

## CHAPTER 1

### Introduction

This study is intended as a contribution to the world-wide Commemoration of the fiftieth anniversary of the adoption, on 10 December 1948 of the Universal Declaration of Human Rights.

In the fifty years which have elapsed since the General Assembly of the United Nations adopted and solemnly proclaimed the Universal Declaration of Human Rights, there have been political, economic, social and cultural changes which have unquestionably made an impression on the concept of human rights, on the question of their protection and guarantee by national and international law, on their effectiveness and on the actual respect held for them in today's world.

In fact, it is difficult to find a period in the history of mankind when the question of human rights has had a greater and more general significance in theory and practice than during the period from 1948 till today. There have been times when the matter held capital importance in a given state or region, but never has the question of human rights been the object of such wide general attention as nowadays. Furthermore, this matter has never held such interest for the masses and the peoples of practically the whole world as it has during these years.

The 50<sup>th</sup> anniversary of the Universal Declaration of Human Rights necessarily provides an opportunity to consider its impact. Numerous attempts are made these days to assess its past value and what may be its importance for the future development of mankind. Such stock-takings have occurred several times and certainly always on the occasion of anniversaries of the Declaration.

The time which has elapsed since the adoption of the Declaration is sufficient to permit an appraisal of the impact which the Declaration has exercised in this respect. The signing of the Charter of the United Nations, in 1945, was indeed a landmark in the annals of internationalisation of human rights. For the first time 'human rights' were referred to in the Constitution of an international organization. The reference to 'human rights' in the Charter was in general terms but it did not define or

elaborate the rights.<sup>1</sup> By Articles 55 and 56, member states pledged themselves to take joint and separate action in cooperation with the United Nations to achieve respect for human rights. However, the institutions, procedures, and programmes for inducing national respect for rights, for monitoring the condition of human rights in different countries, and for preventing, deterring, or ending violation, were not provided. But the words of the Charter are words of legal obligation and surely the pledge of Article 56 is violated if a member state itself persists in committing gross violations of human rights universally recognised as fundamental.

No doubt, however, the members of the United Nations themselves recognized that the Charter law was insufficient. Immediately they proceeded to prepare and promulgate the Universal Declaration of Human Rights, making specific the general Charter references to human rights and freedoms for all. The Declaration is a remarkable juncture of political-civil and economic-social rights, with equality and freedom from discrimination a principal and recurrent theme. It declares the rights to life, liberty, and security of person, to fair criminal process, to freedom of conscience, thought, expression, association, and privacy; the right to seek and enjoy asylum, to leave one's country and return to it; right to marriage and family, and rights of property. It declares the will of the people to be the basis of the authority of government, and provides for universal suffrage and bona fide elections. It speaks of the right to work and leisure, health care and education.

The universalisation of the above human rights is a political fact. The Universal Declaration of Human Rights adopted by the General Assembly in 1948 has been accepted by all of today's states; even those, notably the European Communist states, which had abstained when the Declaration was adopted, have now accepted it formally in the Final Act of the Conference on Security and Cooperation (Helsinki, 1975).<sup>2</sup> Every state has adhered to at least one human rights agreement; and more than a third of the world's states have accepted the comprehensive agreements, the International Covenant on Civil and Political Rights, and

---

<sup>1</sup> For details, see below, Chapter 3.

<sup>2</sup> Final Act, Conference on Security and Cooperation in Europe, 1(a) VII, Helsinki (1975), *International Legal Materials*, Vol. 14, 1975, p. 1293. The Act was adhered to by 35 states, including Byelorussia, Czechoslovakia, Poland, Ukraine, USSR, and Yugoslavia, who had abstained from voting on the Declaration in 1948.

## Fifty Years of the Universal Declaration of Human Rights

the International Covenant on Economic, Social, and Cultural Rights, with more states joining every year. The universal acceptance of the idea of human rights and its general content may be only formal and superficial, in some cases even hypocritical, but no government dissents from the ideology of human rights today or offers an alternative to it.

The adoption of the Universal Declaration in 1948 was a decisive step towards the recognition that human rights were not a matter of exclusive domestic jurisdiction but a matter of international concern. In this sense, the Declaration served to support the pertinent provisions of the Charter, which set forth a similar idea. Moreover, the Declaration gave the rights it enumerated an international status. This made possible the launching of a movement in their favour that has gradually gained an unquestionable momentum allowing us now to take new steps towards the development of the field.

The Universal Declaration is an instrument, which is widely known, frequently invoked and largely accepted as authoritative. It is a tool in the hands of many people who claim their rights and fight oppression. But it is quite timely and opportune to re-assess the Universal Declaration in the light of developments that took place since 1948. Over the years, the Universal Declaration has served as a source of inspiration and a catalyst for broadening and deepening the network of human rights standards and for devising comprehensive human rights policies.

During the last fifty years the international standard setting activities in the field of human rights, both on global and regional levels, have been highly creative and productive in scope and content. The Declaration and the Covenants are comprehensive human rights agreements designed to be complete lexicons of rights. But even while these were developing, the United Nations was promoting other agreements on specific rights for some categories of persons. The Convention on Genocide was adopted at the same time as the Declaration. Later the Convention on the Elimination of All Forms of Racial Discrimination, the Convention on Political Rights of Women, the Convention on the Status of Refugees, and others, supplemented the Covenants, expanding on particular rights and providing additional implementation machinery. While in some respects the special agreements add new obligations and are binding therefore only on parties to those agreements, in other respects they may spell out obligations already implied in the Covenant and are available therefore as sources for interpretation of the Covenant.

## Chapter 1

The Declaration and the Covenants grew up while regional human rights agreements were also developing, in sight and knowledge of each other, dealing with the same problems, in the same universe, with some of the same participants. Inevitably, they drew on and reacted to each other, even when one rejected or avoided what another chose.

In the process of such activities, the Declaration was intended to serve as a yardstick of activities of both the organs of the United Nations and its members in dealing with human rights and of measuring the progress towards promotion and protection of human rights.

Thus, the present study, on the occasion of 50<sup>th</sup> anniversary, undertakes to determine within its limited scope, the impact of the Universal Declaration of Human Rights at the international, regional and national level. Fifty years is a relatively short time in the sweeping march of history. Yet it is long enough to measure some of the progress made in the development of international co-operation on human rights. The framework of the study is presented in the following paragraphs.

Chapter 2 outlines the relationship of Bangladesh with the United Nations by elaborating its membership history and then briefly establishes its tie with the Universal Declaration of Human Rights. Chapter 3 traces the historical basis of the Universal Declaration and its drafting history while chapter 4 provides an overview of the Declaration and its significance. Chapter 5 documents chronologically human rights initiatives of the United Nations since the adoption of the Universal Declaration of Human Rights 1948 until the Vienna Declaration and Programme of Action 1993.

Chapters 6 to 9 compare various Conventions on human rights with the Universal Declaration of Human Rights. The object is to focus reflection of the rights mentioned in the Declaration to these Conventions, which were adopted subsequently. Thus, chapter 6 provides a comparative analysis of the European Convention on Human Rights and the Universal Declaration. Chapter 7 draws a comparison between the two United Nations Covenants of 1966 i.e. International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights with the Universal Declaration. Similarly, chapter 8 draws comparison between the Universal Declaration and the American Convention on Human Rights while chapter 9 deals with the African Convention on Human and Peoples' Rights.

## Fifty Years of the Universal Declaration of Human Rights

Chapter 10 highlights the endorsement of the Universal Declaration of Human Rights in the national Constitutions of the world while chapter 11 presents the endorsement of the United Nations Charter. The endorsement of the status of international law in the national Constitutions of the world has been detailed in chapter 12.

Chapters 13 to 15 compare Constitutions of three countries i.e. India, Pakistan and Bangladesh with the Universal Declaration. It aims to show how far these Constitutions have relied on the Universal Declaration of Human Rights in guaranteeing rights to their citizens. Thus, chapter 13 provides a comparative analysis of the Constitution of India and the Universal Declaration. Chapter 14 draws comparison between the Constitution of Pakistan and the Universal Declaration while chapter 15 compares the Constitution of Bangladesh. The conclusions of the present work are presented in chapter 16.

## CHAPTER 2

# Membership of Bangladesh in the United Nations and its Adherence to the Universal Declaration of Human Rights

The emergence of Bangladesh as an independent state was one of the most important events in the history of South Asia since the withdrawal of British rule from this region. Before its inception as a sovereign independent state, Bangladesh was first part of British India and then part of Pakistan known as East Pakistan. Hence, in order to discuss the membership of Bangladesh in the United Nations, we must first go back to India's membership in the League of Nations in 1920, and the United Nations in 1945, followed by Pakistan's membership in 1947.

The League of Nations was established by virtue of the Treaty of Versailles.<sup>1</sup> India's membership in the League of Nations is of special interest since it was at that time not a sovereign state nor a self-governing territory, but a part of British empire.

The World War I had a profound effect on the attitude of His Majesty's Government towards India. Before 1917 the composition of the Imperial Conference was confined to the members of His Majesty's Government and the Governments of the Dominions. But in view of her war effort, India was represented at the special war Conferences of 1917 and 1918 and in the Imperial War Cabinet. The Conference of 1917 expressed the view that India should be represented at all future conferences. A resolution of the Imperial War Conference, 1917, referred to the Dominions as "autonomous nations of an Imperial Commonwealth" and to India as "an important portion of the same".<sup>2</sup> The decision that India should be represented at all future Imperial Conferences, the great assistance rendered by her during the war, the resolution just quoted above, all had influence on the next step in the

---

<sup>1</sup> For text of the Treaty, see, ILO, *Official Bulletin*, Geneva, 1919, Vol. 1, p. 332.

<sup>2</sup> *Report of the Indian Statutory Commission*, Vol. V, London, 1930, p. 1634.

evaluation of her international status. Thus, when at the Paris Peace Conference special representation was given to the four chief Dominions<sup>3</sup> in the British Empire delegation, the same treatment was accorded to India.<sup>4</sup>

In the very first meeting of the League of Nations Commission of the Peace Conference, President Wilson proposed amendment to Article VI of the Hurst-Miller Draft regarding membership of the proposed world organisation and suggested that the Covenant should contain the following: "only self-governing states shall be admitted to the membership in the League; Colonies enjoying full powers of self-government may be admitted".<sup>5</sup>

The debate on Wilson's proposal took a very wide range. His amendment had admitted the self-governing colonies but India had been left out. Lord Robert Cecil emphasised the special position of India and asked that India's claim for membership should be recognised. He argued:

The President's (Wilson) amendment admits self-governing colonies; but what about the Indian Empire? She mobilized a million men and made a valuable contribution to the Allied armies, . . . . If the League of Nations were to employ words which would arbitrarily exclude India, it would be taken by those people as bitter insult. I am free to tell you that there is a spirit of unrest abroad in India of a serious character. The British Government is trying just as rapidly as possible to advance India into a self-governing colony; and for any thing to happen which would exclude India would be unfortunate indeed.<sup>6</sup>

President Wilson admitted that it was indeed hard to define self government and stated:

For myself I have great admiration for India's performance. The spirit she has shown is fine. Nevertheless, the impression of the whole world is that she is not self-governed.<sup>7</sup>

<sup>3</sup> Australia, Canada, New Zealand and South Africa.

<sup>4</sup> See above, note 2, at p. 1634.

<sup>5</sup> Miller, D. H., *The Drafting of the Covenant*, New York, 1928, p. 157.

<sup>6</sup> *Ibid*, p. 164.

<sup>7</sup> *Ibid*, p. 165.

## Chapter 2

The difficulty in admitting India, President Wilson pointed out, was that if India were admitted on any principle, that principle would have to be extended to other dependent territories, such as the Philippines. At the same time he argued that it would be unwise to admit territories like the Philippines to the League.<sup>8</sup>

At this stage General Smuts, Prime Minister of South Africa, intervened in the discussion and pointed out that it was unnecessary to discuss India's case in such detail for "the Covenant itself takes care of India".<sup>9</sup> He cogently argued that India could become a member of the League by virtue of her being a signatory to the Peace Treaty (which also included the Covenant of the League of Nations) independent of any condition which might be laid down concerning subsequent members and it would not affect her.<sup>10</sup>

While President Wilson hesitated as to the membership of India, he did not finally object, as Miller observes "no one else seemed to care".<sup>11</sup> In this manner, in a fit of virtual absent-mindedness, India became a member of the League of Nations and an anomaly in international law was created.<sup>12</sup>

It must always be remembered that India was an original member and not an admitted member of the League. This is not just a distinction without a difference; it was of practical importance in the case of India. Original members acquired membership in the League under Article I, paragraph 1 of the Covenant. This paragraph did not prescribe any specific qualification for membership. It merely admitted that "the original members of the League shall be those of signatories which are named in the Annex to the Covenant". India was so named and therefore was an original member of the League. Mr. David Hunter Miller summed up India's membership in the League of Nations as "an anomaly among anomalies".<sup>13</sup> And it was indeed so. It was a striking paradox without parallel that India enjoyed in theory at least and as a matter of course, the

---

<sup>8</sup> Ibid, p. 166.

<sup>9</sup> Id.

<sup>10</sup> Id.

<sup>11</sup> Ibid, p. 165.

<sup>12</sup> Sethi, L. R., "India in the Community of Nations", in *Canadian Bar Review*, Vol. 14, 1936, p. 40.

<sup>13</sup> See, Miller, D. H., above note 5, at p. 493.



sovereign rights of the Dominions, notwithstanding the fact that it had not reached a condition of complete autonomy even in its internal affairs.

In spite of being a political dependency of Britain, India's membership of the League was indeed the first step towards elevating its international status in the assemblies of the world.<sup>14</sup> It can be argued that India's admission to the League was in a nature of a reward for the assistance it provided in the First World War to the Allies.<sup>15</sup> It also has been said that British Government was motivated by selfish interest, when she struggled for India's membership in the League of Nations, for this would secure the collateral support of India for Britain in her struggle for leadership at Geneva.<sup>16</sup>

After the Second World War when the United Nations was established in 1945, India became one of the original members under article 3 of the UN Charter. Until 1947, India continued to be a member of the United Nations under British colonial rule. But the Indian Independence Act, 1947 passed by the British Parliament on 12 July, 1947 provided that from the fifteenth day of August, 1947 two independent Dominions were to be set up in India to be known respectively as India and Pakistan.<sup>17</sup> The Indian Independence Act raised questions of far-reaching implication from the viewpoint of international law. The Act had brought about the division of British India into two Dominions, India and Pakistan. In the case of the division of India, there was no act of international law to which India was a party in her international capacity. Nor was there anything in the Act, even remotely suggesting that the Dominion of India was a continuation, pure and simple of India's juristic personality. On the contrary, it is manifest from the provisions of the Act that the territory of British India in its entirety had been partitioned between two Dominions. There was no express or implied reservation in the Act that the juristic personality of India would continue. Hence it

---

<sup>14</sup> See, Dhyani, S. N., *International Labour Organisation and India*, New Delhi, 1977, p. 121.

