to adjudicate on claims of human rights violations by individuals against their own → governments (see also → Human Rights, Individual Communications/Complaints). The latter proposal attracted very little support and was vehemently opposed by the Soviet Union delegate as ‘fantastic and dangerous’, an unacceptable infringement of State sovereignty (quoted in Glendon 95). In the end, Eleanor Roosevelt’s sense of urgency about the definition of human rights norms prevailed and the UDHR contains no implementation measures. The issue of the legal status of the UDHR was prompted by the expectation of a number of delegates that the term ‘international bill of human rights’, used by the ECOSOC to describe the UNCHR’s mandate, required a treaty structure. The debate found Australia, Great Britain, and India supporting a multilateral human rights convention, while the US favoured a non-binding resolution. One Soviet Union delegate initially was interested in a treaty form because of the possibility that States Parties could append reservations (→ Treaties, Multilateral, Reservations to) to a human rights treaty in order to reduce its impact on sensitive areas of State policy, although the interest turned to opposition once the nature of the rights to be covered became clear. The US position was in part dictated by Eleanor Roosevelt’s concern that if the instrument was in treaty form, it would not survive the process of ratification by the US Senate required by the US Constitution, given traditional American hostility to international scrutiny. She informed the Drafting Committee that the US supported a broad declaration that could later be supplemented by binding instruments on particular subjects.

8 Another debate among the drafters was over the priority to be given to rights of individuals in relation to the rights of communities and States (see also → Group Rights; → Solidarity Rights [Development, Peace, Environment, Humanitarian Assistance]). A consistent concern of members of the Soviet bloc was the UDHR’s effect on State sovereignty; indeed this concern was crucial in these States’ abstentions in the final vote in the UNGA. This controversy was connected to contention about the location of the duty to respect rights. The Soviet delegates in the Drafting Committee argued that the State should be presented as the guarantor of rights and proposed the insertion of qualifying phrases into the definition of rights such as ‘in accordance with the law of the State’. The Soviet Union also sought inclusion of obligations that individuals owed to the State. Others, such as René Cassin, insisted that human rights should also be observed at the levels of the family, workplace, religion and the human community generally (Glendon 113).

9 A third area of contention in the drafting of the UDHR was the status of economic and social rights. The debate in the UNCHR concerned the relative emphasis on social and economic rights vis-à-vis civil and political rights. The communist States represented in the UNCHR argued for priority to be given to economic and social rights and for the role of the State as responsible for the guarantee of these rights to be made clear. They were supported in this concern by Latin American countries as well as some European countries (Glendon 156–60). This approach would have confirmed the importance of central economic and social planning. The US was initially opposed to the inclusion of these rights in any form, but Eleanor Roosevelt, relying on the notion of freedom from want, one of the ‘four freedoms’ identified in Franklin Roosevelt’s State of the Union Address in 1941, persuaded the US State Department to agree to refer to them in the UDHR. The US however was anxious to de-emphasize the responsibility of the State for securing economic and social rights, relying more on the benefits of free markets for this task. The Indian and Egyptian delegates, for their part, were concerned that the recognition of economic and social rights
would place unsustainable pressures on poorer States. In the end this concern was met with the phrase (now included in Art. 22 UDHR) that economic, social, and cultural rights should be realized ‘in accordance with the organization and resources of each State’. Once it was clear that the outcome of the UNCHR’s negotiations would be a non-binding declaration, Western States found it easier to support the inclusion of economic and social rights.

10 The content of the UDHR was, and remains, radical for – international law. Its preamble speaks of the ‘inherent dignity and … equal and inalienable rights of all members of the human family’ and refers to the consequences of disregard for human rights as ‘barbarous acts which have outraged the conscience of mankind’. An attempt by the Dutch government to insert a reference to the ‘divine origin and immortal destiny’ of humans and human rights failed. The preamble borrows from Franklin Roosevelt’s ‘four freedoms’ in referring to ‘freedom of speech and belief and freedom from fear and want’ as ‘the highest aspiration of the common people’. There is an intriguing reference in the preamble to the possibility that people may ‘be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression’ if human rights are not protected by the – rule of law (see also – Resistance, Right to, International Protection). The preamble contains one, dissonant, reference to the necessity to ‘promote the development of friendly relations between nations’, borrowed from the UN Charter on the insistence of the Soviet Union. This reference implies that the protection of human rights must take account of international relations, while the rest of the document emphasizes the individual’s rights over those of governments.

