1. The Long and Influential Life of the Universal Declaration of Human Rights

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1.1 History of the UDHR

The Universal Declaration of Human Rights emerged from the ashes of the Second World War. With the end of the conflict, and the creation of the United Nations, the international community vowed never again to abide the unspeakable atrocities the world had just witnessed. So the leaders of the world decided to amplify the UN Charter by enshrining and encouraging guarantees for the rights of human beings everywhere.

In 1946, as part of the preliminary work of drafting the Declaration, under the auspices of UNESCO, Jacques Maritain assembled a Philosophers’ Committee to identify key theoretical issues in framing a charter of rights for all peoples and all nations. The work of the Philosophers’ Committee then moved to the UN Commission on Human Rights. At its first session in January 1947, the Commission authorized its members to formulate what it termed “a preliminary draft international bill of human rights.” Later the work was taken over by a formal drafting committee, consisting of members of the Commission from eight states. The Commission on Human Rights comprised 18 members from various political, cultural, and religious backgrounds. Eleanor Roosevelt, the widow of President Franklin D.
Roosevelt, chaired the Commission. It also included René Cassin of France, who composed the first draft of the declaration; Commission Rapporteur Charles Malik of Lebanon; Vice-Chairman Peng Chung Chang of China; and John Humphrey of Canada, Director of the UN’s Human Rights Division, who prepared the Declaration’s blueprint.

The Commission had to resolve issues of fundamental importance. First, it concluded that the right mission was to develop a declaration, rather than a treaty. The Commission’s view was that the declaration should be relatively short, inspirational, energizing, and broadly accessible to peoples everywhere: the defining document of an international bill of human rights. It also decided that the declaration should encompass both civil and political rights, on the one hand, and social and economic rights, on the other.

Cassin handed his draft of the declaration to a meeting of the Commission on Human Rights in Geneva. Thus this version, which was sent to all UN Member States for comment, became known as the “Geneva draft.” The Commission revised the Geneva draft to reflect the replies it had received from Member States, before submitting it to the General Assembly. The General Assembly in turn scrutinized the document between September and December of 1948, with over 50 Member States voting a total of 1,400 times on practically every clause and virtually every word of the text. By its resolution 217 A (III) of 10 December 1948, the General Assembly, meeting in Paris, voted to adopt the UDHR with eight nations abstaining but none dissenting.¹ It was an historic moment, and the General Assembly called upon all Member States to publicize the text of the Declaration and “to cause it to be disseminated, displayed, read, and expounded principally in schools.

¹ The following 48 countries voted in favor of the Declaration: Afghanistan, Argentina, Australia, Belgium, Bolivia, Brazil, Burma, Canada, Chile, China, Colombia, Costa Rica, Cuba, Denmark, Dominican Republic, Ecuador, Egypt, El Salvador, Ethiopia, France, Greece, Guatemala, Haiti, Iceland, India, Iran, Iraq, Lebanon, Liberia, Luxembourg, Mexico, Netherlands, New Zealand, Nicaragua, Norway, Pakistan, Panama, Paraguay, Peru, Philippines, Siam, Sweden, Syria, Turkey, United Kingdom, United States, Uruguay, and Venezuela. The following eight countries abstained: the Soviet Union, Ukrainian SSR, Byelorussian SSR, People’s Federal Republic of Yugoslavia, People’s Republic of Poland, Union of South Africa, Czechoslovakia, and the Kingdom of Saudi Arabia. Honduras and Yemen – both members of the UN at the time – failed to vote or abstain.
and other educational institutions, without distinction based on the political status of countries or territories.”

The UDHR formed the basis for two covenants which were adopted by the General Assembly in 1966: the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. These Covenants have binding status in international law. The Declaration and the Covenants are collectively known as the “International Bill of Human Rights.”

Today, the Universal Declaration, translated into 350 languages, is the best-known and most often cited human rights document on Earth. By setting out, for the first time, fundamental rights to be universally protected, it is a milestone in the history of human interactions and the cause of human rights.