<sup>15</sup> See, Puri, M. M., *India in the International Labour Organisation*, The Hague, 1958, p. 29.

<sup>16</sup> See, Dhyani, S. N., above note 14, at p. 122.

<sup>17</sup> For the Indian Independence Act, 1947, see, *The Public General Acts and the Church Assembly Measures of 1947*, Vol. 1, Chapter 30, London, 1947, pp. 236-235.

## Chapter 2

could reasonably be argued that India had ceased to exist in international law and its place had been taken by the Dominions of India and Pakistan.

However, before the date set for this change (15 August, 1947), the Secretariat of the United Nations was obliged to consider the legal consequences with regard to membership and representation in the United Nations. In substance the following questions were raised: a) Did the division of India result in the extinction of the member state? Was it, in legal effect, a 'dismemberment' or merely a succession or breaking away of a part of state? b) What consequences did the constitutional change, the transfer of sovereignty, have on the status and representation of the member state? c) What was the status of the new state of Pakistan? Did it succeed to the rights and obligations of a member under the charter? These questions were answered in a brief legal opinion of the Assistant Secretary General in charge of the legal department which reads as follows:

From the viewpoint of international law, the situation is one in which part of an existing state breaks off and becomes a new state. On this analysis, there is no change in international status of India; it continues as a state with all the treaty rights and obligations, and consequently, with all the rights and obligations of membership in the United Nations. The territory which breaks off, Pakistan, will be a new state; it will not have the treaty rights and obligations of the old state, and it will not, of course, have membership in the United Nations.

In international law, the situation is analogous to the separation of the Irish Free State from Great Britain, and of Belgium from the Netherlands. In these cases, the portion which separated was considered a new state; the remaining portion continued as an existing state with all the rights and duties which it had before.<sup>18</sup>

The opinion did not analyse the facts in the Indian situation but merely drew attention to what it considered the analogous situation involved in the separation of the Irish Free State from Great Britain and Belgium from the Netherlands.<sup>19</sup> It could be argued that the analogy of the Irish Free

<sup>18</sup> United Nations Press Release PM/473, 12th August, 1947.

<sup>19</sup> Schachter, O., "The Development of International Law Through the Legal Opinions of the United Nations Secretariat", in *British Year Book of International Law*, Vol. 25, 1948, p. 102.

State would be inapplicable since it came into existence as a result of a treaty concluded by Great Britain in 1921. This was an act of international law done by Great Britain in her capacity as an international person, and there was nothing in the Act to prejudice the continuance of her international personality.<sup>20</sup>

The position was entirely different in the case of India. The Dominion of Pakistan did not set itself up as an independent state by virtue of an agreement with India. There had been no act of international law to which India had been a party and which was the source of independence of the Dominion of Pakistan. The situation would have been totally different if India had become a Dominion before the partition and had thereafter agreed to the succession of those areas which were included in the Dominion of Pakistan. Similar results would have followed, if before the passing of the Indian Independence Act, 1947 India had with the approval of the British parliament, concluded a treaty with the seceding areas for the constitution of a separate state. However, that was not the case. Two separate Dominions had been created by virtue of a Statute of the British Parliament and not by an international agreement to which India was a party.

Whatever criticism may be centred against the legal opinion of the Secretariat, nevertheless India and Pakistan had considered themselves the problem of the devolution of the international rights and obligations, and arrived at an agreement. The agreement was promulgated by the Governor General in the Schedule to the Indian Independence (International Arrangements) Order, 1947 which provided *inter alia*:

2 (a) Membership of all international organisations together with the rights and obligations attaching to such membership, will devolve solely upon the Dominion of India. b) The Dominion of Pakistan will take such steps as may be necessary to apply for membership of such international organisation as it chooses to join.<sup>21</sup>

<sup>20</sup> Sen, S. D. K., "The Partition of India and Succession in International Law", in *Indian Law Review*, Vol. 1, 1947, p. 197.

<sup>21</sup> For the Text of the Agreement see, *The Gazette of India Extraordinary, 1947*, pp. 911-12.

## Chapter 2

Under these provisions it is significant that Pakistan did not succeed to the membership of international organisations or the rights and obligations attaching to such membership but had to apply to become a member of any organisation it chose to apply. Thus, it did not become a member of the UN, nor did it succeed to the rights and obligations attached to India by reason of its membership in the League of Nations.

However, Pakistan applied for membership in the UN immediately on 15 August, 1947 and in accordance with the Charter was admitted to the United Nations.

In one sense, the admission of Pakistan to the United Nations was not one of admission of a new member. Until 15 August, 1947 Pakistan and India continued as one entity. On 15 August they agreed to constitute themselves into two sovereign states. One chose to continue to call itself by the old name of India, which had applied to the whole of the country and the other elected to call itself by the name of Pakistan. Inasmuch as Pakistan had been a part of India, it was in effect under the latter name, a signatory to the Treaty of Versailles and an original member of the league of nations. Therefore, it can be argued that Pakistan was not a new member of the UN, but a co-successor to a member state which was one of the founders of the Organisation.

In 1971, East-Pakistan<sup>22</sup> in the name of Bangladesh declared itself independent on 26 March 1971, under the leadership of Bangabandhu Sheikh Mujibur Rahman, and after a war of liberation achieved its independence in the same year.<sup>23</sup> The historic war for National Independence was fought in due fulfillment of the legitimate right of self-determination of the People of Bangladesh. Human rights agenda, thus, had been in the fore-front of the country's liberation struggle. However, within a short time of its independence, on 8 August 1972, Bangladesh applied to the United Nations for membership under Article 4 of the UN Charter. Article 4 of the Charter reads as follows:

---

<sup>22</sup> The State of Pakistan comprised two parts, i.e., East Pakistan and West Pakistan.

<sup>23</sup> For independence of Bangladesh see, Chowdhury, S. R., *The Genesis of Bangladesh*, London, 1972; Chowdhury, A. K., *Independence of East-Bengal*, Dhaka, 1984; Zaheer H., *The Separation of East Pakistan: The Rise and Realization of Bengali Muslim Nationalism*, Karachi, 1994.

## Fifty Years of the Universal Declaration of Human Rights

1. Membership in the United Nations is open to all other peace loving states which accept the obligations contained in the present Charter and, in the judgement of the Organisation, are able and willing to carry out these obligations.

2. The admission of any such state to membership in the United Nations will be effected by a decision of the General Assembly upon the recommendation of the Security Council.

Accordingly, Bangladesh's membership was taken up by the Security Council on 10 August 1972, but the People's Republic of China, a permanent member of the Council stood in the way. The representative of China first unsuccessfully opposed the inclusion of the item in the Council's agenda, then succeeded in deferring a decision on the same for a fortnight and finally cast its maiden veto against the resolution co-sponsored by Yugoslavia, India, Soviet Union and Britain recommending the immediate membership of Bangladesh.<sup>24</sup>

The Security Council thus failed to take any decision on the application of Bangladesh for membership because of the negative vote of one of its permanent members. However, it was accorded observer status on 17 October 1972.<sup>25</sup>

Bangladesh continued its diplomatic maneuver throughout 1973 and the Non-aligned Summit Conference held in September 1973 strongly supported the candidature of Bangladesh's membership in the United Nations. Yet, Chinese attitude on the issue did not change. However, a break through occurred on 9 April 1974 when India, Pakistan and Bangladesh signed historic agreement in New Delhi providing for repatriation of all prisoners of war and thus putting an end to the conflict and confrontation that have hitherto marred relations. In the meantime, during the Islamic Summit Conference in Lahore to which Bangladesh was invited, Pakistan and Bangladesh accorded each other mutual recognition owing largely to the mediatory efforts of the Egyptian Secretary General of the organisation.<sup>26</sup>

---

<sup>24</sup> Doc. S/10771.

<sup>25</sup> See, Momen, N., "Bangladesh's Entry into the United Nations", in Jahangir, B. K., (ed.) *Rastra Bignan Shomoti Patrica*, Dhaka, 1986, p. 94.

<sup>26</sup> *Ibid*, p. 96.

## Chapter 2

It was only after these developments, the Security Council reconsidered the application of Bangladesh for membership in May-June 1974. Accordingly, on 10 June 1974 the Security Council by consensus adopted the following resolution:<sup>27</sup>

The Security Council,

Having examined the application of the People's Republic of Bangladesh for admission to membership in the United Nations,

Recommends to the General Assembly that the People's Republic of Bangladesh be admitted to membership in the United Nations.<sup>28</sup>

Upon the above recommendation of the Security Council, a Resolution was moved in the General Assembly by 68 countries which was adopted by the Assembly unanimously. The resolution of the General Assembly was as follows:<sup>29</sup>

The General Assembly,

Having received the recommendation of the Security Council of 10 June 1974 that the People's Republic of Bangladesh should be admitted to membership in the United Nations,

Having considered the application for membership of the People's Republic of Bangladesh,

Decides to admit the People's Republic of Bangladesh to membership in the United Nations.<sup>30</sup>

Thus, on 17 September 1974 Bangladesh became the 136th member of the United Nations.

The Charter of the United Nations contains a number of references to the promotion of human rights. The preamble reaffirms "faith in fundamental human rights". Among the purposes of the United Nations set out in article 1, is "to co-operate . . . in promoting respect for human rights and fundamental freedoms for all". The most important provisions

<sup>27</sup> Resolution No. 351(1974), 10 June 1974.

<sup>28</sup> See, *Year Book of the United Nations*, Vol. 28, 1974, p. 296.

<sup>29</sup> Resolution No. 3203(XXIX), 17 September, 1974.

<sup>30</sup> See, *Year Book of the United Nations*, Vol. 28, 1974, p. 297.

## Fifty Years of the Universal Declaration of Human Rights

are probably those contained in articles 55 and 56. Article 55 provides that the United Nations shall promote "universal respect for and observance of, human rights and fundamental freedoms", while in article 56 "all members pledge themselves to take joint and separate actions". The Charter, however, does not define or contain a bill of rights but it was agreed in the San Francisco Conference that a bill of rights will be drawn up as soon as possible. In his closing speech to the San Francisco Conference president Trueman stated that:

We have good reason to expect the framing of an international bill of rights, acceptable to all the nations involved . . . . The Charter is dedicated to the achievement and observance of human rights and fundamental freedoms. Unless we can attain those objectives for all men and women everywhere - without regard to race, language or religion - we cannot have permanent peace and security.<sup>31</sup>

To give effect to this proposal, the General Assembly of the United Nations adopted on 10 December, 1948, a Declaration of Human Rights. It was not intended to impose legal obligations on states but rather to establish goals for states to work towards. Thus, the operative part of the Resolution reads as follows:

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 the peoples of territories under their jurisdiction.<sup>32</sup>

---

<sup>31</sup> Quoted in Shon, L. B., "A Short History of United Nations Documents on Human Rights", in *The United Nations and Human Rights*, eighteenth report of the Commission to Study the Organisation of Peace, New York, 1968, pp. 51-52.

<sup>32</sup> Quoted in Robertson, A. H., and Merrills, J.H., *Human Rights in the World*, Manchester, 1989, p. 26.

## Chapter 2

The Declaration was drafted in pursuance of the dispositions of the Charter introducing the promotion of a respect for human rights as an international concern of primary importance.

Thus, it may be emphasised that by becoming a member of the United Nations under the Charter, the government of Bangladesh adhered to the Universal Declaration of Human Rights as there seems to be an agreement that the Declaration is a statement of general principles spelling out in considerable detail the meaning of the phrase 'human rights and fundamental freedoms' in the Charter of the United Nations.<sup>33</sup> Further, such adherence is apparent by the fact that the Constitution of Bangladesh in its Preamble pledges itself to establish a society securing fundamental human rights and freedoms for all citizens who "may prosper in freedom and . . . make . . . full contribution towards international peace and co-operation in keeping with the progressive aspiration of mankind". It may further be emphasised that article 25 of the Constitution recognises respect for international law and the principles enunciated in the United Nations Charter while article 11 declares that the Republic shall be a democracy in which fundamental human rights and freedoms and respect for the dignity and worth of the human person shall be guaranteed.

---

<sup>33</sup> See, Shon, L.B., "A Short History of the United Nations Documents on Human Rights", in *United Nations and Human Rights*, New York, 1968, p. 71.



## CHAPTER 3

# Historical Basis of the Universal Declaration of Human Rights and its Drafting History

The catalyst to which we owe the Universal Declaration of Human Rights and indeed much of the new international law of human rights which has so radically changed the theory and practice of the law of nations<sup>1</sup> was the gross violations of human rights that were committed in and by certain countries during and immediately before the Second World War. For it was these atrocities that fostered the climate of world opinion which made it possible for the San Francisco Conference to make the promotion of respect for human rights and fundamental freedoms "for all without distinction as to race, sex, language or religion" one of the pillars on which the United Nations was erected and a stated purpose of the Organization.<sup>2</sup> It was on these foundations that the new international law of human rights was built.<sup>3</sup>

Thus, international concern with human rights is a contemporary development, dating largely from the Second World War. Traditionally, the international political system, and therefore international law, considered what we now call human rights, to be a matter of domestic, not international concern. This international lack of interest in human rights was often expressed in two overlapping propositions: the individual was not a subject of international law; and how a state treated its own inhabitants was its own affair. That tradition no doubt reflected the prevailing conception of the limited domain of international law. It may have been also a reflection of the prevailing morality, since human rights were not highly respected in most countries and since governments were not moved to refrain from inhumanity at home, they could not be

---

<sup>1</sup> See, Humphrey, J. P., "The International Law of Human Rights in the Middle Twentieth Century" in Bos (ed.), *The Present State of International Law*, Kolner, 1973, p. 75.

<sup>2</sup> See, Article I of the United Nations Charter.

<sup>3</sup> See, Humphrey, J. P., "The Universal Declaration of Human Rights: Its History, Impact and Juridical Character", in Ramcharan, B. G., (ed.) *Human Rights: Thirty Years After The Universal Declaration*, The Hague, 1979, p. 21.

expected to care more for the human condition elsewhere.<sup>4</sup> This scenario changed with the establishment of the United Nations in 1945, and the unanimous adoption of the Universal Declaration of Human Rights by the General Assembly in 1948.

The Universal Declaration of Human Rights of 1948 did not, however, spring ready-made from the heads of a group of men and women who met in 1946, 1947, and 1948 at New York, Lake Success, Geneva, and Paris. In the following pages we shall investigate briefly, the Declaration's philosophical and constitutional roots and foundations and, to this end enter upon a short analysis of the history, national and international, which led up to the adoption of the Declaration in 1948.