11 The final catalogue of rights set out in the UDHR was similar in many respects to that proposed in the original UN Secretariat draft. The opening words of the UDHR present the rights as ‘a common standard of achievement for all peoples and all nations’. Art. 1 UDHR, which proclaims that ‘[a]ll 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’ was added towards the end of the drafting process. The next 20 articles contain civil and political rights, most of which were later given treaty status in the – International Covenant on Civil and Political Rights (1966) (‘ICCPR’). Art. 2 UDHR elaborates on Art. 1 UDHR by affirming the entitlement to the rights ‘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’. This article also makes explicit that the rights attach whatever the political status of the territory to which a person belongs, eg a trust (→ United Nations Trusteeship System) or non-self-governing territory. Other civil and political rights recognized in the UDHR include the right to life, liberty and security of person (Art. 3 UDHR; → Security, Right to, International Protection), a prohibition on → slavery (Art. 4 UDHR) and on torture or cruel, inhuman, or degrading treatment (Art. 5 UDHR; → Torture, Prohibition of), the right to recognition as a person before the law (Art. 6 UDHR), the right to equal protection of the law (Art. 7 UDHR), rights to due process in civil and criminal matters (Arts 8–11 UDHR; → Fair Trial, Right to, International Protection), the right to be free from interference with privacy and family (Art. 12 UDHR; → Family, Right to, International Protection; → Privacy, Right to, International Protection), the right to freedom of movement (Art. 13 UDHR; → Movement, Freedom of, International Protection), the right to seek and enjoy asylum from persecution (Art. 14 UDHR), the right to a → nationality (Art. 15 UDHR), the right to marry (Art. 16 UDHR), the right to own property (Art. 17 UDHR), freedom of thought, conscience, and religion (Art. 18 UDHR), freedom of opinion and expression (Art. 19 UDHR; → Information and Communication, Freedom of, International Protection; → Opinion and Expression, Freedom of, International Protection), freedom of peaceful assembly and association (Art. 20 UDHR; → Assembly, Freedom of, International Protection; → Association, Freedom of, International Protection), and the right to participate in government (Art. 21 UDHR; → Democracy, Right to, International Protection; → Elections, Right to Participate in, International Protection). The next six
articles set out economic, social, and cultural rights, since incorporated in the → *International Covenant on Economic, Social and Cultural Rights (1966)* (‘ICESCR’). Art. 22 UDHR provides for a right to social security (→ *Social Security, Right to, International Protection*) and a general right to those economic, social, and cultural rights ‘indispensable for [individual] dignity’. Other rights include the right to work (Art. 23 UDHR), the right to rest and leisure (Art. 24 UDHR), the right to an adequate standard of living, including rights to health, food, clothing, and housing (Art. 25 UDHR; → *Food, Right to, International Protection; → Housing, Right to, International Protection*), the right to education (Art. 26 UDHR; → *Education, Right to, International Protection*), and the right to participate in cultural life (Art. 27 UDHR; → *Cultural Life, Right to Participate in, International Protection*). Art. 28 UDHR provides for a right to a social and international order conducive to the realization of rights. The final two articles of the UDHR deal with limits on rights: Art. 29 (1) UDHR refers in general terms to an individual’s duties to the community, while Art. 29 (2) UDHR states that restrictions on rights must be only to promote the rights of others and the demands of a democratic society. Art. 30 UDHR affirms that there is no implication in the UDHR that a State, group or person may act to destroy any of the rights recognized in the UDHR.

12 A notable omission from the UDHR’s catalogue of rights was one relating to minorities, as had been included in earlier drafts. The UN Secretariat’s draft had provided for the right of ethnic, linguistic, and religious minorities to their own schools, and to their own cultural and religious organizations as well as to the use of their language in public institutions. This entitlement was supported strongly by States such as Denmark, the Soviet Union and Yugoslavia, but was equally strongly opposed by the US. Eleanor Roosevelt noted that there were different ethnic and linguistic groups in the US, but insisted that ‘there was no minority problem’ (quoted in Morsink at 272). Discussion in the Third Committee raised wider doubts about a minorities provision from countries with significant immigrant populations (see also → *Immigration*), such as Australia, Brazil, Canada, and Uruguay, concerned that the provision would discourage assimilation. It was ultimately watered down to the bland text of Art. 27 UDHR, which assures everyone the right to participate in the cultural life of the community. The ICCPR was to repair the omission of a right specifically applicable to minorities in its Art. 27.