1.2 Affirming and protecting the UDHR

Given that the UDHR is best understood as a living enterprise that challenges each new generation to new actions to fulfill and extend its writ, the aim of the Commission has been to assess what needs to be understood and undertaken in the twenty-first century to realize the high ideals of the UDHR, and to reinforce its status as a foundational document of global citizenship. Therefore, the Commission not only celebrates the framers of the Declaration – together with all those who have worked so hard over the years to sustain it – but, in that spirit, we also set forth issues on which we believe the international community should focus in renewing the 1948 enterprise for our day and generation.

So the Commission both affirms the UDHR and seeks to further recognition and respect for human rights for all citizens of the world, in the life and light of the twenty-first century. The intention of our report is not to rewrite or revise the UDHR. Rather, what we have learned and share here should be regarded as an analytical commentary that reflects changed circumstances and progress in our moral thought since the first days of the Declaration. The report further observes that individuals, states, and other entities each and all have a common duty to ensure recognition of human rights and accept responsibility to secure them.
1.3 The changing context

The social, political, and legal environment has been transformed since 1948. It is impossible to list all the changes, but many are of sweeping and particular importance. Decolonization, the breakup of old empires, and the emergence of new states mean that there are 193 UN Member States today, compared to the 58 of 1948. Some would say that states have risen and then declined in importance since 1948. Certainly in recent years the growth in the number of states has been matched by the growth of new centers of authority, and by an increase in the power of non-state actors.

Our global interdependence now plays a central and often contentious role: globalization is a major phenomenon in economics and trade as well as politics, culture, communications, and technology. International institutions have far greater sway in world affairs than they did in 1948, both those associated with the United Nations itself and those that hold an independent status. There is more and more awareness too of global challenges such as climate change. New patterns of life and economic development have emerged, as have new patterns of migration and inequality.

In 1948, the memory of the Second World War was fresh in everyone’s minds. Since then new forms of conflict have emerged: the Cold War dominated the period between the 1950s and 1980s; today armed conflict frequently involves non-state actors; and there is the prolonged struggle against terrorism. Along with such new forms of conflict have come new formulations of international responsibilities such as the Responsibility to Protect.

We have been able to reconsider the UDHR after 70 years not only in light of these changed circumstances, but also in the context of the undeniable truth that global interconnectedness and dependence have diminished our moral distance from each other.

1.4 The enduring relevance of the UDHR

One of the tasks of the Commission is to apply the abstract language of the Declaration to the reality of the twenty-first century. The question we should ask is not what the framers of the UDHR would have thought
about a particular issue in 1948. Instead, the question is what we should think now, in the world of today, animated by the same principles that animated the framers then.

The UDHR purports to offer a shared basis for comprehending both the idea of human rights itself and the array of human rights that the idea implies. Specifically, the Declaration presents what the Preamble calls a “common understanding” of human rights and represents what the Proclamation Clause calls “a common standard of achievement for all peoples and all nations.” We believe that the assertion of a “common understanding” of human rights and “a common standard of achievement for all peoples and all nations” was a vital step in 1948 and we believe it remains equally vital in the twenty-first century.

Part of that vitality is that the clauses of the UDHR provide a tangible focus of orientation; so that when people debate human rights there is less chance of talking in circles or at cross-purposes. Even if people disagree with the UDHR’s formulations, the formulations nevertheless help to structure their disagreements and arguments. More than that, however, the Declaration embodies a set of common expectations for the dealings of nations and peoples with one another, so far as the proper treatment of individuals is concerned. It makes apparent that this is a subject on which firm, explicit, and reasonably clear standards have been publicly laid down. Having this common point of reference has been of immeasurable political importance in both large-scale and small-scale campaigns to protect peoples and individuals from abuses. Here we have in mind large-scale campaigns like the articulation of human rights in the Helsinki movement from 1975, as well as small-scale, even village-level, campaigns in various parts of the world.

