



Essay

THE UNIVERSAL DECLARATION OF HUMAN RIGHTS¹

By Jay Winter

The General Assembly of the United Nations approved the Universal Declaration of Human Rights on 10 December 1948. This document reflected a very widely shared sense of revulsion at the crimes committed by the Hitler state in its period in power from 1933-45. Without the Second World War, this document would never have been drafted, let alone approved by communist and non-communist countries alike. This non-binding statement of principles set in motion other measures which established legal sanctions for human rights violations by states. Regional conventions on human rights were signed in Europe, Latin America and Africa. In 1966, the United Nations agreed two covenants on human rights, one on social and economic rights and a second on civil and political rights. Ten years later these came into force as instruments of international law.

These human rights conventions drew on many earlier traditions and documents, but the catalyst of the effort to codify international norms on rights was the Second World War. The crimes committed by the Nazis, both before 1939 and throughout the war were so horrifying that they discredited notions of absolute state sovereignty which the Hitler state asserted and used to genocidal effect. The day before the Universal Declaration of Human Rights was approved by the United Nations gathered in Paris, the organization voted for a Convention on Genocide. The link between the two measures is unmistakable.

Thus the Universal Declaration of Human Rights was an accident of war, a war which threatened to discredit the very notion of the rule of law itself. It is important therefore to separate its genesis from its intellectual and philosophical roots. First we need to tell the story of its framing, before turning to its content and character.

At the height of Nazi power in the spring and summer of 1941, leaders of exiled governments and communities in London came together, under the aegis of British Prime Minister Winston Churchill, to warn the Nazis that there would be a reckoning for the crimes they were committing against the populations they occupied. On 12 June and 24 September 1941, and on 12 January 1942, in three meetings at St James's Palace, they stated their determination to reaffirm the rule of law. This call to action in the face of Nazi crimes was imbedded too in the Atlantic Charter, signed by President Franklin Roosevelt and Churchill on 14 August 1941. This document helped frame the move towards war crimes trials and the creation of the United Nations as a permanent expression of the anti-Hitler alliance.

If the allies thought such acts might act as a deterrent to further crimes, they were mistaken. This was the time when the Holocaust was set in motion, and when the ex-

1 Essay on the source: UN General Assembly, The Universal Declaration of Human Rights (10. Dezember 1948).

terminatory character of the Nazi's war in the east was fully evident. Consequently Allied governments now set up a committee of jurists to determine the appropriate means to arrest and try those guilty of war crimes.²

From war talk to rights talk

In the period 1942-44, those deliberations produced two lines of policy. The first concerned the leadership of the Hitler state, and led slowly but surely to the Nuremberg trials of 1945-46. The second concerned all members of the criminal organizations at the heart of the Nazi terror apparatus – the Gestapo, the SD and the SS. Lists were compiled of all those who were to be arrested after liberation, and tried in the countries where their crimes had been committed. Such arrests and trials did indeed take place, though with varying degrees of success.

What was more important than the outcome of a particular trial was the reestablishment of the rule of law, both within each occupied country in Europe and in international affairs as a whole. It was to this end that the anti-Hitler alliance, rechristened as the United Nations, created within the Secretary-General's office a Commission on Human Rights. This body was instructed to draft a bill of rights for consideration by the General Assembly.

The key figure in the drafting process was the Canadian lawyer John Humphrey. Together with his staff he created a library of human rights documents and literature, and shaped the intellectual framework of the Commission.³ In parallel the newly-formed UNESCO engaged in a wide-ranging philosophical inquiry as to the character of human rights traditions in Muslim, Christian, Hindu, Buddhist, and Confucian culture. This inquiry was by and large ignored by the delegates who were charged with drafting a human rights declaration for scrutiny first by the economic and social council of the UN, and then by the General Assembly as a whole. Bypassing these philosophical reflections was a strategy to avoid the ire of the emerging Soviet bloc, whose hackles were raised by sacralizing the subject of human rights; keeping the project alive meant separating it from the emerging ice floes about to congeal in the Cold War.