C. Impact of the Universal Declaration

13 Formally, a declaration of the UNGA is not binding on Member States, but the broad international acceptance of the UDHR over the last 60 years has given its principles some legal status. It is referred to in the preambles of almost all international and regional human rights treaties, eg the ICESCR, the ICCPR, the → *European Convention for the Protection of Human Rights and Fundamental Freedoms (1950)*, the → *American Convention on Human Rights (1969)*, and the → *African Charter on Human and Peoples’ Rights (1981)*. Many of the provisions of the UDHR were given treaty status in the ICESCR and ICCPR, but there were some striking omissions. For example the right to seek asylum (Art. 14 UDHR), the right to a nationality (Art. 15 UDHR), and the right to own property (Art. 17 UDHR) were not incorporated into the ICCPR. The Vienna Declaration and Programme of Action (‘Vienna Declaration’) of the → *Vienna World Conference on Human Rights (1993)*, described the UDHR in its preamble as ‘the source of inspiration and...the basis for the United Nations in making advances in standard setting as contained in the existing international human rights instruments’. The Vienna Declaration has also profoundly influenced the constitutions of a broad spectrum of States (see Annex 1 to...
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14 It is striking that the → International Court of Justice (ICJ) has only occasionally referred to the UDHR, usually in dissenting or separate opinions. For example Judge Tanaka’s dissenting opinion in the South West Africa Cases (Ethiopia v South Africa; Liberia v South Africa) (Second Phase) referred to the UDHR as ‘not binding in itself’, but nevertheless ‘evidence of the interpretation and application’ of the human rights clauses in the UN Charter (at 293; see also → United Nations Charter; Interpretation of). In the ICJ’s Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970) (Advisory Opinion) (see also → South West Africa/Namibia [Advisory Opinions and Judgments]), Judge Ammoun, in a separate opinion, observed that ‘the affirmations of the Declaration … can bind States on the basis of custom … because they constituted a codification of customary law … or because they have acquired the force of custom through a general practice accepted as law’ (at 76; see also → Customary International Law). In the → United States Diplomatic and Consular Staff in Tehran Case (United States of America v Iran), the ICJ relied on the UDHR as a source of fundamental principles, including a prohibition on the wrongful deprivation of freedom and physical constraint in conditions of hardship (para. 91).

15 The UDHR has been cited in national court decisions in a variety of ways (→ International Law and Domestic [Municipal] Law). It has been used as evidence of customary international law in legal systems where international law has direct application; it has informed interpretations of domestic human rights law; and it has provided a basis for interpretation of legislation in countries where there is a presumption that national law should be consistent with international law. At the same time, the applicability of the UDHR has been rejected in some national systems on the basis that it has no local legal significance (Hannum 295–312).

16 The UDHR is often described as part of customary international law, although, as Oscar Schachter has pointed out, the application of the traditional tests for custom to human rights (→ State Practice accompanied by opinio iuris) is difficult because ‘States do not usually make [human rights] claims on other States or protest violations [of human rights] that do not affect their nationals’ (at 334). Some scholars have drawn distinctions between the status of particular rights set out in the UDHR: eg the right to be free from torture qualifies for customary status by virtue of its wide acceptance, but the right to property arguably does not. Other scholars have proposed that human rights norms are better understood as → general principles of law (recognized in Art. 38 (1) (c) Statute of the International Court of Justice) rather than as customary international law (Simma and Alston; see also → Sources of International Law).

17 Whatever its legal status, some aspects of the UDHR remain contentious. Much political and scholarly attention has been devoted to whether the UDHR lives up to its title, or whether it is primarily a statement of Western values. In 1947, the American Anthropological Association issued a Statement on Human Rights warning that the task of drafting a universally applicable declaration of rights would inevitably come up against the particularity of culture: ‘Standards and values are relative to the culture from which they derive so…any attempt to formulate postulates that grow out of the beliefs or moral codes of one culture must to that extent detract from the applicability of any Declaration of Human Rights to mankind as a whole’ (at 542; see also → Universality). This concern was amplified during the drafting of the UDHR by the Saudi Arabian delegation, which strongly resisted the reference to the equality of the rights of men and women in relation to marriage in Art. 16 UDHR and the right to change one’s religion in Art. 18 UDHR. A Saudi delegate in the Third Committee, Jamil Baroody, accused the drafters of considering ‘only
the standards recognized by Western civilization and ... ignor[ing] more ancient civilizations which were past the experimental stage, and the institutions of which, for example marriage, had proved their wisdom through the centuries’ (quoted in Morsink at 24). Saudi Arabia’s criticism of the Western bias of the UDHR was not widely supported by other delegations; eg Egypt and Pakistan accepted the notion of equal rights in marriage, although at least Pakistan noted that equal rights were not the same as identical rights (Glendon 154). The influential participation of many non-Western delegates in the drafting of the UDHR also undermines the claim of the instrument’s Western bias. Charges that international human rights standards were essentially a Western construct and inconsistent with some values of other traditions were revived before and during the 1993 Vienna World Conference on Human Rights. For example, the Bangkok Declaration, a statement of governments from the Asian region adopted in preparation for the Vienna Conference, emphasized that ‘while human rights are universal in nature, they must be considered in the context of a dynamic and evolving process of international norm-setting, bearing in mind the significance of national and regional particularities and various historical, cultural and religious backgrounds’ (at para 8). During the Vienna Conference, the Chinese delegate said more bluntly:

The concept of human rights...is closely associated with specific social, political and economic conditions and the specific history, culture and values of a particular country.... Thus, one should not and cannot think the human rights...model of certain countries as the only proper ones and demand all other countries to comply with them.... For the vast number of developing countries, to respect and protect human rights is first and foremost to ensure the full realization of the rights to subsistence and development. (Quoted in Davis at 112.)