Although some scholars claim to be able to trace a rudimentary concept of human right back to Stoic philosophy of classical times *via* the natural law jurisprudence of Grotius and the *jus naturale* of Roman law,<sup>5</sup> it seems evident that the origins of the modern concept are to be found in the English, American and French revolution of the seventeenth and the eighteenth centuries.<sup>6</sup>

Though Magna Carta (1215) is often seen as the origin of liberties of the English citizens,<sup>7</sup> it was not until the Bill of Rights (1689) that rules directed towards the protection of individual rights or liberties emerged. The Bill of Rights, which is described in its long title as 'An Act Declaring the Rights and Liberties of the Subject and Setting the Succession of the Crown', was the outcome of the seventeenth-century struggle of Parliament against the arbitrary rule of the Stuart monarchs. Passed after the enforced abdication of James II and the accession to the throne of William III and Mary II following the 'Glorious Revolution' of 1688, the Bill which expressed itself to be declaratory of existing law and not creative of new law, subjected the monarchy to the power of Parliament by declaring illegal the claimed suspending and dispensing powers of the Crown. It also forbade the levying of taxes or the maintenance of a

---

<sup>4</sup> See, Henkin, L., "The International Bill of Rights: The Universal Declaration and the Convention" in Bernhardt, R., and Jolowicz, J. A., (eds.) *International Enforcement of Human Rights*, Berlin, 1985, p. 1

<sup>5</sup> See, Vasak, K. "Towards a Specific International Human Rights Law" in Vasak, K. (ed.), *The International Dimensions of Human Rights*, Vol. 2, Paris, 1982, p. 67.

<sup>6</sup> Davidson, S., *Human Rights*, Buckingham, 1993, p. 2.

<sup>7</sup> It was, in reality, simply a compromise on the distribution of powers between King John and his nobles.

standing army in peacetime by the Crown without Parliamentary consent.<sup>8</sup>

In Marxist analysis, the Glorious Revolution of 1688 and the Bill of Rights which institutionalized it, was a bourgeois revolution: it simply confirmed the ascendancy of the gentry and merchant class over the monarchy<sup>9</sup>. For the most part, therefore, the Bill represented a constitutional settlement which protected the sectional interests of one group. However, Whig historians, however, saw the Bill as the triumph of liberty over despotism and the protection of Englishmen (women had little say in the matter) from absolutist and arbitrary government.<sup>10</sup> There is merit in both these views, for the Bill of Rights not only secured the interests of the bourgeoisie, but it also dealt with certain matters having the characteristics of 'human rights', although they were not referred to as such at the time. In particular, the Bill provided that 'excessive bail ought not to be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted'. It further provided that 'jurors ought to be duly impaneled and returned and that 'all grants and promises of fines and forfeitures of particular persons before conviction are illegal and void'. While the 'human rights' element of the Bill of Rights might appear to be biased in favour of a particular class of citizens, nevertheless the whole context of the instrument was of fundamental importance, since it sought to replace the vagaries and excesses of arbitrary monarchical absolutism with parliamentary constitutional legitimacy.<sup>11</sup>

Thus, when we consider the philosophical foundations of the concept of human rights, it is clear that the main stream has its origins in the liberal democratic tradition of Western Europe - a tradition which is itself the product of Greek philosophy, Roman law, the Judaeo-Christian tradition. It is the parliamentary democracies of Western Europe which are the direct heirs of this tradition. Other countries which have inherited this political philosophy have carried the tradition to other parts of the world. Others in turn have absorbed some of it - but to varying degrees and incompletely.

A detailed formulation of that philosophy as applied to the specific

<sup>8</sup> See, Davidson, S., *Human Rights*, Buckingham, 1993, p. 2.

<sup>9</sup> See, generally, Max, K. and Engeless, F., *The Communist Manifesto*, Ryazanoff, D. (ed.) New York, 1965.

<sup>10</sup> See generally, Trelvelyan, G. M., *The English Revolution 1688-89*, Oxford, 1965.

<sup>11</sup> See, Davidson, S., *Human Rights*, Buckingham, 1993, p. 3.

problem of human rights may be found in the French Declaration of the Rights of Man and the Citizen of 1789 and particularly in its second article: "The aim of all political association is the conservation of the natural inalienable rights of man. These rights are: liberty, property, security and resistance to oppression". The Declaration does not discuss why these rights are 'natural' and 'inalienable'. No doubt its authors would have considered that to be self-evident.<sup>12</sup>

The French Declaration proclaimed a number of entitlements which are now generally called civil and political rights: the basic principle that all men are born and remain free and equal in their rights; also particular rights, including equality before the law, freedom from arrest except in conformity with the law, the presumption of innocence, protection against retroactivity of the law, freedom of opinion, freedom of expression and the well known definition of liberty as freedom to do anything which is not harmful to others.<sup>13</sup>

The experience of English and French Revolutions and the various philosophical and theoretical attempts to justify it were not lost on the leaders of Britain's rebellious North American colonies in the latter part of the eighteenth century. Seeking to disengage the colonies from British rule following dissatisfaction over the levels of taxation and lack of representation in the British Parliament, the American Founding Fathers sought justification in the social contract and natural rights theories of Locke and the French *philosophes*. In the American Declaration of Independence (1776), drafted by Thomas Jefferson, these ideas find particularly clear and felicitous expression:

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their creator with certain unalienable rights, that among these are Life, Liberty and the pursuit of Happiness – That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the government. That whenever any form of government becomes destructive of these ends, it is the right of the People to alter or abolish it.

While the high sounding ideals of the protection of life, liberty and the pursuit of happiness were sufficient for a declaration of independence, they were clearly inadequate as a catalogue of individual

---

<sup>12</sup> See, Robertson, A. H., *Human Rights in the World*, Manchester, 1989, p. 3.

<sup>13</sup> *Ibid*, at p. 4

rights which the state was obliged to protect. The Virginia Declaration of Rights, which was drafted by George Mason and which pre-dated the Declaration of Independence by a month, included specific liberties that were to be protected from state interference. These included freedom of the press, the free exercise of religion and the obligation that no person should be deprived of their liberty except by the law of the land or the judgement of their peers. The drafters of the US Constitution, influenced by Mason's Virginia Declaration, included the protection of these minimum rights. It was not until 1791, however, that the US adopted a Bill of Rights containing a list of guaranteed individual rights. This was effected by a number of amendments to the constitution. Among the more well-known amendments are the First, which protects freedom of religion, freedom of the press, freedom of expression and the right of assembly; the Fourth, which protects individuals against unreasonable search and seizure; and the Fifth, establishing the rule against self-incrimination and the right to due process of law. Subsequent amendments to the US Constitution have extended the Bill of Rights (for example, the Thirteenth adopted after the Civil War forbade the practice of slavery), but no rights have ever been removed or abridged by Congress.<sup>14</sup>

A number of recurring themes and concepts in human rights law originate from the American and French Revolutions. Foremost among these is that rights are by nature inherent, universal and inalienable: they belong to individuals simply because they are human beings and not because they are the subjects of a state's law. Second, that the protection of rights is best afforded within a democratic framework. The concept of political self-determination formulated by the drafters of the French Declaration made it clear that the effective protection of rights was to be found only within the bounds of democratic legitimacy. Third, that the limits to the exercise of rights could be determined or abrogated only by law. This might be seen as part of the concept of the rule of law which requires that rights should be protected by law, and that in abrogating or diminishing individual rights a government is obliged to conform to constitutional legal requirements. It also requires governments to act according to law, and that the law upon which the government seeks to act should be neither oppressive, arbitrary or discriminatory.

Thus, it is apparent that English, American and French Revolutions

---

<sup>14</sup> See, Davidson, S., *Human Rights*, Buckingham, 1993, p. 5.

### Chapter 3

contributed towards the development of liberal democracy in which certain rights were regarded as paramount in protecting individuals from state's inbuilt tendency to authoritarianism.

We will now focus our attention beyond national boundaries and begin with the League of Nations which after the end of First World War was established by the Treaty of Versailles - 1919. The Covenant of the League of Nations, the treaty which in 1920 established the League and served as its constitution, contained no general provisions dealing with human rights. The notion that human rights should be internationally protected had not yet gained acceptance by the community of nations, nor was seriously contemplated by those who drafted that treaty. The Covenant did, however, contain two provisions (Article 22 and 23) that bear on the development of international human rights law. The League also played an important role in helping with the implementation of post World War I treaties for the protection of minorities.

The First World War had, in the words of President Wilson, been fought "to make the world safe for democracy," that is "to render it a secure habitation for the fundamental right of man to be governed by rulers chosen by and accountable to him".<sup>15</sup> We are aware that on the conclusion of that war, great strides were made towards this goal. We have also seen, however, that whatever progress had been achieved in 1918 and the years immediately following was wiped out by the horrors of Fascism and other authoritarian regimes, and by the ordeals of World War II. Hitler's and Mussolini's records proved, moreover, how close a relationship exists between outrageous behavior by a government towards its own subjects and aggression against other nations, between respect for human rights and the maintenance of peace.

This experience resulted in the widespread conviction that effective international protection of human rights is an essential condition of international peace and progress. The first authoritative pronouncement of this aim was made at a time when the United States was not yet at war, in President Roosevelt's Annual Message to the Congress, of January 6, 1941, in which he formulated the Four Freedoms: freedom of speech and expression; freedom of religion; freedom from want; freedom from fear, In the Atlantic Charter of August 14, 1941, the President of the United States and the Prime Minister of Great Britain expressed the hope "to see established a peace which will afford assurance that all the men in all the

---

<sup>15</sup> Lauterpacht, H., *International Law and Human Rights*, 1950, London, p. 77.

lands may live out their lives in freedom from fear and want." In the "Declaration of the United Nations" signed by all the Allied Powers on January 1, 1942, it was stated that "complete victory over their enemies is essential to defend life, liberty, independence, and religious freedom, and to preserve human rights and justice in their own lands as well as in other lands".<sup>16</sup>

After the end of the Second World War the United Nations<sup>17</sup> was set up in 1945 by the Charter of the United Nations. The United Nations Charter was written in the closing days of the Second World War by the representatives of 50 governments meeting at the United Nations conference on International Organisation in San Francisco from 25 April to 26 June, 1945. The Charter was adopted and signed on 26 June 1945, by the representatives of 50 states participating in the conference, and later by a fifty-first state, Poland, which had been unable to attend.<sup>18</sup>

It may be emphasized that although the origins of human rights law can be traced back to revolutionary constitutionalism of the seventeenth and the eighteenth centuries, it is only with the entry into force of the United Nations Charter in 1945, that it is possible to speak of the advent of systematic human rights protection within the international system.

One of the features of the U. N. Charter which distinguishes it most sharply from the Covenant of the League of Nations is its concern for human rights and fundamental freedoms. There are seven specific references in the charter of human rights and freedoms but nowhere does it catalogue or define them. The first reference is in the Preamble which reads as follows:

We the peoples of the United Nations, determined . . . to reaffirm *faith in fundamental human rights*,<sup>19</sup> in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small . . . have resolved to combine our efforts to accomplish these aims.

<sup>16</sup> Humphrey, J., *No Distant Millennium : The International Law of Human Rights*, Paris, 1989, p. 70.

<sup>17</sup> The name 'United Nations' was devised by President Franklin D. Roosevelt and was first used in the 'Declaration by the United Nations' of 1 January 1942, during the Second World War, when representatives of 26 Nations pledged their Governments to continue fighting together against the Axis power.

<sup>18</sup> United Nations, *Basic Facts About the United Nations*, New York, 1992, p. 3.

<sup>19</sup> Italics for emphasis.

### Chapter 3

The second reference is to be found in article 1(3) which proclaims the following goals as one of the purposes of the UN:

To achieve international co-operation 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*<sup>20</sup> for all without distinction as to race, sex, language, or religion.

The third reference in article 13(1)(b) authorizes the General Assembly to initiate studies and make recommendations for the purpose of "assisting in the realization of *human rights and fundamental freedoms*".<sup>21</sup>

The innovative nature of the Charter is not limited to simple proclamation of goals and initiating studies and making recommendations on human rights. Article 55(c), written in imperative terms, obliges the United Nations to act in such a way as to promote "*universal respect for, and observance of, human rights*".<sup>22</sup>

The fifth Charter reference to human rights is in article 62, para. 2, which states that the Economic and Social Council "may make recommendations for the purpose of *promoting respect for, and observance of, human rights and fundamental freedoms*"<sup>23</sup> for all".

The sixth reference is to be found in article 68 by which the Economic and Social Council shall set up commission in economic and social fields and for the *promotion of human rights*,<sup>24</sup> and such other commissions as may be required for the performance of its functions.

The seventh and last explicit reference to human rights in the Charter is in article 76(c) where one of the basic objectives of the trusteeship system is declaration to be "*to encourage respect for human rights and for fundamental freedoms*"<sup>25</sup> for all without distinction as to race, sex, language, or religion and to encourage recognition of the interdependence of the peoples of the world".

A few delegations to the San Francisco Conference, including the Chilean, Cuban and Panamanian delegations sponsored provisions

---

<sup>20</sup> Italics for emphasis.

<sup>21</sup> Italics for emphasis.

<sup>22</sup> Italics for emphasis.

<sup>23</sup> Italics for emphasis.

<sup>24</sup> Italics for emphasis.

<sup>25</sup> Italics for emphasis.



## Fifty Years of the Universal Declaration of Human Rights

which would have had the Charter guarantee the protection of specified rights; and Panama even urged the incorporation of a bill of rights; but none of these proposals were accepted.<sup>26</sup> However, the Conference did include in the Charter an article 68 by which Economic and Social Council was instructed to set up a commission for the promotion of human rights; and although there was no mention in the article of such a mandate it was generally understood that the Commission would draft an International Bill of Rights.<sup>27</sup>

Thus, at the San Francisco Conference which drafted the Charter of the United Nations in 1945, a proposal to embody an International Bill of Rights in the Charter itself was put forward but not proceeded with. The idea of establishing an International Bill of Rights was, however, treated as inherent in the Charter. Even before the Charter was ratified and before it entered into force and before the United Nations as an organization was established, steps were taken towards this goal. The "Preparatory Commission of the United Nations" and its "Executive Committee," meeting in the Autumn of 1945, both recommended that the work of the Commission on Human Rights, the establishment of which is provided for in the Charter, should be directed, in the first place, towards the "formulation of an international bill of rights." The General Assembly agreed with these recommendations in January, 1946. Accordingly, when the terms of reference of the Commission on Human Rights were laid down in February, 1946, "an international bill of rights" was the first item on its work program.<sup>28</sup>

When the Commission and a drafting committee which had been established started their work on this ambitious project, it turned out that there was doubt and disagreement among the members about the form which the draft Bill of Rights should take. Some members thought the Bill should be a "declaration" or "manifesto" which would be proclaimed by

<sup>26</sup> See Humphrey, J., "The U. N. Charter and the Universal Declaration of Human Rights" in Luard, E., (ed.) *The International Protection of Human Rights*, London, 1967, p. 40.

<sup>27</sup> In the speech with which he closed the Conference President Truman said that "under the Charter we have good reason to expect the framing of an international bill of rights acceptable to all the nations involved". See, *United States Department of State Bulletin*, Vol. XIII, No. 314, p. 5.

<sup>28</sup> See, Schwelb, E., *Human Rights and the International Community*, Chicago, 1964, p. 31.