The Commission was composed of delegates from all over the world. They included India, Iran, the Philippines, China, and Australia from Asia and the Pacific rim; Yugoslavia, Byelorussia, the Soviet Union, France, Belgium, and the United Kingdom from Europe; the United States, Panama, Cuba, Chile, and Uruguay from the Americas; and Egypt and Lebanon from the Middle East.

The chair of the drafting committee was Eleanor Roosevelt, the widow of the American president. Among the key figures whose hands are evident in the document are the Chinese philosopher and playwright, P.C. Chang; the Lebanese Catholic philosopher Charles Malik, and the French jurist René Cassin, then head of the French high court, the *Conseil d'Etat*. Once agreed, the document was presented to the United Nations assembled in Paris in December 1948. Cassin wrote the preamble and presented the full document for the approval of the General Assembly, which accepted it by a vote of 48

2 Archives Nationales, Paris, Fonds Cassin, 382AP175, Répression et prévention des crimes de guerres ennemis. Deuxième rapport du Professor René Cassin, Delegué de la France à la Commission d'Enquête des Nations Unies sur les Crimes de Guerre, 3 mai 1944.

3 Humphrey, John, On the edge of greatness: the diaries of John Humphrey, first director of the United Nations Division of Human Rights, 4 vols., ed. by Hobbins, A.J., Montreal 1994-1998.

yes, 0 no, and 8 abstentions. The abstentions were from Saudi Arabia, South Africa and six Soviet bloc countries.⁴ The abstentions were a diplomatic compromise, worked out on the day to give those troubled by the possibility that a weapon was being forged here to use against them in the future. They were right, but the advantage to the Soviet bloc was in maintaining their standing as the defender of progressive movements especially in the still colonized world of Africa and Asia.

Provisions

The first article established the principle that all men are born free and equal in dignity and rights. When Cassin spoke these words in Paris, within walking distance of the Place de la Concorde, he was both affirming the enduring force of the principles of the French revolution and the survival of those people whom the Nazis had tried to exterminate. Cassin was Jewish and lost 26 members of his family to deportation and death in Auschwitz. The absolutely specific outrage over Nazi crimes was there mingled together with a reaffirmation of the French Republican tradition, so recently trampled on by the Nazis and their French collaborators. The shadow of the war was the reason why such principles had to be restated publicly in Paris, just a few years after the liberation of France and the end of the war.⁵

Article 2 spoke to the wounds of war in another way, denouncing discrimination on the grounds of race, religion, sex, language, or other arbitrary categories. The reaffirmation of life, liberty and security of person in Article 3 similarly drew everyone's attention back to the horrors of the concentration and death camps. Slavery and servitude in all their forms were made anathema in Article 4; who could miss the stench attached to the crimes committed on those so treated by the Nazis, including millions of Soviet prisoners of war? To speak in article 5 of torture, cruel and inhuman punishment was to refer in no uncertain terms back to the war and the medical experiments conducted by the Nazis.

Legal rights to due process were reaffirmed in articles 6-12. Article 13 affirms the right to leave one's country and to return to it. The immediate references to the horrors of Nazi policies needed no elucidation. Article 14 considered the essential right to seek and to enjoy asylum from persecution from one's own country. This falls short of affirming a right of immigration, which none of the major powers would countenance, but it once again placed entry within the framework of massive persecution then well within living memory. Similarly contemporary was the affirmation in article 15 about the right of individuals to be protected from being stripped of their citizenship or nationality.

Thus 15 of the 30 articles in the Universal Declaration of Human Rights spoke to the generation of the Second World War in absolutely vivid terms of the catastrophe which they had survived.⁶ And yet, as Cassin insisted, this was not an international declaration, or a European declaration, but a universal declaration of rights. The re-

4 Glendon, Mary Ann, *A world made new: Eleanor Roosevelt and the Universal Declaration of Human Rights*, New York 2001.

5 Winter, Jay, *Dreams of peace and freedom: Utopian moments in the twentieth century*, New Haven 2006, chapter 4, *passim*.