Most of all, the UDHR gives substance to the idea that there actually is such a thing as a “common conscience” for mankind. One of the most fundamental things that human rights declarations and human rights law can do is to establish certain taboos around serious abuses and violations. Quite apart from enforcement, this is a matter of culture and positive morality. It is essential that those who abuse individuals should recognize that there is something called “human rights” that they are violating, and that both those who suffer abuses and those who observe them should have a common and publicly recognized vocabulary in which to express denunciation of this conduct and to organize resistance against it.
So we believe the UDHR has been and is an unprecedented educational and cultural force, making people conversant with the idea of human rights, providing a widely accepted text enumerating those rights, and delivering an articulate focus for what might otherwise be timid and inarticulate concerns. The UDHR in 1948 laid the foundation for our modern culture of human rights. Now, as distinct from 1948, the document functions in a world that by and large takes human rights seriously, a world in which the idea and culture of human rights are pervasive though implementation falls far short of the ideals, a world in which the idea of human rights can no longer be dismissed as simply aspirational and unworldly. In short, the UDHR has had a shaping influence on the world in which it now operates.

1.5 Legal status

The UDHR was originally formulated as “soft law;” it was aspirational, not legally binding. Since its adoption, however, the UDHR has been complemented by the two covenants that are legally binding on the nations that have signed and ratified them: the International Covenant on Civil and Political Rights, which came into force in 1976 and has been ratified by 168 nations; and the International Covenant on Economic, Social and Cultural Rights, which also came into force in 1976 and has been ratified by 164 nations. Further, many provisions of the UDHR are also now part of customary international law. There are additional conventions on particular human rights concerns, such as the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the Convention on the Rights of the Child (CRC), and the Convention on the Rights of Persons with Disabilities (CRPD).

The International Bill of Human Rights is matched in many cases by the rights provisions of national constitutions, charters, and bills of rights. Some of these, like the U.S. Bill of Rights, predate the UDHR by decades or centuries. Others, including the constitutions of some of the newest countries in the world, have been cast in the image of the
International Bill of Human Rights, directly or indirectly adopting ideas and formulations from these international instruments. In this way the UDHR provides a template for national law-making, and forges a continuum between the international protection of human rights and their protection under public law in particular countries. Such international and national instruments are complemented by regional treaties – principally the African Charter on Human and Peoples’ Rights, the American Convention on Human Rights, and the European Convention on Human Rights.

In reality, most of the legal work to secure human rights and vindicate them in the face of violations is conducted under the auspices of national and regional law and practice. This will continue to be the ordinary mode of implementation in the twenty-first century, and one of the roles of international declarations like the UDHR and the Covenants should be to serve as a model for structuring local constitutional and legislative arrangements.

### 1.6 Foundational principles

The Declaration does not clearly indicate the reasons for enumerating the particular rights it mentions, nor does it articulate the philosophical ideas upon which these rights are predicated. However, the Commission believes that the UDHR’s emphasis on the principle of human dignity is the keystone. The Preamble enunciates the principle: “recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.” The United Nations clause says that the Member States have “reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person.” And Article 1 reafﬁrms the ideal that “all human beings are born free and equal in dignity and rights.”

In the Covenants, dignity is also cited as a way of determining what a particular right entails. For example, Article 10(1) of the ICCPR says: “All persons deprived of their liberty shall be treated with […] respect for the inherent dignity of the human person,” and Article 13(1) of the ICESCR recognizes a right to education and provides that “education shall be directed to the full development of the human personality and
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the sense of its dignity." There is a reference of this kind in the UDHR’s conditions of work provision, Article 23, which asserts, among other things, that “everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity.”

Dignity is not defined in the UDHR or in any of the human rights documents that repeatedly invoke it. But it is clear that human dignity is a special status that accrues to all people on account of the inherent features of their human being, their human potential, and their human qualities and capacities. As a status dignity implies a number of important rights and responsibilities; it generates a basis on which people can exact respect for themselves from others; it is an equal status; and it inheres in people by virtue of their humanity as such, irrespective of merit or demerit.

Human dignity is often cited as a value or principle associated integrally and perhaps foundationally with human rights. The Preamble to the ICCPR announces this specifically, “recognizing that these rights derive from the inherent dignity of the human person.” A number of national constitutions also make human dignity the centerpiece of their bills or charters of fundamental rights. These include the South African Constitution (Articles 1, 7, and 10), the Chinese Constitution (Article 38), the Basic Law of Germany (Article 1.1), and many others.