### Chapter 3

a resolution of the General Assembly. Others urged that it should take the form of an international treaty which, in addition to being approved by the General Assembly, would have to be opened for signature, ratification, and accession by governments to be binding only on those governments, which had ratified it or acceded to it. At the end of 1947 the Commission on Human Rights arrived at a decision to solve controversy in the following way. It decided:

- To apply the term "International Bill of Human Rights," or, for brevity, "Bill of Rights" to the entirety of documents in preparation: the Declaration, the Convention, and the Measures of Implementation;
- To present a separate draft of the "Declaration";
- To call the Convention on Human Rights "The Covenant on Human Rights"; and
- To refer to the outcome of various suggestions for international supervision as "Measures of Implementation," regardless of whether these measures will eventually form part of the Covenant or not.<sup>29</sup>

The Commission made no attempt at its first session to draft the declaration, but it did appoint a committee consisting of its chairman (Mrs. Roosevelt of the United States), its vice-chairman (P.C. Chang of China) and its rapporteur (Charles Malik of Lebanon) to prepare a first draft. This Committee of three held only one meeting and found itself without a mandate. Nor did it draft any article, partly because Chang and Malik – two of the most brilliant men ever to sit on the Human Rights Commission and who would later be among principle architects of the International Bill of Rights – were poles apart philosophically and could seldom agree on anything; but the committee did ask the Director of the Human Rights Division in the Secretariat to prepare a draft declaration. He eventually did so but not until after the Commission's arrangements were upset by the Economic and Social Council when somewhat tardily the Soviet Union realized that these arrangements effectively excluded it from any role in the early drafting process. The issue was resolved when on 24 March 1948, Mrs. Roosevelt informed the president of the Council that she was appointing a new drafting committee of eight members of

---

<sup>29</sup> Ibid, p. 32.

## Fifty Years of the Universal Declaration of Human Rights

the Commission: Australia, Chile, China, France, the Lebanon, the United States, the United Kingdom and the Soviet Union.<sup>30</sup>

It was to this new drafting committee that the Director presented his draft on 9 June, 1948. This draft, which was based on a number of texts the secretariat had been able to collect, was known as the 'outline' although it was in fact a preliminary draft. The Commission and its drafting committee (which held two long sessions) completed their work in remarkably short time; and the commission's draft was sent up to the General Assembly in time for its third session which opened in Paris on 21 September 1948. Although the draft was routed through the Economic and Social Council (of which the Commission is one of the functional bodies) the Council as such took no part in the drafting of the declaration.<sup>31</sup>

The Assembly referred the draft to its third committee which devoted eighty-one meeting (not including meetings of various drafting and style committees which sometimes worked late into the night) to the text and to the 168 formal amendments which were proposed to it. But, notwithstanding the length of the discussions and the many amendments considered, the text which finally emerged was surprisingly like the one that had been prepared by the Commission on Human Rights. One reason for this was that the chairman of the third committee<sup>32</sup> and a number of other representatives, including some of the most influential, had worked on the draft in the Commission.<sup>33</sup>

After the text had been adopted by the third committee, the Soviet delegation moved that further consideration of the Declaration be postponed to the next session of the General Assembly in 1949. This move, which was defeated, was again attempted in plenary session of the Assembly, which after adopting one amendment<sup>34</sup> proposed by the United Kingdom, accepted and proclaimed the Declaration on the Rights on the night of 10 December without dissenting voice. The countries

---

<sup>30</sup> See, Humphrey, J., "The Universal Declaration of Human Rights: Its History, Impact and Juridical Character", in Ramcharan, B. G., (ed.), *Human Rights: Thirty Years After the Universal Declaration*, The Hague, 1979, p. 23.

<sup>31</sup> See, Humphrey, J. P., "The UN Charter and the Universal Declaration of Human Rights" in Luard, E., (ed.) *International Protection of Human Rights*, London, 1967, p. 48.

<sup>32</sup> Charels Malik of Lebanon who was also the rapporteur of the Commission.

<sup>33</sup> See above, note 31, at p. 49.

<sup>34</sup> The amendment was to Article 2.

### Chapter 3

which did abstain in the final vote in the night of 10 December were the six communist countries which were then members of the United Nations, plus Saudi Arabia and South Africa. After the vote had been taken, many delegations exercised their right to explain their votes or their reasons for abstention.

In a long speech, Ambassador Andrei Vishinsky of the Soviet Union said that the Declaration suffered from serious defects and omission: the article on slavery was too abstract; there could be no freedom of information unless the workers had the means to voice their opinions, and that meant having at their disposal printing presses and newspapers; the right to demonstrate in the streets should have been guaranteed; there were no guarantees that scientific research would not be used for war purposes; and there were no provisions protecting the rights of minorities. Finally, he regretted, there was no mention in the Declaration of the sovereign rights of states.<sup>35</sup>

The representative of the Ukraine rationalized his abstention in traditional Marxist terms: the Declaration proclaimed rights that could not be exercised under existing conditions and within the economic structure of many countries. Before the right of work, to rest and to education could be implemented the economic system of free enterprise would have to be drastically altered. True equality, he said, was possible only under a system which guaranteed to everyone equal conditions and opportunities for the development of their potential, and that was not the kind of equality contemplated by the Declaration. Speaking for Czechoslovakia, its representative complained that the Declaration was not imbued with revolutionary spirit; it was neither bold nor modern. It was merely a proclamation, said the representative of Byelorussia: it did not guarantee the rights proclaimed. There was no mention of the duties which an individual owed to his neighbours, his family, his group or his nation. Compared to the Declaration of 1789 on his neighbors, his family, his group or his nation. Compared to the Declaration of 1789 on the Rights of Man and of the Citizen, and the Communist Manifesto, and especially the principles which inspired the October Revolution, it was a step backward. The Yugoslavs found more measured language to explain their abstention: the traditional categories of human rights (meaning civil and political rights) needed to be widened, and a system of social rights

---

<sup>35</sup> See, Humphery, J. P., *Human Rights & the United Nations: A Great Adventure*, New York, 1984, p. 72.

## Fifty Years of the Universal Declaration of Human Rights

recognized which would include the collective rights of certain communities.<sup>36</sup>

In the Third Committee, the South Africans had said that the list of rights included in the Declaration was too wide and that it should have been limited to those fundamental rights that were universally recognized. The explanation which they gave for their abstention in plenary session was more interesting and, from the point of view of the future of the Declaration, most discerning. They reminded the Assembly that in the Third Committee they had already made the point that the Declaration, although not a treaty, would nevertheless impose certain obligations on member states, since it would probably be recognized as an authoritative definition of the fundamental rights and freedoms mentioned in the Charter which that instrument had left undefined. "If such an interpretation were accepted," they said, "those member states which voted for the Declaration would be bound in the same manner as if they had signed a convention embodying those principles".<sup>37</sup>

Saudi Arabia did not explain its abstention, but in the Third Committee Jamil Baroodi had said that the provision in Article 18, which recognizes the right of everyone to change his religion or belief, was contrary to the rule of the Koran, an interpretation which was challenged in the plenary by Sir Mohammed Zafrullah Khan, the Pakistani representative.<sup>38</sup>

However, several delegates, including New Zealand and the Soviet Union, tried for different reasons to postpone the adoption of the Declaration. The New Zealand was opposed to adopting any Declaration until the Covenant was ready: "If the Declaration were adopted first", its representative argued, "there was less likelihood that the Covenant would be adopted at all".<sup>39</sup> Had this advice been followed the adoption of the Declaration could have been postponed indefinitely; for it was only in 1966, eighteen years later, that the Assembly adopted the two Covenants.<sup>40</sup> Further, it is quite unlikely that at any time after, say 1949, the Declaration could have been adopted with its present content.

<sup>36</sup> Ibid, at p. 73.

<sup>37</sup> Id.

<sup>38</sup> Id.

<sup>39</sup> A/C3/S.R.89 at p. 4.

<sup>40</sup> International Covenant on Economic, Social and Cultural Rights & the International Covenant on Civil and Political Rights.

## CHAPTER 4

## An Overview of the Universal Declaration of Human Rights and its Significance

Although the Charter lists the promotion and encouragement of respect for human rights and for fundamental freedoms among the purposes of the United Nations, and although it calls repeatedly for the observance of those rights and freedoms, it does not endeavour to enumerate or to define them.<sup>1</sup> This task, which the San Francisco Conference did not attempt to undertake, was left to the competent organs of the United Nations: the General Assembly, the Economic and Social Council, and Commission on Human Rights.

After the establishment of the United Nations, one of the first acts of the Economic and Social Council was to set up a Commission on Human Rights under article 68 of the United Nations Charter. It was this commission which was entrusted to draft the Universal Declaration of Human Rights. Accordingly, when the Commission on Human Rights finalised its draft, it was then sent to the General Assembly for adoption and the Assembly indeed adopted the Declaration on 10 December 1948.

Although human rights are viewed as setting minimal standards, contemporary rights declarations tend to posit rights that are numerous and specific rather than few and general. The Universal Declaration replaces Locke's three generic rights - to life, liberty, and property - with nearly two dozen specific rights.

The Universal Declaration proclaims two broad categories of rights: civil and political rights on the one hand and economic, social and cultural rights on the other hand. It consists of a preamble and 30 articles setting forth the above basic human rights and fundamental freedoms to which all men and women everywhere in the world are entitled, without discrimination. Articles 3 to 21 deal with civil and political rights while

<sup>1</sup> See above, Chapter 3 and Appendix One.

## Fifty Years of the Universal Declaration of Human Rights

articles 22 to 27 deal with economic, social and cultural rights; article 28 speak of social and international order in which the above rights and freedoms are to be realised; articles 29 and 30 provide limitations.

In article 1, the philosophical postulates upon which the Declaration is based are laid down. The article reads:

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.

The article thus defines the basic assumptions of the Declaration: (a) that the right to liberty, and (b) equality is the birthright of every individual and cannot be alienated, and they as rational and moral being are different from other creatures on earth and therefore entitled to certain rights and freedoms which other creatures do not enjoy.

Article 2 sets out the basic principle of equality and non-discrimination as regards the enjoyment of human rights and fundamental freedoms, elaborating the Charter provision that the United Nations should promote the observance of those rights and freedoms "for all without distinction as to race, sex, language, or religion". In paragraph 2, it expressly states that the Declaration is applicable to all countries and territories regardless of their status.

Article 3 proclaims three fundamental and inter-related civil and political rights: the right to life, the right to liberty and the right to security of person. These rights are essential to the enjoyment of all the other rights set forth. Article 3 thus serves as a cornerstone of the Declaration, introducing articles 4 to 21 in which further eighteen civil and political rights of every person as an individual are elaborated.

However, the civil and political rights recognized in the Declaration are: freedom from slavery and servitude;<sup>2</sup> freedom from torture or cruel, inhuman or degrading treatment or punishment;<sup>3</sup> the right to recognition everywhere as a person before the law;<sup>4</sup> equality before the law and equal

<sup>2</sup> See, The Universal Declaration of Human Rights, 1948, Article 4.

<sup>3</sup> See, *Ibid*, Article 5.

<sup>4</sup> See, *Ibid*, Article 6.

protection of the law;<sup>5</sup> the right to an effective judicial remedy;<sup>6</sup> freedom from arbitrary arrest, detention or exile;<sup>7</sup> the right to a fair trial and public hearing by an independent and impartial tribunal;<sup>8</sup> the right to be presumed innocent until proved guilty;<sup>9</sup> freedom from arbitrary interference with privacy, family, home or correspondence, freedom from attacks upon honour and reputation, the rights and to protection of the law against such attacks;<sup>10</sup> freedom of movement and residence;<sup>11</sup> the right of asylum;<sup>12</sup> the right to a nationality;<sup>13</sup> the right to marry and to found a family;<sup>14</sup> the right to own property;<sup>15</sup> freedom of thought, conscience and religion;<sup>16</sup> freedom of opinion and expression;<sup>17</sup> freedom of peaceful assembly and association;<sup>18</sup> the right to take part in the government and the right of equal access to public service.<sup>19</sup>

The Universal Declaration differs from the traditional catalogues of human rights of the 18th, 19th and on the eve of the 20th centuries in that it includes not only civil and political rights but also economic social and cultural rights. Articles 22 to 27 of the Declaration provide six economic, social and cultural rights. Article 22 is another cornerstone of the Declaration which introduces Articles 23 to 27. Because, the article declares, *inter alia* that everyone, as a member of society, is entitled to the economic, social and cultural rights which are indispensable for human dignity and the free development of personality. Furthermore, it suggests that: these rights are to be realised, "through national effort and

---

<sup>5</sup> See, *Ibid*, Article 7.

<sup>6</sup> See, *Ibid*, Article 8.

<sup>7</sup> See, *Ibid*, Article 9.

<sup>8</sup> See, *Ibid*, Article 10.

<sup>9</sup> See, *Ibid*, Article 11.

<sup>10</sup> See, *Ibid*, Article 12.

<sup>11</sup> See, *Ibid*, Article 13.

<sup>12</sup> See, *Ibid*, Article 14.

<sup>13</sup> See, *Ibid*, Article 15.

<sup>14</sup> See, *Ibid*, Article 16.

<sup>15</sup> See, *Ibid*, Article 17.

<sup>16</sup> See, *Ibid*, Article 18.

<sup>17</sup> See, *Ibid*, Article 19.

<sup>18</sup> See, *Ibid*, Article 20.

<sup>19</sup> See, *Ibid*, Article 21.



international co-operation and in accordance with the organisation and resources of each state".

The economic, social and cultural rights set out in the Declaration are: the right to social security;<sup>20</sup> the right to work, the right to equal pay for equal work, the right to form and join trade unions;<sup>21</sup> the right to rest and leisure including reasonable limitation of working hours and periodic holidays with pay;<sup>22</sup> the right to a standard of living adequate for the health and well being of a person and his family;<sup>23</sup> the right to education;<sup>24</sup> and the right freely to participate in the cultural life of the community.<sup>25</sup>

Article 28 of the Declaration has laid down that everyone is entitled to a social and international order in which the rights and freedoms set forth in the Declaration can be fully realised.<sup>26</sup> Thus, article 28 not only speaks of social order but also of an international order. This would seem to imply that the states have taken upon themselves a collective responsibility to realise the rights set forth in the Declaration and must not only realise that standard in their own societies, but assist other countries in doing so.

Articles 29 and 30 of the Declaration provide limitation: the first one to the enjoyment of human rights by individuals within the framework of modern society's agencies:

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 requirement of morality, public order and the general welfare in a democratic society.<sup>27</sup>

---

<sup>20</sup> See, *Ibid*, Article 22.

<sup>21</sup> See, *Ibid*, Article 23.

<sup>22</sup> See, *Ibid*, Article 24.

<sup>23</sup> See, *Ibid*, Article 25.

<sup>24</sup> See, *Ibid*, Article 26.

<sup>25</sup> See, *Ibid*, Article 27.

<sup>26</sup> See, *Ibid*, Article 28.

<sup>27</sup> See, *Ibid*, Article 29(2).