6 On the link between the Second World War and the Universal Declaration, see Morsink, Johannes, *World War Two and the Universal Declaration*, in: *Human Rights Quarterly* 15/2 (1993), pp. 357-405.

mainder of the provisions in the document went beyond the particular setting of the 1940s and the Second World War to frame what may be termed the protections needed for a vibrant civil society to grow and for coming generations to be inculcated with the tolerance needed to avoid war and dictatorship alike. Freedom to form families, freedom of religious expression, the right to hold property, to form associations, the right to the exchange of ideas were all affirmed, alongside freedom from destitution. And finally, the declaration stated that with rights came duties and responsibilities, in particular the responsibility to oppose any attempt to use these rights to destroy the rights and freedoms of others.

The Declaration drew on many different human rights traditions. The Kantian tradition is evident in the linkage between freedom and peace. The Thomist tradition informed the emphasis on the dignity of the individual. And there are traces of the socialist tradition of finding dignity in work, and indignity in social inequality and poverty. There are newer forms of rights discourse too, many of them worked out in the League of Nations by a group of prominent jurists concerned to limit state sovereignty, by placing a higher legal norm of human rights above national law. The strength of the document was its ecumenical amalgam of all these different readings of human rights within European philosophical and juridical traditions.⁷

There are three elements of this document which are revolutionary. The first is that it changed the character of international law by placing the individual within it. Until then, international law was conducted as a matter between and among states. Now the individual had standing in international law. Secondly, this universal (rather than international) document presented a normative standard above those established by the constitution of individual states. That is, there was a set of principles deemed universal which transcended the legal order of the state. This entailed a truncation of state sovereignty, since it meant that a state's supreme court did not have the last word on rights; there was a universal standard above it. Thirdly, the document's echoes of the ravages of the Second World War were so loud that no one could miss the claim that the peace of the world was at risk whenever and wherever human rights were violated.

Implementation

The ratification of the Universal Declaration of Human Rights took place at the very last moment it could have been passed by the United Nations. It was a kind of epitaph to the grand alliance which had defeated the Axis in the Second World War. Consequently, the confrontation between the Soviet bloc and the Western bloc froze the declaration in such a way as to block its transformation into an international treaty. Both the Soviet Union and the United States were strong defenders of state sovereignty. Perhaps 20 million Soviet citizens had died in a war to defend the borders of the Soviet Union, and Stalin had no interest in doing more than offering lip service to human rights. After an initial period of support of turning the declaration into a treaty, American lawyers and politicians turned away from the idea of transforming the declaration into an international bill of rights, on the American model. The central problem in doing so was the sacrosanct status of the American Supreme Court, but there were other embarrassments – structural racial inequality, for instance – which stood in the way of American support

7 Morsink, Johannes, *Inherent human rights: philosophical roots of the universal declaration*, Philadelphia 2009.

for creating human rights instruments of force and substance.⁸ Britain and France were similarly aloof, fearing being targets for anti-colonial protests over their human rights record in territories under their control.⁹

The Cold War also petrified the chief agency charged with surveying the human rights situation in individual member states of the United Nations. The Commission on Human Rights, which drafted the Declaration, was hamstrung in its activities, and lost the freedom to demand an accounting from every member of its state of affairs. By the mid-1950s, the Commission was further weakened by the way the United States – alongside the Soviet Union – turned away from its earlier support for turning the Declaration into enforceable international law. American anti-communism, blended with a liberal dose of racialism, turned human rights into a dangerously subversive idea, and made support for the United Nations politically costly within American domestic politics. Thus even though the United Nations agreed to two covenants on human rights, one on civic and political rights, a second on social and economic rights, in 1966, both of which came into force in 1976, that organization ceased to be a focus of international law and practice in the defense of human rights.

