

Human Rights

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1. Introduction

In the Preamble to the Charter, "the peoples of the United Nations" express their determination "to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small." Article 1 of the Charter states that one of the purposes of the UN is to promote and encourage "respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion." In Article 56, "all Members pledge themselves to take joint and separate action in cooperation with the Organization for the achievement" of this purpose. The Charter vests responsibility for assisting in the realization of human rights and fundamental freedoms in three of the principal organs: the General Assembly, the Economic and Social Council, and the Trusteeship Council. The Charter also provides for the establishment of commissions for the promotion of human rights as subsidiary bodies of the Economic and Social Council. As early as 1946, two such commissions were created: the Commission on Human Rights and the Commission on the Status of Women.

2. The International Bill of Rights

At the San Francisco Conference, a proposal to embody an international bill of rights in the Charter itself was put forward but was not pursued because it required more detailed consideration. The idea of establishing an international bill of rights, however, was regarded as inherent in the Charter. Even before the Charter was ratified and had entered into force and before the UN as an organization was established, steps were taken toward this goal. The Preparatory Commission of the UN and its Executive Committee, meeting in the fall of 1945, both recommended that the work of the Commission on Human Rights should be directed, in the first place, toward 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.

When the Commission on Human Rights and its drafting committee started work on this ambitious project, it turned out that there was disagreement among the members about the form that the draft bill of rights should take. Some members thought the bill should be a "declaration" or "manifesto" that would be proclaimed by a resolution of the General Assembly. Others urged that it take the form of an international treaty, which, in addition to being approved by the General Assembly, would have to be opened for signature and for ratification or accession by governments and would be binding only on those governments that had

ratified it or acceded to it. The relevant report of the drafting committee records that it was agreed by those who favored the declaration form that the declaration should be accompanied or followed by one or more conventions. It was also agreed by those who favored the convention form that the General Assembly, in recommending a convention to member nations, might make a declaration wider in content or more general in expression. As a consequence, drafts of a "declaration" and of a "convention" were prepared, and studies were undertaken for the creation of international supervisory and enforcement machinery, called "measures of implementation."

Eventually, the decision emerged that the international bill of rights should not be produced by one single, comprehensive, and final act but should consist of two or more international instruments, namely, a declaration and a convention (or covenant), and measures of implementation. Later, it was decided that there should be not one but two covenants—one on civil and political rights and the other on economic, social, and cultural rights—and that the provisions on the measures of implementation should be embodied in the texts of the covenants. The latter decision was modified somewhat in 1966, when the provisions regulating one specific aspect of the implementation arrangements, the right of petition (communication), were included in a separate optional protocol.

3. The Universal Declaration of Human Rights

The Universal Declaration of Human Rights was prepared by the Commission on Human Rights in 1947 and 1948 and adopted and proclaimed by the General Assembly on 10 December 1948 by a vote of 48 in favor, none against, with 6 abstentions. Two representatives were absent. One of them stated later that, if he had been present, he would have voted in favor.

The Universal Declaration consists of a preamble and 30 articles. It proclaims—and in this regard it differs from the traditional catalog of the rights of man that are contained in various constitutions and fundamental laws of the 18th and 19th centuries and the first decades of the 20th century—not only civil and political rights but also rights that were eventually regulated in the International Covenant on Economic, Social and Cultural Rights.

The declaration proclaims, in Article 1, that all human beings are born free and equal in dignity and rights and, in Article 2, that everyone is entitled to all the rights and freedoms set forth in the declaration "without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status" and that "no distinction shall be made on the basis of the political, jurisdictional or international

status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty."

In Articles 3 to 21, the declaration deals with the traditional civil and political rights, including the right to life, liberty, and security of person; freedom from slavery and servitude; freedom from torture or cruel, inhuman, or degrading treatment or punishment; equality before the law and equal protection of the law; freedom from arbitrary arrest, detention, or exile; the right to be presumed innocent until proved guilty; the right to protection against arbitrary interference with one's privacy, family, home, or correspondence and to protection against attacks upon one's honor and reputation; freedom of movement and residence; the right to leave any country, including one's own; the right to seek and enjoy in other countries asylum from persecution; the right to a nationality and the right to change one's nationality; the right of men and women of full age to marry, without any limitation due to race, nationality, or religion; freedom of thought, conscience, and religion; the right to own property and not to be arbitrarily deprived of it; freedom of opinion and expression; the right to peaceful assembly and association; the right to take part in the government of one's country; and the right to equal access to public service.

Economic, social, and cultural rights (Articles 23 to 27) are introduced by Article 22, which states generally that "everyone, as a member of society, has the right to social security" and is entitled to the realization of "economic, social and cultural rights indispensable for his dignity and the free development of his personality." The article implies, however, that those economic, social, and cultural rights are not everywhere and immediately achievable. It states that the "realization" of these rights is to be brought about "through national effort and international cooperation and in accordance with the organization and resources of each state."