## Chapter 4

The second is even more important as well as more difficult to realise as it deals with restrictions of the authority of the states:

Nothing in this Declaration may be interpreted as implying for any state, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.<sup>28</sup>

The Universal Declaration however, states that these rights are rooted in the dignity and worth of human beings and in the requirements of domestic and international peace and security. In promulgating the Universal Declaration as a "common standard of achievement", the United Nations did not purport to describe rights already recognized everywhere or to enact these rights within international law. Instead, it attempted to set forth the norms that exist within enlightened moralities. Although the goal of many of the participants was to enact these rights in both domestic and international legal systems, they were held to exist not as legal rights but as universal moral rights.

The fundamental principles on which the Declaration was based may be summarized in the following manner. Human rights are based on the "inherent dignity"<sup>29</sup> of every human person. This dignity, and the rights to freedom and equality which derive therefrom, are inalienable. They have precedence over all powers, including that of the State, which may regulate but may not abrogate them.

The dignity of the human person exists and should be recognized "without distinction of any kind".<sup>30</sup> It follows that human rights are by nature universal, acquired at birth by "all members of the human family"<sup>31</sup> whatever "the political, jurisdictional or international status of the country or territory to which a person belongs".<sup>32</sup> The growing recognition among human beings of their equal dignity, which is their

---

<sup>28</sup> See, *Ibid*, Article 30.

<sup>29</sup> See, The Universal Declaration of Human Rights, 1948, Preamble.

<sup>30</sup> See, *Ibid*, Article 2.

<sup>31</sup> See, *Ibid*, Preamble.

<sup>32</sup> See, *Ibid*, Article 2.

common heritage, is such that it gradually promotes a "spirit of brotherhood"<sup>33</sup> in their relations.

The declaration recognises the need for a social "order",<sup>34</sup> both domestic and international, so that human rights "can be fully realised".<sup>35</sup> The individual has "duties"<sup>36</sup> to the community "in which alone the free and full development of his personality is possible".<sup>37</sup> These duties impose certain limitations on the exercise of human rights, provided they are "determined by law"<sup>38</sup> and are "solely for the purpose of securing due recognition and respect for the rights"<sup>39</sup> of others and of meeting "the just requirements of morality, public order and the general welfare in a democratic society".<sup>40</sup>

Human rights, as conceived in twentieth century human rights documents such as the Universal Declaration, have a number of salient characteristics. First, lest we miss the obvious, these are rights. The exact import of this status is unclear but the word at least suggests that these are definite and high-priority norms whose pursuit is mandatory.

Second, these rights are alleged to be universal, to be held by people simply as people. This view implies that characteristics such as race, sex, religion, social position, and nationality are irrelevant to whether one has human rights. It also implies that these rights are applicable all around the world. One of the distinctive features of human rights today is that they are international rights. Compliance with such rights has come to be seen as a legitimate object of international concern and action.

Third, human rights are held to exist independently of recognition or implementation in the customs or legal systems of particular countries. These rights may not be effective rights until legally implemented, but

---

<sup>33</sup> See, Ibid, Article 1.

<sup>34</sup> See, Ibid, Article 28.

<sup>35</sup> Id.

<sup>36</sup> See, Ibid, Article 29.

<sup>37</sup> Id.

<sup>38</sup> Id.

<sup>39</sup> Id.

<sup>40</sup> Id.

## Chapter 4

they exist as standards of argument and criticism independently of legal implementation.

Fourth, human rights are held to be important norms. Although they are not all absolute, they are strong enough as normative considerations to prevail in conflicts with contrary national norms and to justify international action on their behalf. The rights described in the Declaration are not ranked in terms of priority; their relative weights are left unstated. It is not claimed that some of them are absolute. Thus the rights of the Declaration are what philosophers call *prima facie* rights.

Fifth, these rights imply duties for both individuals and governments. These duties, like the rights with which they are lined, are alleged to exist independently of acceptance, recognition, or implementation. Governments and people everywhere are obligated not to violate a person's rights, although a person's own government may have the main responsibility to take positive measures to protect and uphold that person's rights.<sup>41</sup>

Some characteristics which stand out in the Universal Declaration are the following:

- its postulate of universality,
- its proclamation as a common standard of achievement for all peoples and all nations,
- its emphasis on the individual person,
- its broad scope by encompassing civil and political rights as well as economic, social and cultural rights,
- its recognition that human rights are a constituent element of a new social and international order.

The Universal Declaration was not meant to be the 'final' document on human rights. It was envisaged as a part of the International Bill of Human Rights. The other parts, which were only adopted in 1966, were intended as a legally binding complement in the form of substantive norms and mechanisms and procedures for implementation.

---

<sup>41</sup> See. Nickel, J. N., *Making Sense of Human Rights*, Berkely, 1987, p. 3.

## Fifty Years of the Universal Declaration of Human Rights

Now we will proceed to discuss the significance of the Universal Declaration of Human Rights. Before determining its significance it is imperative to know the meaning of the term 'declaration' in the practice of the United Nations. It is of some interest to recall that when, in 1962, the Commission on Human Rights inquired as to the meaning of the term 'declaration' in United Nations practice, the Office of Legal Affairs in the secretariat replied:

In United Nations practice, a 'declaration' is a formal and solemn instrument, suitable for rare occasions when principles of great and lasting importance are being enunciated, such as the Declaration on Human Rights. A recommendation is less formal . . . . A 'declaration' or a 'recommendation' is adopted by a resolution of United Nations organ. As such it cannot be made binding upon member States, in the sense that a treaty or convention is binding upon the parties to it, purely by the device of terming it a 'declaration' rather than a 'recommendation'. However, in view of the greater solemnity and significance of a declaration, it may be considered to impart, on behalf of the organ adopting it, a strong expectation that Members of the international community will abide by it. Consequently, in so far as the expectation is gradually justified by state practice, a declaration may by custom become recognised as laying down rules binding upon states.<sup>42</sup>

However, the Preamble of the Universal Declaration, which - as is usual in international instruments - gives the reasons and intent of the instrument, confines itself to describing the Declaration as a "common standard of achievement for all peoples and all nations" and as a "common understanding of [the] rights and freedoms" for which the Members of the United Nations have pledged themselves to promote "universal respect and observance". These may appear to have two different elements.

The first would imply that the provisions of the Declaration are an ideal to which the nations of the world should aspire and that the effective recognition and observance of these provisions would be secured in the more or less distant future by a long process of education, teaching, and national and international measures. The second may seem

---

<sup>42</sup> United Nations Document E/CN. 4/L. 610.

## Chapter 4

to have a more immediate purpose: the Charter refers to "human rights and fundamental freedoms" without defining what these rights and freedoms are. Since the members of the United Nations undertook certain obligations under the Charter with regard to human rights and fundamental freedoms, they must first arrive at a definition or enumeration of them, in order to be able to accomplish their pledge under the Charter.

Thus, according to the Declaration, the rights and freedoms enumerated therein would constitute for the moment the catalogue of rights and freedoms to which reference is made in the Charter. The Chinese representative on the Third Committee formulated this idea in the following words: "The Charter committed all nations to the observance of human rights; the Declaration stated these rights explicitly".<sup>43</sup> The same idea was expressed by the representative of Chile, who considered the purpose of the adoption of the Declaration to be "that the world might know what, according to the United Nations, were the basic rights of man within society and state".<sup>44</sup> Similar was the position of the representative of Panama, who said that "it [the Declaration] defined what the rights and liberties set forth in the Charter were, and could not be simply set aside as having no juridical force".<sup>45</sup> Almost the same view was taken by the Australian representative in the Ad Hoc Political Committee, who "conceded that the Declaration was resolution of the General Assembly and not an International Convention. But he pointed out that the Declaration was merely a restatement of the human rights and fundamental freedoms referred to in the Charter".<sup>46</sup> The Declaration thus appears to be an authoritative interpretation of the scope of the Charter's "human rights and fundamental freedoms".

The interpretation of the significance of the Declaration on the basis of the text of the preamble and the Charter may not exhaust its import. It is accepted that the Declaration, as distinct from the Covenants, is formally

---

<sup>43</sup> A/C.3/SR 91, p. 4.

<sup>44</sup> A/C.3/SR 91, p. 7.

<sup>45</sup> A/BUR/SR 58, p. 20.

<sup>46</sup> A/AC.24/SR 36, p. 11.

## Fifty Years of the Universal Declaration of Human Rights

not a legally binding document. Mrs. Roosevelt, in her statement made on the eve of the adoption of the Declaration, put it in the following words:

In giving our approval to the declaration today, it is of primary importance that we keep clearly in mind the basic character of the document. It is not a treaty; it is not an international agreement. It is not and does not purport to be a statement of law or of legal obligation. It is a declaration of basic principles of human rights and freedoms, to be stamped with the approval of the General Assembly by formal vote of its members, and to serve as a common standard of achievement for all peoples of all nations.<sup>47</sup>

There was no unanimity among those who drafted the Declaration as to the measure and weight of the obligation it may impose on the members of the United Nations. Thus, there were others who were of a different view. In the third committee, the representative of China said that the Charter committed member states to the observance of human rights and that the Declaration "stated these rights explicitly". The same view was expressed by Professor Rene Cassin, on behalf of France, who said that the Declaration "could be considered as an authoritative interpretation of the Charter". Mr. Hernan Santa Cruz of Chile said that 'violation by any state of the rights enumerated in the Declaration would mean violation of the principles of the United Nations'.<sup>48</sup>

However, status of the Declaration when it was adopted in 1948 is described by the United Nations as that of "a manifesto with primarily moral authority".<sup>49</sup> But with time, the Universal Declaration has itself acquired significant legal status. Some see it as having given content to the Charter pledges, partaking therefore of the binding character of the Charter as an international treaty. Others see both the Charter and the Declaration as contributing to the development of a customary law of human rights binding on all states.<sup>50</sup>

<sup>47</sup> A/C.3/SR 93, p. 12. See also, *Department of State Bulletin*, Dec. 19, 1948, p. 751.

<sup>48</sup> See, Humphrey, J. P., "The UN Charter and the Universal Declaration of Human Rights", in Luard, E., (ed.) *The International Protection of Human Rights*, London, 1967, pp. 50-51.

<sup>49</sup> United Nations, *The International Bill of Human Rights*, New York, 1993, p. 1.

<sup>50</sup> Henkin, L., *The Age of Rights*, New York, 1990, p. 19.

## Chapter 4

On the twentieth anniversary of the adoption of the Declaration, a major international conference of non-governmental organisations proclaimed unequivocally that the Universal Declaration "constitutes an authoritative interpretation of the Charter of the highest order, and has over the years become part of customary international law."<sup>51</sup> A governmental conference held in the same year at which 84 states were represented observed that the Declaration "constitutes an obligation for the Members of the international community",<sup>52</sup> although there was no elaboration of the precise nature of this obligation. In 1994, the International Law Association observed that the Declaration "is universally regarded as an authoritative elaboration of the human rights provisions of the United Nations Charter" and concluded that "many if not all of the rights elaborated in the . . . Declaration . . . are widely recognized as constituting rules of customary international law".<sup>53</sup>

Several distinguished commentators have taken the position that the entire Universal Declaration now represents customary international law. One of the Declaration's principal drafters ~~John Humphrey~~ concludes that, since its adoption, "the Declaration has been invoked so many times both within and without the United Nations that lawyers now are saying that, whatever the intention of its authors may have been, the Declaration is now part of the customary law of nations and therefore is binding on all states. The Declaration has become what some nations wished it to be in 1948: the universally accepted interpretation and definition of the human rights left undefined by the Charter."<sup>54</sup> Waldock similarly concludes that the widespread recognition of the principles of the

---

<sup>51</sup> Montreal Statement of the [Non-governmental] Assembly for Human Rights 1968, reprinted in *Journal of International Commission of Jurists Review*, 1968, p. 94.

<sup>52</sup> Proclamation of Tehran, 1968 reprinted in United Nations, *Human Rights: A Compilation of International Instruments*, Vol. 1, (First Part), New York 1994, P. 51.

<sup>53</sup> Quoted by, Hannum, H., "The Status of the Universal Declaration of Human Rights in National and International Law" in *Georgia Journal of International & Comparative Law*, Vol. 25, 1995/96, p. 323.

<sup>54</sup> *Id.* A later work by Humphrey emphasizes the point that the Declaration is now "binding on all states, including the states that did not vote for it in 1948". See, Humphrey, J., *No Distant Millennium: The International Law of Human Rights*, Paris, 1989, p. 55.



Declaration "clothing it, in my opinion, in the character of customary international law."<sup>55</sup> Sohn considers that the Declaration is not only "an authoritative interpretation of the Charter obligations but also a binding instrument in its own right."<sup>56</sup>

After examining these and other opinions, Thornberry recently concluded that "[t]here is . . . strong evidence that the Universal Declaration has become part of customary international law, and that it is the most valid interpretation of the human rights and freedoms which the Members of the United Nations pledge to promote."<sup>57</sup> Alston stated in 1983 that "there is a large and growing body of evidence" to support the proposition that at least the first twenty-one articles of the Declaration are part of customary law.<sup>58</sup> Robertson and Merrills agree that the Declaration, "by reason of its constant reaffirmation by the General Assembly and in numerous other texts, both international and national, can now, more than forty years on, be taken as a statement of customary international law, establishing standards which all States should respect."<sup>59</sup>

The International Court of Justice has addressed the status of the Declaration at least indirectly in several opinions. The Declaration was cited in support of the applications in the South West Africa cases,<sup>60</sup> although the Court, in a widely criticized opinion, ultimately rejected the

---

<sup>55</sup> Waldock, H., "Human Rights in Contemporary International Law and the Significance of the European Convention", in *The European Convention Of Human Rights*, Brit. Inst. Int'l & Comp. L., Ser. No. 5, 1965, p. 15.

<sup>56</sup> Sohn., L. B., "The Human Rights Law of the Charter", *Texas International Law Journal*, Vol.12, 1977, p. 133.

<sup>57</sup> Thornberry, P., *International Law and the Rights of the Minorities*, Oxford, 1991, pp. 237-38.

<sup>58</sup> Quoted by, Hannum, H., "The Status of the Universal Declaration of Human rights in National and International Law" in *Georgia Journal of International & Comparative Law*, Vol. 25, 1995/96, p. 323.

<sup>59</sup> Robertson, A.H., & Merrills, J.G., *Human rights in the World*, Manchester, 1989, p. 96.

<sup>60</sup> See, South West Africa, 1962 I. C. J. p. 323 (Preliminary Objections) (Judgment of September, 3)

## Chapter 4

applicants' standing to bring their claims.<sup>61</sup> The dissenting opinion of Judge Tanaka more persuasively clarified the relationship among the UN Charter, the Universal Declaration, and the obligation to protect human rights in the following words:

From the provisions of the Charter referring to the human rights and fundamental freedoms it can be inferred that the legal obligation to respect human rights and fundamental freedoms is imposed on member States . . . .