After-life

The impact of the Universal Declaration was its effect on de-centering the effort to defend human rights. In a series of regional initiatives, conventions on human rights turned the universal declaration into a political force. The first such regional convention was signed in Rome in 1950. The European Convention on Human Rights stipulated that all members of the Council of Europe had to stipulate their adherence to principles very similar to those inscribed in the Universal Declaration. From 1960, when the European Court of Human Rights opened its doors, this court affirmed the right of individual petition and made its judgments superior to those of national courts. This court became part of the judicial construction of Europe, working in parallel with the economic and political institutions of the European Union. In Strasbourg, the Council of Europe and the European Parliament hold their meetings, across a canal from the European Court of Human Rights.¹⁰

In 1969, in Costa Rica, the Organization of American States accepted an American Convention on Human Rights. This document came into force in 1978, and framed the work of the Inter-American Court of Human Rights.¹¹ The Organization of African Unity agreed in 1981 to the African Charter on Human and People's Rights. In 1998 the African Court on Human and People's Rights was convened in Gambia, where it sits today (2009).¹²

In addition, the shadow of the Universal Declaration fell over the process of détente in the 1970s and 1980s. In 1975 the Final Act of the Conference on Security and Cooperation in Europe created the kind of trade-off between sovereignty and security which

8 Borgwardt, Elizabeth, *A new deal for the world: America's vision for human rights*, Cambridge, Mass. 2005.

9 See Simpson, A. W. Brian, *Human Rights and the End of Empire*, Oxford 2001, and Soutou, Georges-Henri, *La France et la Déclaration des droits de l'homme*, Paris 2009.

10 Yearbook of the European convention on human rights, The Hague 1960.

11 Cleary, Edward, *The Struggle for Human Rights in Latin America*, Westport, Conn., 1997.

12 Lyons, Scott, *The African Court on Human and People's Rights*, in: American Society of International Law 10/24 (2006), <<http://www.asil.org/insights060919.cfm>> (21.09.2009).

the Universal Declaration had framed in 1948. The Soviet Union had its territorial boundaries, in particular those in its west, recognized, and in return accepted in Article 7 of the agreement the need to respect human rights and freedoms. On this basis a series of organizations – in particular, Helsinki Watch – monitored human rights in the Soviet Union, and played a role in the emergence of dissident opinion, which after the arrival of Mikhail Gorbachev in power in 1986, grew throughout the Soviet bloc. Similar groups drew on international support for human rights in Czechoslovakia and Poland, where dissidents were increasingly able and willing to defy repression. The key moment was reached when Gorbachev refused to use Soviet tanks to destroy dissent in the Warsaw pact; his decision saved lives and doomed communism in Eastern Europe. There is evidently an indirect line between the Universal Declaration of Human Rights in 1948 and the collapse of the Soviet bloc and the Soviet Union itself in the period 1989-91.

Thus it is best to see the Universal Declaration of Human Rights as a major event in international law and practice. One way to picture it is as the source of an underground river of thought about rights which resurfaced in different places and in different ways in the third and fourth quarters of the twentieth century. When the Cold War came to an end, the instruments created, and hampered, during the clash of the Great Powers, were still intact, and helped insert human rights principles in the international arena in a way they had never been seen before.

René Cassin and the other framers of the Universal Declaration saw it as a first step, a promise, rather than as an achievement. They were right. In most parts of the world, human rights are abused with impunity. The term 'human rights' can be used in many ways, most of which are so vague as to mean nothing at all. Breathing life into human rights – with respect to women's rights, the rights of undocumented immigrants, the rights of indigenous peoples, the rights of children, for example – is an ongoing struggle, the future character of which is still to be determined. But of one thing we may be sure. Without the Universal Declaration of Human Rights of 1948, that struggle and its meaning for us all today would be radically different.

Bibliography:

- Glendon, Mary Ann, *A world made new: Eleanor Roosevelt and the Universal Declaration of Human Rights*, New York 2001.
- Kennedy, Paul, *The Parliament of man. The United Nations and the quest for world government*, London 2006.
- Lauren, Paul Gordon, *The evolution of international human rights: visions seen*, Philadelphia 1998.
- Morsink, Johannes, *World War Two and the Universal Declaration*, in: *Human Rights Quarterly* 15/2 1993, pp. 357-405.
- Simpson, A. W. Brian, *Human Rights and the End of Empire*, Oxford 2001.

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