1.7 Universality

Our report makes a number of claims about what ought to count as a human right: for example, that it is every human being’s right not to be enslaved, and that it is every human being’s right to marry and found a family. How are such claims to be understood? Specifically, are they put forward as principles that everyone ought to accept regardless of his or her religion or cultural tradition, or are they meant merely to reflect the values of a particular segment of the human population?

To say that freedom from enslavement is a human right is not merely to express a preference for living in a world in which no one is enslaved. It is also not merely to say that freedom from slavery is an ideal to which we happen to subscribe but that others are free to reject in favor of a competing ideal. It is to say that enslaving people deprives them
of a condition of life to which they are entitled inalienably as a result of being human. There is no way to understand this claim as simply the expression of a mere preference; it is put forward and urged on everybody as a matter of principle.

But how is such a principled commitment to avoid coming across as disrespectful towards the potentially vast number of human beings who may disagree with a particular human rights claim? The claim about slavery may no longer be controversial in our time; but the claim about marriage, for example, is an occasion for much controversy with different interpretations both advanced and rejected by large numbers of people around the globe. If we adopt a particular view, are we not in danger of just imposing our own values on others, without consideration of their opposing points of view?

We do not think so. First, when a claim, any claim, is put forward as true, that is not the same thing as saying that it is put forward as certain, or infallible, or not open to rational discussion. The claim needs to be backed up with reasons and arguments, and any reasons and arguments on the other side need to be listened to, considered, and answered. We have sought to arrive at the moral conclusions about human rights that seem to us most justified by what we judge to be the best moral thinking of our time. However, we remain entirely sensitive to the possibility that we have fallen short and invite anyone who disagrees with our conclusions to assert and argue the countervailing considerations.

Second, many expressions of human rights – including those of the UDHR – allow for a certain amount of contextual variation. For example, the UDHR is emphatic in Articles 10 and 11 that people have the right to due process when they are accused of any crime, but the legal systems of the world vary in their procedural arrangements and, within broad limits, the UDHR respects such variations.

Finally, the formulations of human rights declarations are often vague and abstract, and they leave certain issues unsettled and open to interpretation. These are often matters of good-faith disagreement within particular countries and between particular countries. So, for example, some countries may regard corporal punishment as consistent in principle with Article 5 (the anti-torture provision) while other countries emphatically reject this. Similarly, some countries may see the disenfranchisement of convicted prisoners as consistent with Article 21 (the democracy provision) while others will disagree. This openness of
the UDHR is one of its great virtues. It does not preclude the emergence of a checkerboard of interpretations around the world of its various provisions, reflecting what European human rights lawyers call a “margin of appreciation” for discrete national practices and sensibilities. The room for interpretation is not unlimited, but the provisions of the Declaration were not intended to settle every last detail.

### 1.8 Interconnectivity of rights

It was no doubt important to divide the binding human rights instruments into two separate covenants – the ICCPR and ICESCR – if only to secure ratification of at least one of these (e.g., the ICCPR by the United States or the ICESCR by China) in circumstances where the ratification of the other was not possible. But the unity of the UDHR in this respect – the fact that it combines civil, political, economic, social, and cultural rights in a single declaration with a single preamble – is critical.

The UDHR does not explicitly commit itself to any thesis of the indivisibility of human rights. But implicitly it conveys the impression that the values that underpin, for example, the free expression provision, the anti-torture provision, and the democracy provision are grounded in the same way and stand upon the same foundation as the values that underpin the social security provision, the conditions of work provision, and the standard of living provision. Not everyone is convinced of this, of course, but we think it was an appropriate stance to take in drafting the UDHR.

Although the rights set out in the UDHR are presented as a list – line item by line item – it is imperative to acknowledge the interconnectivity of these rights. We should understand the Declaration as an implicit expression of the interconnections, overlaps, and mutual reinforcement between rights. By way of illustration, both Article 4 (the anti-slavery provision) and Article 16 (the marriage and family provision) are relevant to child marriage.