Without doubt, under the present circumstances, the international protection of human rights and fundamental freedoms is very imperfect . . . . [However,] there is no doubt that these obligations are not only moral ones, and that they also have a legal character by the very nature of the subject matter.

Therefore, the legislative imperfections in the definition of human rights and fundamental freedoms and the lack of mechanism for implementation, do not constitute a reason for denying their existence and the need for their legal protection . . . .

Furthermore, the Universal Declaration of Human Rights . . . although not binding in itself, constitute [s] evidence of the interpretation and application of the relevant Charter provisions.<sup>62</sup>

Only four years later, the Court addressed the substance of the South African presence in Namibia (South West Africa) and stated clearly that "[t]o establish . . . and to enforce, distinctions, exclusions, restrictions and limitations exclusively based on grounds of race, colour, descent or national or ethnic origin which constitute a denial of fundamental human rights is a flagrant violation of the purposes and principles of the Charter".<sup>63</sup> Vice-President Ammoun relied specifically on the Universal Declaration in arriving at his conclusions that the right to equality is a binding customary norm:

<sup>61</sup> South West Africa, 1966 I.C.J. p. 6 (Second Phase) (Judgment of July 18).

<sup>62</sup> Id. at pp. 289-90, (Tanaka, J., dissenting).

<sup>63</sup> Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276 (1970), 1971, I.C.J. p. 57, (Advisory Opinion of June 21).

The Advisory Opinion takes judicial notice of the Universal Declaration of Human Rights . . . .

Although the affirmations of the Declarations are not binding *qua* international convention . . . , they can bind States on the basis of custom within the meaning of paragraph 1(b) of [Article 38 of the Statute of the Court] . . . because they constituted a codification of customary law. . . or because they have acquired the force of custom through a general practice accepted as law.<sup>64</sup>

The Court's acceptance of Judge Ammoun's approach was evidenced a decade later in the Hostages case. In its judgment, the Court stated:

Wrongfully to deprive human beings of their freedom and to subject them to physical constraint in conditions of hardship is in itself manifestly incompatible with the principles of the Charter of the United Nations, *as well as with the fundamental principles enunciated in the Universal Declaration of Human Rights.*<sup>65</sup>

Although there were dissents to the Court's judgment, none clearly challenged the quoted language. Thus, the apparently unanimous view of the Court is that the Universal Declaration of Human Rights is a document of sufficient legal status to justify its invocation by the Court in the context of a State's obligations under general international law.

Hence, it is apparent that the Universal Declaration of Human Rights not only possesses high moral and political authority but at the same time have now acquired the force of law as part of the customary law of nations.

---

<sup>64</sup> *Ibid.* at p. 76, (Ammoun, J., separate opinion).

<sup>65</sup> *United States v. Iran*, 1980 I.C.J. p. 42, (Judgement of May 24) (italics for emphasis).

## CHAPTER 5

# From Universal Declaration of Human Rights to Vienna Declaration and Programme of Action

Since the adoption of the Universal Declaration of Human Rights by the General Assembly, the idea of human rights has reached at an unprecedented heights. This massive acceptance seems to have occurred in spite of the hesitation of many governments, beginning as early as from the birth of the League of Nations and continuing to the present day, to articulate standards and implementation methods. The 'lack of time' at the San Francisco Conference, the notion of the Commission on Human Rights as a 'rudimentary receptacle' and lack of inclusion of the Right of petition in the Universal Declaration are examples which suggest this reluctance.<sup>1</sup> Yet, the latter half of the twentieth century has witnessed an extraordinary efforts in the adoption of a series of instruments in the form of Declarations, Recommendations and Conventions on human rights. Below, we will briefly highlight the development which began its journey with the adoption of the Universal Declaration of Human Rights in 1948.<sup>2</sup>

### Convention Relating to the Status of Refugees 1951

More than two years after the adoption of the Universal Declaration, on 28 July 1951 the Convention relating to the Status of Refugees was adopted, revising and consolidating previous international agreements on the status of refugees and extending the scope of, and the protection accorded by, such instruments. The Convention in its Preamble has recalled the Universal Declaration of Human Rights.

<sup>1</sup> See, Wronka, J., *Human Rights and Social Policy in the 21st Century*, New York, 1992, p. 112.

<sup>2</sup> The chapter has been primarily based on the basis of the following sources: United Nations, *Human Rights: A Compilation of International Instruments*, Volume I (First Part) and (Second Part), New York, 1994; United Nations, *The United Nations and Human Rights*, Blue Book Series, Volume VII, New York, 1995; United Nations, *United Nations Action in the Field of Human Rights*, New York, 1994; Robertson, A. H., and Merrills, J. G., *Human Rights in the World*, Manchester, 1989.

The Convention sets out, in article 1, a definition of the term 'refugee' for the purpose of the Convention. Articles 2 to 11 contain general provisions and provide for non-discrimination as to race, religion, or country of origin; religious freedom, at least to the extent granted to nationals; safeguarding of rights apart from the Convention; equal treatment with aliens unless the Convention contains more favourable provisions, and exemption from legislative reciprocity after three years' residence; exemption from exceptional measures which might be taken against the person, property or interests of nationals of a foreign state solely on account of such nationality, and recognition of continuity of residence.

Articles 12 to 16 pertain to the juridical status of the refugees, articles 17 to 19 concern the rights of refugees to engage in gainful employment, articles 20 to 24 concern the welfare of the refugee in regard to such matters as rationing, housing, public education, public relief, labour legislation and social security, Article 25 deals with the provision of administrative assistance to refugees and article 26 with their freedom of movement, Articles 27 and 28 deal respectively with the issuing of identity papers to refugees and of travel documents to enable them to travel outside their country of lawful residence. Article 29 deals with the applicability of fiscal charges to refugees and article 30 with the right of refugees to transfer their assets from the territory of a Contracting State to another country where they have been admitted for resettlement. Articles 31 to 33 contain important provisions which are relevant to the question of asylum. According to these articles, a refugee requesting asylum in the territory of a contracting state may not be subjected to penalties on account of his illegal entry or presence provided he presents himself without delay to the competent authorities; if he has resided in the territory of a contracting State he may not be expelled save on grounds of national security and public order and in any event he may not be expelled or returned in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion. Article 34 of the Convention requires contracting States as far as possible to facilitate the assimilation and naturalisation of refugees and in particular to make every effort to expedite naturalisation proceedings and to reduce the charges and costs of such proceedings. Article 35 of the Convention requires the contracting States to co-operate with the Office of the United Nations High Commissioner for Refugees in

## Chapter 5

the exercise of its functions and in particular to facilitate its duty of supervising the application of the provisions of the Convention.

### Convention on the Political Rights of Women 1952

The Convention records in its Preamble that it was concluded in order "to equalise the status of men and women in the enjoyment and exercise of political rights, in accordance with the provisions of the Charter of the United Nations and of the Universal Declaration of Human Rights". "Everyone has the right to take part in the government of his country, directly or through freely chosen representatives", provides article 21 of the Universal Declaration. This provision has been made the basis of the Convention on the Political Rights of Women of 1952. It is to the effect that women shall be entitled to vote in all elections to all publicly elected bodies, and that they shall be entitled to hold public office and to exercise all public functions, all this on equal terms with men and without any discrimination. This is the first Convention adopted by the United Nations specifically dealing with women.

### Supplementary Convention on the Abolition of Slavery 1956 and the Abolition of Forced Labour Convention 1957

Combating slavery and the slave trade has been one of the aims of international humanitarian endeavour since the beginning of the nineteenth century. The Universal Declaration has continued the struggle. Its Article 4 provides that no one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms. In 1926 a Slavery Convention was concluded under the auspices of the League of Nations. In 1956, a Supplementary Convention on the Adoption of Slavery, the Slave Trade, and Institutions and Practices similar to Slavery was concluded. The contribution made by this Convention consists in the outlawing of certain institutions and practices similar to slavery, such as debt bondage, serfdom, purchase of brides, and exploitation of child labour. In the following year, by the Convention concerning the Abolition of Forced Labour, 1957, states undertook to suppress and not to make use of any form of forced or compulsory labour, *inter alia*, as a means of political coercion or education or as a punishment for holding or expressing political views or views ideologically opposed to the

established political, social, or economic system; as a method of mobilizing or using labour for purposes of economic development; or as a means of racial, social, or religious discrimination.

### Convention on the Nationality of Married Women 1957

Article 15 of the Universal Declaration provides that everyone has the right to a nationality and that no one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality. This is clearly one of the weakest provisions of the Declaration, the second sentence being contradictory to the first. If a state is permitted to deprive a person of his nationality provided that the deprivation does not take place "arbitrarily", then the person concerned loses his right to the nationality he holds and is by no means assured of the acquisition of another.

The problem of the nationality of married women has been the concern of the United Nations since the Commission on the Status of Women decided to study this question in 1948. At its second session, held in January of that year, the Commission noted the many and varied discriminations against women that resulted from conflicts in nationality laws, and recalled The Hague Convention on Certain Questions relating to the Conflict of Nationality Laws (1930), the Montevideo Convention on the Nationality of Women (1933), and the studies in the field which had been undertaken by the League of Nations. At its request the Economic and Social Council at its seventh session in 1948 requested the Secretary General to prepare a report based on replies received to the questionnaire on the legal status and treatment of women and a report on existing treaties and Conventions in the field of nationality. The Convention on the Nationality of Married Women was adopted by the General Assembly and opened for signature and ratification in Resolution 1040 (XI) of 29 January 1957. On the aspect of the 'right to nationality' of married women each Contracting State agrees that neither the celebration nor the dissolution of marriage between one of its nationals and an alien shall automatically affect the nationality of the wife.

### Declaration of the Rights of the Child 1959

In 1959, the General Assembly proclaimed the Declaration of the Rights of the child, an instrument based upon the Charter and the Universal Declaration of Human Rights which spells out the rights of

children in greater detail than does the Universal Declaration. It was proclaimed: "to the end that he may have happy childhood and enjoy for his own good and for the good of society the rights and freedoms herein set forth". The Assembly called upon "parents, upon men and women as individuals, and upon voluntary organisations, local authorities and national governments" to recognise the rights set out in the Declaration and to strive for their observance by legislative and other measures.

The Declaration presents, in a series of principles, a code for the well-being of every child "without any exception whatsoever" and "without distinction or discrimination on account of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, whether of himself or of his family". The Declaration is addressed to individuals, voluntary organisations, local authorities, and national governments, and calls upon them to recognise the rights set forth in it and to strive for their observance by legislative and other measures progressively taken.

### Declaration on the Granting of Independence to Colonial Countries and Peoples 1960

The right of self-determination has not been included in the Universal Declaration of Human Rights. But the Declaration on the Granting of Independence to Colonial Countries and Peoples refers the Universal Declaration in the following manner: "All states shall observe faithfully and strictly the provisions of the Charter of the United Nations and the Universal Declaration of Human Rights and the present Declaration on the basis of equality, non-interference in the international affairs of all states, and respect for the sovereign rights of all peoples and their territorial integrity".

The General Assembly first recognized "the right of peoples and nations to self-determination" as a fundamental human right in Resolution 421 D (V) of 4 December 1950, in which it called upon the Economic and Social Council and the Commission on Human Rights to make recommendations on ways and means to ensure the enjoyment of this right.

In Resolution 1514 (XV) of 14 December 1960, the General Assembly solemnly proclaimed "the necessity of bringing to a speedy and



## Fifty Years of the Universal Declaration of Human Rights

unconditional end to colonialism in all forms and manifestations", and adopted the Declaration on the Granting of Independence to Colonial Countries and Peoples.

In the preamble to the Declaration, the General Assembly referred to "the need for the creation of conditions of stability and well-being and peaceful and friendly relations based on respect for the principles of equal rights and self-determination of all peoples, and of universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion". It expressed the belief that "the process of liberation is irresistible and irreversible and that, in order to avoid serious crises, an end must be put to colonialism and all practices of segregation and discrimination associated therewith"; recognized "the increasingly powerful trends towards freedom" in territories which had not attained independence; and expressed the conviction "that all peoples have an inalienable right to complete freedom, the exercise of their sovereignty and the integrity of their national territory".

### Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages 1962

Article 16 (2) of the Universal Declaration provides that marriage shall be entered into only with the free and full consent of the intending spouses. After making a detailed study of marriage, with particular regard to free consent to marriage, minimum age for marriage and registration of marriages, the Commission on the Status of Women, in 1961, drafted an international convention and a Recommendation on these subjects. The purpose of the proposed instruments was to eliminate such practices as child marriage, inheritance of widows and other practices especially harmful to women. The Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages was adopted by the General Assembly in 1962.

The Convention was signed on 10 December 1962, Human Rights Day, in which more precise provisions regulating this problem have been given. No marriage shall be legally entered into, without the full and free consent of both parties, such consent to be expressed by them in person

## Chapter 5

after authority competent to solemnize the marriage and of witnesses as prescribed by law. State parties shall specify a minimum age for marriage. All marriages shall be registered.

### United Nations Declaration on the Elimination of All Forms of Racial Discrimination 1963

In December, 1962, "deeply disturbed by the manifestations of discrimination based on differences of race, color, and religion still in evidence throughout the world, considering the necessity of taking all possible steps conducive to the final and total elimination of all such manifestations, which violate the Charter of the United Nations and the Universal Declaration of Human Rights," the General Assembly initiated the drafting of a Declaration on the Elimination of All Forms of Racial Discrimination. At its session in 1963, the General Assembly adopted the Declaration on Elimination of All Forms of Racial Discrimination.

Article 1 provides discrimination between human beings on the ground of race, colour or ethnic origin is an offense to human dignity and shall be condemned as a denial of the principles of the Charter of the United Nations, as a violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights, as an obstacle to friendly and peaceful relations and as a fact capable of disturbing peace and security among peoples. On the other hand article 11 provides that every state shall promote respect for and observe of human rights and fundamental freedoms in accordance with the Charter of the United Nations and shall fully and faithfully observe the provisions of the present Declaration, the Universal Declaration of Human Rights and the Declaration on the Granting of Independence to Colonial Countries and Peoples.

### International Convention on the Elimination of All Forms of Racial Discrimination 1965

The International Convention on the Elimination of All Forms Racial Discrimination which was adopted on 21 December 1965 and entered into force on 4 January 1969, was the first United Nations human rights instrument to set up an international monitoring system including, in particular, a procedure for individual complaints.

The memory of the Nazi atrocities during the Second World War, profound indignation at the continued existence of racism and the development of the institutionalised racial segregation in South Africa under the name of apartheid led to the creation of the most effective possible international legal weapon against those abhorrent practices. The conclusion of such a Convention was one of the priority objectives, in particular, of the new Member States which had just acceded to independence in the early 1960s.

The Convention was essentially the work of the General Assembly itself, in consultation with various other bodies. Article 1 defines the term "racial discrimination" broadly as "any distinction, exclusion, restriction or preference based on race, colour, descent or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms...". It nevertheless stipulates that the Convention does not prohibit distinctions between citizens and non-citizens.