Theresolution of this debate appears in the rather curious final wording of the Vienna Declaration which proclaims that the ‘universal nature of [human] rights and freedoms is beyond question’ (para. 1) but that ‘the significance of national and regional peculiarities and various historical, cultural and religious backgrounds must be borne in mind’ while ‘it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms’ (para. 5).

18 Another criticism of the UDHR is its attention to male lives, while discounting human rights that most affect women. For example, scholars have argued that the UDHR's emphasis on the family as the basic unit of society shields violations of rights occurring within the family from scrutiny. There was, however, considerable energy deployed during the drafting of the UDHR to give women’s rights some prominence. The UNCHR was given a specific mandate to deal with the status of women in the UDHR and various delegates took this charge very seriously. The UNCHR's work was also closely monitored by the Commission on the Status of Women. Women delegates to the Commission and the Third Committee were generally vigilant that the formulation of rights did not disadvantage women, particularly Hansa Mehta of India and Minerva Bernardino of the Dominican Republic. The language of early drafts of the UDHR caused some dissension in this connection. For example, draft Art. 1 referred to ‘[a]ll men’ as born free and equal in dignity and rights. This was opposed by the Soviet delegate, Koretsky, on the basis that it ‘implied an historical reflection on the mastery of men over women’ (quoted in Morsink at 118). Eleanor Roosevelt countered however with the observation that it was customary to regard male nouns and pronouns as including women and men. Eventually, after energetic lobbying by the Commission on the Status of Women, the wording was changed to ‘[a]ll human beings’, although a reference to ‘brotherhood’ survived, and most other references to men in the various drafts of the UDHR were ultimately amended to be generally applicable. The phrase ‘himself and his family’, found in Arts 23 (the right to work) and 25 (the right to an adequate standard of living) somehow escaped scrutiny. Other signs of the influence of women delegates and institutions in drafting the UDHR are the reference to the equal
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rights of men and women in the preamble and Art. 16’s guarantee of the equal rights of women before, during, and after marriage. Foreshadowing modern debates about the value of gender mainstreaming in the UN, there was discussion among delegates sympathetic to women’s rights about the value of the repetition of Art. 2 UDHR’s prohibition of discrimination on the basis of sex in the context of particular rights, such as Art. 16 UDHR. Some feared that the repetition would undermine the application to women of other articles where the non-discrimination principle was not made explicit while others supported reiteration of the principle in situations where women’s rights were especially vulnerable to abuse (Morsink 126–29).

D. Evaluation

19 It is difficult to imagine that the economically drafted text of the 30 articles of the UDHR could emerge from a 21st century UN process. Today, the formulation of the rights contained in the UDHR would be likely to be much more qualified. The UDHR was drafted with a keen sense of the recent atrocities committed by a State, Germany, against its own citizens during the holocaust (see also → National Socialism and International Law). It was a product of a short era of wary international institutional collaboration before the fracturing of the American-Soviet alliance in 1950. Its significance is remarkable. For the first time, a general catalogue of the rights of individuals was made the explicit subject of international standards. The President of the UNGA at the time of the UDHR’s adoption, Herbert Evatt of Australia, spoke of the UDHR as a ‘step forward in a great evolutionary process’. He celebrated this ‘first occasion on which the organised community of nations had made a declaration of human rights and fundamental freedoms. [The UDHR] was backed by the authority of the body of opinion of the United Nations as a whole and millions of people, men, women and children all over the world, would turn to it for help, guidance and inspiration.’ (quoted in Devereux at 1). Evatt’s enthusiastic prediction about the inspiration the UDHR would provide has been largely met, but the ideological and political divisions that were papered over in the text of the UDHR are today deeper and starker.

20 The Irish poet, Seamus Heaney, wrote in 2008 that the UDHR ‘is always there as a means of highlighting abuse if not always as a remedy: it exists in the moral imagination as an equivalent of the gold standard in the monetary system … Even if its Articles are ignored or flouted—in many cases by governments who have signed up to them—it provides a worldwide system for the “still, small voice.”‘ (The Irish Times 15 March 2008).

Select Bibliography

American Anthropological Association ‘Statement on Human Rights’ (1947) 49
American Anthropologist 539–43.

Select Documents


South West Africa Cases (Ethiopia v South Africa; Liberia v South Africa) (Second Phase) (Dissenting Opinion of Judge Tanaka) [1966] ICJ Rep 250.

Statute of the International Court of Justice (adopted 26 June 1945, entered into force 24 October 1945) 145 BSP 832.