The preamble succinctly sets forth the philosophy of the Convention. It expresses the view: (a) "that any doctrine of superiority based on racial differentiation is scientifically false, morally condemnable, socially unjust and dangerous"; (b) "that there is no justification for racial discrimination, in theory or in practice"; and (c) "that the existence of racial barriers is repugnant to the ideals of any human society". The preamble reaffirms "that discrimination between human beings on the grounds of race, colour or ethnic origin is an obstacle to friendly and peaceful relations among nationals and is capable of disturbing peace and security among peoples and the harmony of persons living side by side even within one and the same State".

### The International Covenant on Economic Social and Cultural Rights 1966

The International Covenant on Economic, Social and Cultural Rights, adopted and opened for signature, ratification and accession by General Assembly Resolution 220A (XXI) of 16 December 1966, entered into force on 3 January 1976, three months after the date of deposit with the Secretary General of the thirty-fifth instrument of ratification or accession, as provided under article 27 of the Covenant.

## Chapter 5

This Covenant does not require states to give effect to the rights recognised, but simply initiates an exhortatory and programmatic approach to their implementation as article 2(1) provides that each state party "undertakes to take steps . . . to the maximum of its available resources, with a view to achieving progressively the full realisation of the rights recognised in the present Covenant by all appropriate means . . .". It is thus quite clear that this is what is known as a promotional convention, that is to say it does not set out rights which the parties are required to implement immediately, but rather lists standards which they undertake to promote and which they pledge themselves to secure progressively, to the greatest extent possible, having regard to their resources.

Of the remaining general provisions in the Covenant on Economic, Social and Cultural Rights, the non-discrimination clause [Article 2(2)] is similar to that in the other Covenant i.e. the Civil and Political Covenant, as are also the proclamation of the equal rights of men and women (Article 3) and the provisions in Article 5 designed to prevent abuse of the rights secured, together with a general saving clause. Article 4 relates to limitations on the rights protected. Limitations are permissible only "as determined by law . . . and solely for the purpose of promoting the general welfare in a democratic society". However, there is no provision for derogation in a state of emergency, as in the Civil and Political Rights Covenant. Finally, paragraph 3 of Article 2 contains the following provision, designed to protect developing countries from economic exploitation by their more powerful neighbours: "Developing countries, which due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognised in the present covenant to non-nationals".

When we come to the particular rights protected in the Covenant on Economic, Social and Cultural Rights, we find a longer list and more detailed definitions than those contained in the Universal Declaration. The latter included only six articles relating to these rights in 1948 but the number increased to ten in the Covenant. This illustrates the tendency of the United Nations over the last fifty years to pay increasing attention to economic and social rights. This tendency, which is due largely to the admission of so many developing countries as new members, has been accompanied by a corresponding reduction in emphasis on those rights of a civil and political character. It is perhaps indicative that in the General

## Fifty Years of the Universal Declaration of Human Rights

Assembly Resolution approving the new Covenants, the Covenant on Economic, Social and Cultural Rights was placed before the Covenant on Civil and Political Rights.

The economic, social and cultural rights protected by the Covenant are the following: right to work; right to just and favourable conditions of work, including fair wages, equal pay for equal work and holidays with pay; right to form and join trade unions, including the right to strike; right to social security; protection of the family, including special assistance for mothers and children; right to an adequate standard of living, including adequate food, clothing and housing and the continuous improvement of living conditions; right to the highest attainable standard of physical and mental health; right to education, primary education being compulsory and free for all, and secondary and higher education generally accessible to all; and the right to participate in cultural life and enjoy the benefits of scientific progress.

### The International Covenant on Civil and Political Rights 1966

Like the International Covenant of Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, was also adopted by Resolution 2200 A(XXI) of 16 December 1966, entered into force on 23 March 1976, three months after the date of deposit with the Secretary General of the thirty-fifth instrument of ratification or accession, as provided in article 49 of the Covenant.

Whereas the Universal Declaration was drafted in the form of preemptory commands to states to protect certain rights, the present Covenant was drafted to meet the practical problems of protecting rights. Thus, the Covenant elaborates the protectable rights more specifically and indicates with reasonable degree of clarity the limitations which may be imposed upon the exercise of certain rights in given situations. The Covenant in article 2 provides that each state party "undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognised in the present Covenant . . .". Does this impose on states an obligation of immediate implementation, or only an obligation to do something in the future? From the words just quoted, which are from the first paragraph of Article 2, one would conclude that the obligation is immediate. This would, indeed, appear to have been the intention. At the same time it seems clear that some states cannot

## Chapter 5

immediately accept all the obligations resulting from the Covenant, because the list of rights secured is, as we shall see shortly, very extensive.

To encourage the largest possible number of ratifications paragraph 2 of Article 2 therefore creates an obligation to take "the necessary steps . . . to adopt such legislative or other measures as may be necessary to give effect to the rights recognised in the present Covenant", in cases where they are not already provided for in the national law. It thus appears that while the first principle is one of immediate obligation, the possibility of progressive application is also recognised.

The first paragraph of Article 2 of the Covenant on Civil and Political Rights contains a non-discrimination clause in what may now be considered the standard form, and the third paragraph an undertaking to make available an effective remedy to anyone whose rights set out in the Covenant are violated. The non-discrimination clause is amplified by Article 3, which contains an undertaking to respect the principle of equality of men and women in the enjoyment of the rights secured. Article 4 provides for the possibility of derogation 'in time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed'; while Article 5 contains two separate provisions. The first is designed to prevent abuse of the rights and freedoms set out and is based on Article 30 of the Universal Declaration; and the second is a general saving clause which states that nothing in the Covenant may be interpreted as limiting the rights and freedoms already existing or recognised under national law or under other conventions.

Part III of the Covenant sets out the rights which the Covenant is designed to protect. They are as follows: right of life; freedom from torture and inhuman treatment; freedom from slavery and forced labour; right to liberty and security; right of detained persons to be treated with humanity; freedom from imprisonment for debt; freedom of movement and of choice of residence; freedom of aliens from arbitrary expulsion; right to a fair trial; protection against retroactivity of the criminal law; right to recognition as a person before the law; right to privacy; freedom of thought, conscience and religion; freedom of opinion and of expression; prohibition of propaganda for war and of incitement to national, racial or religious hatred; right of assembly; freedom of association; right to marry and found a family; rights of the child; political rights; equality before the law; and rights of minorities.

## Fifty Years of the Universal Declaration of Human Rights

The above is an extensive list. The number of rights included is greater than in the Universal Declaration. As regards the Universal Declaration, it may be observed that the rights set out in the Covenant are generally defined in greater detail and include the following, which are not contained in the Declaration: the right of detained persons to be treated with humanity; freedom from imprisonment for debt; prohibition of propaganda for war and of incitement to hatred; rights of the child and rights of the minorities. On the other hand, the right of property, which was included in Article 17 of the Universal Declaration, is not included in either of the Covenants. This was because it proved impossible to reach agreement between countries of widely different political philosophies on a definition of this right.

### Optional Protocol to the International Covenant on Civil and Political Rights 1966

The Optional Protocol to the International Covenant on Civil and Political Rights was adopted by the General Assembly in 1966 by the same resolution which adopted the two Covenants. This treaty, adopted as a separate instrument, supplements the measures of implementation of the Civil and Political Rights Covenant. It came into force simultaneously with the Covenant in 1976 having received the minimum of ten ratifications or accessions required by article 9 of the Protocol.

The Optional Protocol to the International Covenant on Civil and Political Rights enables the Human Rights Committee, set up under the terms of the Covenant, to receive and consider communications from individuals claiming to be victims of violations of any of the rights set forth in the Covenant.

Under articles 1 to 6 of the Optional Protocol, a state party to the Covenant that becomes a party to the Protocol recognises the competence of the Human Rights Committee to receive and consider communications from individuals subject to its jurisdiction who claim to be victims of a violation by that State of a right set forth in the Covenant. Individuals who make such a claim, and who have exhausted all available domestic remedies, are entitled to submit written communications to the Committee.

Such Communications as are determined to be admissible by the Committee are brought to the attention of the State party alleged to be

## Chapter 5

violating a provision of the Covenant. Within six months, that state must submit to the Committee written explanations or statements clarifying the matter and indicating the remedy, if any, that it may have taken. The Human Rights Committee considers the admissible communications, at closed meetings, in the light of all written information made available to it by the individual and the state party concerned. It then forwards its views to the state party and to the individual.

### Declaration on the Elimination of All Forms of Discrimination Against Women 1967

The Declaration on the Elimination of Discrimination against Women was adopted unanimously by the General Assembly in Resolution 2263 (XXII) on 7 November 1967, after four years of debate and detailed drafting in the Commission on the Status of Women and in the Assembly. The need for this Declaration is stated in the preamble, which expresses concern that despite the Charter, the Universal Declaration of Human Rights, the International Covenants on Human Rights and other instruments, and despite the progress made, "there continues to exist considerable discrimination against women".

The Declaration represents a general pronouncement of the United Nations policy in regard to equality of rights of men and women and the elimination of discrimination based on sex. It restates and consolidates a series of principles, many of which were embodied in earlier international instruments emanating from the United Nations and the specialised agencies. It also sets forth a series of important principles not contained in earlier treaties and recommendations.

### The Proclamation of Teheran 1968

To mark the twentieth anniversary of the adoption of the Universal Declaration of Human Rights, the General Assembly decided to designate the year 1968 as the International Year for Human Rights and to convene an International Conference on Human Rights (resolution 2081 (XX) of 20 December 1965). This Conference was held in Teheran from 22 April to 13 May 1968 and was attended by delegations from 84 States. Its objective was to reaffirm the will of the international community to put a stop to gross denials of human rights and step up both national and international efforts and initiatives in the human rights field.



## Fifty Years of the Universal Declaration of Human Rights

The Conference evaluated the impact of the Universal Declaration of Human Rights on national Constitutions, laws and, in some cases, judicial decisions. It also took note of the fact that certain important documents had made reference to the Declaration, for example, the 1950 European Convention on Human Rights, the Caracas Declaration adopted by the Inter-American Conference of 1954.

While stressing that the Universal Declaration was binding on all States, the Conference urged all members of the international community to redouble their efforts to apply the principles set out in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights, the Declaration on the Granting of Independence to Colonial Countries and Peoples, the International Convention on the Elimination of All Forms of Racial Discrimination and other Conventions and Declarations in the human rights sphere.

A major opportunity was thus created to review the progress that had been made in protecting human rights since the adoption of the Universal Declaration, to evaluate the effectiveness of the Universal Declaration, to evaluate the effectiveness of the methods and techniques that had been used and to take stock of the principal obstacles to be faced. It was clear that even substantial progress had been made in setting standards, there was an urgent need to find new ways of pursuing the constant struggle for the protection of human rights, which was considered to be closely linked to the struggle for peace, prosperity and the fundamental purpose of the United Nations.

During the Teheran Conference, particular attention was paid to the problems of racial discrimination, apartheid, illiteracy and the protection of the family and of the child. Furthermore, concerning the application of international human rights standards, the Conference recommended that the Commission on Human Rights should stipulate procedures relevant to the examination of such rights.

The Proclamation of Teheran, adopted on 13 May 1968, addressed various problems or achievements relating to the activities of the United Nations for the promotion and encouragement of respect for human rights and fundamental freedoms, and formulated a programme for the future.

It noted that the Universal Declaration of Human Rights stated the "common understanding of the people of the world concerning the inalienable and inviolable rights of all members of the human family" and constituted "an obligation for the members of the international community". The Proclamation of Teheran also emphasized that "since human rights and fundamental freedoms are indivisible, the full realization of civil and political rights without the enjoyment of economic, social and cultural rights is impossible". Thus, sound and effective national and international policies of economic and social development were considered essential to the implementation of human rights.

In addition, the Proclamation highlighted the need to eliminate discrimination against women, to improve the protection of the family and of the child and to continue efforts aimed at disarmament. Finally, the International Conference urged all peoples and governments to dedicate themselves to increasing respect for human rights and promoting their implementation.

### Declaration on Social Progress and Development 1969

The Declaration on Social Progress and Development, prepared by the Commission for Social Development and adopted by the General Assembly in Resolution 2542 (XXIV) of 11 December 1969, states in article 10 that social progress and development shall aim at the continuous raising of the material and spiritual standards of living of all members of society, with respect for and in compliance with human rights and fundamental freedoms, through the attainment of the following main goals:

(a) The assurance at all levels of the right to work and the right of everyone to form trade unions and workers' associations and to bargain collectively; promotion of full productive employment and elimination of unemployment and under-employment; establishment of equitable and favourable conditions of work for all, including the improvement of health and safety conditions; assurance of just remuneration for labour without any discrimination as well as a sufficiently high minimum wage to ensure a decent standard of living; the protection of the consumer;

(b) The elimination of hunger and malnutrition and the guarantee of the rights to proper nutrition;

## Fifty Years of the Universal Declaration of Human Rights

(c) The elimination of poverty; the assurance of a steady improvement in levels of living and of a just and equitable distribution of income;

(d) The achievement of the highest standards of health and the provision of health protection for the entire population, if possible free of charge;

(e) The eradication of illiteracy and the assurance of the right to universal access to culture, to free compulsory education at the elementary level and to free education at all level; the raising of the general level of life-long education;

(f) The provision for all, particularly persons in low income groups and large families, of adequate housing and community services.

Additional goals set out in the Declaration include the protection of the rights of the mother and child, of the aged and disabled, and of the physically or mentally handicapped; the guarantee that all individuals, without discrimination of any kind, are made aware of their rights and obligations and receive the necessary aid in the exercise and safeguarding of their rights; the limitation of all forms of discrimination and exploitation; and the protection and improvement of the human environment. The achievement of these objectives, the Declaration states, requires the mobilization of the necessary resources by national and international action. The Assembly recommended that all Governments should take the Declaration's principles, objectives and means and methods into consideration in formulating their policies, plans and programmes.

### Declaration on the Rights of Disabled Persons 1975

By Resolution 3447 (XXX) of 9 December 1975, the General Assembly proclaimed the Declaration on the Rights of Disabled Persons and called for national and international action to ensure that it would be used as a common basis and frame of reference for the protection of the rights set forth therein. In doing so the Assembly bore in mind "the necessity of preventing physical and mental disabilities and of assisting disabled persons to develop their abilities in the most varied fields of activities and of promoting their integration as far as possible in normal life".

The Declaration defines the term "disabled person" as meaning "any person unable to ensure by himself, wholly or partly, the necessities of a

normal individual and/or social life, as a result of a deficiency, either congenital or not, in his or her physical or mental capabilities", It provides that organizations of disabled persons, their families and communities, to be fully informed by all appropriate means of the rights contained in the Declaration.

### Convention on the Elimination of All Forms of Discrimination Against Women 1979

This Convention was adopted by the General Assembly in December 1979. Although it is not the first Convention to deal with women's rights, it is the first universal instrument to address the issue of discrimination.

The Convention consists of 30 articles, and is divided into a preamble and six parts. Part I (articles 1 to 6) contains a number of general provisions; part II (articles 7 to 9) contains provisions relating to political rights; part III (article 10 to 14) contains provisions relating to social and economic rights; part IV (articles 15 and 16) contains provisions relating to civil and family rights; part V (article 17 to 22) contains provisions relating to implementation; and part VI (articles 23 to 30) contains a number of final clauses.

In the preamble, the States parties to the Convention recall that discrimination against women violates the principles of equality of rights and respect for human dignity, is an obstacle to the participation of women, on equal terms with men, in the political, social, economic and cultural life of their countries, hampers the growth of the prosperity of social and the family life, and makes more difficult the full development of the potentialities of women in the service of their countries and of humanity; and express their determination to implement the principles set forth in the Declaration on the Elimination of Discrimination Against Women. Article 1 defines discrimination against women as:

... any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

## Fifty Years of the Universal Declaration of Human Rights

Under the Convention the States undertake to adopt measures to promote the principle of non discrimination. Activities of this kind which are specifically mentioned include measures to suppress the exploitation of prostitution (Article 6); measures to eliminate sex discrimination in political and public life (article 7), equal rights in relation to nationality (article 9), education (article 10), employment (article 11), and health care (article 12). The Convention also provides for equality of sexes with regard to marriage and family relations (article 16), while recognising the legitimacy of "special measures . . . aimed at protecting maternity".

The Convention deals with a issue of human rights of fundamental importance, and the decision to supplement the very general provisions on discrimination to be found in such instruments as the Covenant on Civil and Political Rights is clearly a positive step. The Convention came into force on 3 September 1981.

### Convention Against Torture and other Cruel Inhuman or Degrading Treatment or Punishment 1984

This Convention was adopted by the General Assembly in December 1984 and provides a more detailed treatment of a subject which was first addressed in the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the General Assembly in 1975.

Following the adoption of the Declaration, the General Assembly requested the Commission on Human Rights to draw up a draft Convention. The Commission carried out work of preparing the draft Convention as a matter of highest priority at each of its annual sessions between 1979 and 1984, entrusting this task to an open-ended Working Group which met for one week prior to each session of the Commission. At its fortieth session the Commission decided, by resolution 1984/21 of 6 March 1984, to transmit to the General Assembly the report of the Working Group containing the draft Convention, the comments of Governments on that draft, and the summary of records at the Commission's debate on the item. In adopting the Convention the Assembly called upon all governments to consider signing and ratifying it as a subject matter of priority.

The first part of the Convention, which consists of Articles 1 to 16, establishes the scope of the Convention and the nature of the parties'

obligations. The term 'torture' is defined in article 1 of the Convention as meaning:

... any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or from a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

The obligations which the Convention creates are quite extensive and include a duty on the part of the state to undertake measures to prevent acts of torture in any territory under its jurisdiction; a duty not to return a person to a country where he may be subjected to torture; a duty to make torture a criminal offence and to establish jurisdiction over it; a duty to prosecute or, where relevant, extradite persons charged with torture; a duty to co-operate with other states and ensure appropriate education and training for its own personnel; a duty to exclude evidence obtained by torture.

Articles 17 to 24, which make up the second part of the Convention, provide for the creation of a Committee against Torture to supervise its implementation. The Convention entered into force on 26 June 1987.

### Declaration on the Right of Peoples to Peace 1984

Article 28 of the Universal Declaration of Human Rights provides "everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realised": In the Declaration on the Right of Peoples to Peace, approved by the General Assembly through Resolution 39/11 of 12 November 1984, the conviction is expressed "that life without war serves as the primary prerequisite for the material well-being, development and progress of countries, and for the full implementation of the rights and fundamental human freedoms proclaimed by the United Nations".

The Declaration solemnly proclaims that the peoples of our planet have a sacred right to peace, and declare that the preservation of that

right, and the promotion of its implementation, constitutes a fundamental obligation of each State. It emphasises that ensuring the exercise of the right demands that the policies of States be directed towards the elimination of the threat of war, particularly nuclear war, the renunciation of the use of force in international relations, and the settlement of international disputes by peaceful means on the basis of the Charter of the United Nations. The General Assembly then appeals to all States and international organizations to do their utmost to assist in implementation of the right of peoples to peace through the adoption of appropriate measures at both the national and the international level.

### The Declaration on the Right to Development 1986

After 10 years of drafting, the Declaration on the Right to development was adopted by the General Assembly, following a vote, in 1986. The adoption of the Declaration on the Right to Development marked a turning-point in that it expressed a new way of regarding the very concept of 'development' following the failure of national and international development policies, a failure attested to, on the one hand by the growing poverty of most human beings and, on the other hand, by the increasing concentration of wealth and power in the hands of a few. In fact, with the adoption of the Declaration on the Right to development, the international community for the first time questioned the idea that the primary objective of economic activity was to improve economic and financial indicators. Instead it placed human beings, individually and collectively, at the center of all economic activity, making them both the central subject and principal beneficiary of development. In that connection the Declaration defined development as "a comprehensive economic, social, cultural and political process, which aims at the constant improvement of the well-being of the entire population and of all individuals on the basis of their active, free and meaningful participation in development and in the fair distribution of benefits resulting therefrom".

The Declaration redefined the objective of economic activity, which was no longer geared towards growth and profit but towards the attainment of human and social objectives through the improvement of the social, economic political and cultural well-being of individuals, groups and peoples. It also provided that those objectives must be determined by people themselves and that their benefits must be equally

distributed. The meaning of development was thus subjective and required effective participation by all in the decisions affecting people's lives. The key concepts of the Declaration on the Right to Development include recognition of reciprocal relations and the interdependence of respect for human rights and development, as well as the indivisibility and interdependence of civil and political rights and economic, social and culture rights. In a report dated 31 December 1981 (E/CN.4/1488) on the regional and national dimensions of the right to development as a human right, the then Secretary General stressed that an approach that gave priority to economic growth over the goals of human development (including such concepts as equity, non-discrimination, social justice and self-sufficiency) was incompatible with the human rights obligations of States. In that regard the report was quite definite: "Any development strategy which directly involves the denial of fundamental human rights, in whatever name or cause it may be undertaken, must be deemed to be a systematic violation of the right to development". The report went on to state that the persistence of conditions of underdevelopment, in which millions of human beings were denied access to such essentials as food, water, clothing, housing and medicine in adequate measures, and were compelled to live in conditions that were incompatible with human dignity, clearly represented a flagrant violation of human rights.

### The Convention on the Rights of the Child 1989

The adoption of the Convention on the Rights of the Child on 20 November 1989 was the culmination of long-standing United Nations concern for this aspect of human rights. Indeed, the well-being, protection and rights of children have been at the core of the Organisation's concerns since its founding in 1945. Its interest in questions concerning the child led the United Nations to establish, on 11 December 1946, the United Nations Children's Fund (UNICEF), which remains today the primary organisation of the United Nations system responsible for international assistance to children.

The first standard-setting United Nations instrument exclusively devoted to the rights of children was the 1959 Declaration of the Rights of the Child affirming that "mankind owes to the child the best it has to give" and that principle of "the best interests of the child" should guide the actions of those responsible for them, this Declaration offered a moral framework for the rights of the child.



## Fifty Years of the Universal Declaration of Human Rights

The United Nations chose to commemorate the twentieth anniversary of the adoption of this Declaration by proclaiming the year 1979 the International Year of the Child. Many activities were organized to celebrate this Year, and a number of different initiatives were undertaken. In 1978, for instance, the Government of Poland submitted a draft Convention on the rights of the child to the Commission on Human Rights.

The Commission on Human Rights, which had been assigned the task of drafting the text of the Convention, completed its work in 1989, and the General Assembly adopted the Convention on the Rights of the Child the same year, which is 30 years after adoption of the Declaration of the Rights of the Child.

The Convention on the Rights of the Child is the most recent in a series at enshrining the protection of human rights under international law. Its provisions therefore have undertaken into account existing standards relating to the rights of the child and the way their interpretation has evolved. It derives from the Convention that the child is a subject of law and that all human rights – civil, cultural, economic, political and social – necessary to his or her survival, development, protection and participation are interdependent and indivisible.

The Convention is particularly aimed at protecting the child against sexual and economic exploitation, emergency situation, abandonment and ill treatment. It is also meant to protect children involved in armed conflicts and to provide assistance to those seeking refugee status. The Convention prohibits the practice of torture. It also provided that neither capital punishment nor life imprisonment may be imposed for offences committed by persons below 18 years of age.

In other provisions, the Convention provides that children should have the right to health care, education and leisure, and that disabled children receive special care. It recognises the right of the child to have a name and nationality from birth, and to preserve his or her identity. It also provides that both parents have the primary responsibility for the upbringing of the child, that children should not be separated from their parents except when the competent authorities so determine and that, where children are separated from their parents for whatever reason, they have the right to maintain personal relations with the parents.

## Chapter 5

The Convention on the Rights of the Child has also paved the way for the recognition of the rights of the child to respect for his or her views. The Convention provides that children have the right to express their views in matters affecting them, and that these views should be given due weight in accordance with the age and maturity of the child.

Non-discrimination is another important principle embodied in the Convention. The Convention expressly provides that children shall enjoy all the rights set forth therein without discrimination of any kind irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, political or other opinion, national, ethnic or social origin, property, disability, birth or other status. Moreover, the principle that "the best interests of the child" should be a primary consideration in all decisions affecting him or her is reaffirmed in the Convention. Another important point in this instrument is that it mandates that States Parties shall ensure to the maximum extent possible the survival and development of the child.

### Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the Abolition of the Death Penalty 1989

Article 3 of the Universal Declaration of Human Rights provides "Everyone has right to life, liberty and security of person". The Preamble to the present Protocol states ". . . all measures of abolition of death penalty should be considered as progress in the enjoyment of the right to life".

This protocol was opened for signature on 15 December 1989. The protocol objective is the abolition of death penalty. Pursuant to its terms, it is deemed to be an additional provision of the Civil and Political Rights Covenant. Article 1 of the Protocol first provides that no one with the jurisdiction of the State party to the present Protocol shall be executed and secondly that each state party shall take all necessary measures to abolish the death penalty within its jurisdiction.

### Vienna Declaration and Programme of Action 1993

The United Nations decided to hold a world conference on human rights in 1993, pursuant to General Assembly resolution 45/155 of 18 December 1990. Forty-five years after the adoption of the Universal

## Fifty Years of the Universal Declaration of Human Rights

Declaration of Human Rights and twenty-five years after the Teheran International Conference on Human Rights, the United Nations organized the World Conference to review and assess the progress that had been made in the field of human rights and to identify obstacles to further progress in this area and ways in which they could be overcome.

The issues at stake and the significance of the Vienna Conference were in every way exceptional. The Vienna Declaration and Programme of Action reaffirmed the human rights principles which constitute the very foundation of the United Nations, in particular the universality, objectivity, non-selectivity, interdependence and equality of these rights. They also reaffirmed the dignity and worth inherent in the human person, whose preservation and promotion are the basis of all human rights and fundamental freedoms.

While reaffirming the attachment of the United Nations to the universal enjoyment of human rights and fundamental freedoms, the Vienna Declaration and Programme of Action notes several key areas on which the Organisation should focus its efforts in the years to come. The document reaffirms the right to development as a universal and inalienable right and the interdependence of the right to development, democracy and other fundamental human rights. It stresses that economic development in the poorest nations is the collective responsibility of the international community and, in particular, that the last developed countries, which are struggling to achieve democracy and implement reforms for the well-being of their people, deserve the support of that community. Equitable economic relations among States and a favourable economic environment at the international level are of crucial importance from the standpoint of sustainable development. It is equally important to implement effective development policies at the national level which involve the participation of the populations concerned. To attain these objectives, the Declaration considers that the heavy external debt burden must be alleviated and that the widespread poverty and illiteracy in various countries must be combated. Moreover, the countries, with flourishing economic development and high standards of living should refrain from injuring the population of other countries by exporting hazardous substances and toxic wastes and from endangering their own population.

The Vienna Declaration and Programme of Action also contains important measures to ensure better protection of the rights of women

## Chapter 5

and children. With regard to women's rights, the Declaration notes that discrimination and violence are the daily lot of many women, and that girl-children, in particular, are among those who are the most vulnerable to human rights violations in many regions of the World. Some of the most serious issues are the near absence of women in decision-making positions at the national and international level, the insufficiency of health care and family planning services and the violation of rights specific to women. The Conference also recommends, within the framework of the programme of action, that a special Rapporteur on violence against women be appointed. The Vienna Declaration and Programme of Action encourages all States to ratify the Convention on the Elimination of All Forms of Discrimination Against Women by the year 2000. As for the rights of the child, the Declaration reiterates the principle of "First Call for Children" and urges all States to ratify the Convention to make it a universal instrument. It also called on States to make every effort to ensure the effective implementation of the Convention, devoting particular attention to non-discrimination, the best interests of the child and the need to take the child's view into account in all questions concerning him or her.

The Vienna Declaration and Programme of Action also stresses the rights of indigenous populations, affirming the international community's commitment to their economic, social and cultural well-being and their participation in all aspects of the political and social life in the communities and States where they live.

The rights that the Conference felt deserved special attention included the right to request and be granted asylum and the rights of disabled persons, vulnerable groups and migrant workers. Moving from individual to collective rights, the Declaration notes that States are responsible for creating favourable conditions to ensure their enjoyment. For example, States are chiefly responsible for developing strategies to address the root causes of mass migrations, internal displacement of persons and extreme poverty and to incorporate human rights education programmes in educational curricula at all levels. In this regard, special emphasis is placed on the importance of promoting and protecting the right to development as an inalienable human right.

In addition, states are urged to act immediately to put an end to flagrant and systematic violations of human rights, including torture, summary and arbitrary execution and disappearances, genocide,

## Fifty Years of the Universal Declaration of Human Rights

collective rape and other heinous crimes, and states are responsible for ensuring that the perpetrators of such crimes are punished. International humanitarian law and the laws of war should be reactivated and their principles inculcated in members of the armed forces through intensive training.

The persistence of discrimination is a constant theme in the Vienna Declaration and Programme of Action. While welcoming the dismantling of apartheid, the Conference takes note of the sombre reality of the increase in intolerance, racism and racial discrimination in many countries, and urges Government to combat the attitudes and prohibit the activities which nourish such ideologies. Finally, an entire section of the Vienna Declaration and Programme of Action deals with the rights of women from the point of view of both the violation of these rights and the ways and means of ensuring their effective and central promotion and protection through activities and programme of the United Nations and individual States.

With the Vienna Declaration and Programme of Action, the human rights Programme of the United Nations has at its disposal the appropriate goals, guidelines and work programmes for the twenty-first century. However, the implementation of this programme requires not only action on the part of the United Nations, but also a commitment at the regional, national and local levels.

It may be concluded from the preceding discussion that in the overall United Nations human rights programme, a link has been established between development, democracy and all the different categories of rights - economic, social, cultural, civil and political - embodied in the Universal Declaration of Human Rights.