The declaration affirms everyone's right to work, to free choice of employment, to just and favorable conditions of work, and to protection against unemployment. It affirms the right of everyone to equal pay for equal work; to "just and favorable remuneration"; to form and join trade unions; to "a standard of living adequate for the health and well-being of himself and of his family"; and to "rest and leisure, including reasonable limitation of working hours and periodic holidays with pay." It also proclaims "the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond [one's] control." Everyone has the right to education, which "shall be free, at least in the elementary and fundamental stages" and compulsory on the elementary level. The declaration affirms everyone's right "freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits."

Article 28 asserts that "everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized." In the exercise of individual rights and freedoms, everyone shall be subject only to such limitations as are determined by law. Such

limitations, according to Article 29, shall be "solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order, and the general welfare in a democratic society." Article 30 states that nothing in the 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 in the declaration.

The Universal Declaration of Human Rights was adopted, not in the form of an international convention that, when ratified, is legally binding on the states that are parties to it, but in the form of a resolution of the General Assembly, as "a common understanding" of the rights and freedoms that member states have pledged themselves to respect and observe and as "a common standard of achievement for all peoples and all nations." In the view of most of those who were instrumental in its preparation and adoption, the declaration was not meant to be a "binding" instrument. However, as soon as the declaration was adopted, it began to be used as a code of conduct and as a yardstick to measure the compliance by governments with the international standards of human rights.

In countless allegations of human rights violations that it has been called upon to examine, the UN has had recourse to the declaration, whether it was dealing with allegations of forced labor, with discrimination in non-self-governing and trust territories, with customs and practices inconsistent with the dignity of women, or with other violations of human rights. The declaration also has played an important role in the activities of specialized agencies, such as the ILO, UNESCO, and ITU, and in regional organizations, such as the OAS, the Council of Europe, and the OAU.

The declaration has thus acquired a validity beyond that originally contemplated in 1948. The international community, both the states that had been instrumental in its creation and those that later achieved independence, used the declaration for the purpose of fulfilling an assignment greater and more far-reaching than that originally carved out for it. Today, the declaration has acquired the status of customary international law and is valid for all states that have ratified it.

4. The International Covenants on Human Rights

The Commission on Human Rights, the Economic and Social Council, and the General Assembly devoted 19 years (1947–66) to the preparation of the International Covenants on Human Rights. One problem that created a considerable amount of controversy, particularly in the early years, was whether the treaty that would give legal effect to the rights and freedoms set forth in the Universal Declaration of Human Rights should regulate only those rights that traditionally have been guaranteed in national constitutions or catalogs of rights and are known as "civil and political rights" or whether the treaty should also set forth "economic, social and cultural rights."

As already indicated, it was eventually decided that there should be two covenants dealing with the two sets of provisions, respectively. The principal reason for having two separate instruments regulating the two groups of rights was the fundamentally different character of the rights concerned, which led some even to question whether "economic, social and cultural rights" are, technically, rights at all—in the sense of enforceable and justiciable rights. The different character of these rights made it necessary to provide for a difference in the type of international obligations to be undertaken by states that are parties to one or the other, or both, of the two covenants. Another reason for establishing two different covenants was thought to be the necessity to adjust the arrangements for international supervision—the "measures of implementation"—to the different character of the rights.

In the International Covenant on Civil and Political Rights, each state party undertakes to *respect* and to *ensure* to all individuals within its territory and subject to its jurisdiction the rights recognized in that covenant. In the International Covenant on Economic, Social and Cultural Rights, each state party undertakes only to *take steps*, individually and through international assistance and cooperation, to the maximum of its available resources, *with a view to achieving progressively* the full realization of the rights recognized in that covenant. Subject to certain exceptions and modifications, the International Covenant on Civil and Political Rights imposes upon states parties the obligation to maintain defined standards. The states parties to the International Covenant on Economic, Social and Cultural Rights assume the obligation to promote an objective—the achievement of human rights. By and large, the two covenants between them cover the rights proclaimed in the Universal Declaration of Human Rights, as they have been described above, but there are considerable differences between the Universal Declaration and the covenants.

The provisions of the Universal Declaration proclaiming that everyone has a right to own property and that everyone has the right to seek and to enjoy in other countries asylum from persecution have no counterpart in the covenants. On the other hand, the covenants deal with a number of questions in regard to which the declaration contains no provision. An example is the provision of both covenants that all peoples have the right to self-determination "by virtue of which they freely determine their political status and freely pursue their economic, social, and cultural development."

The International Covenant on Civil and Political Rights, but not the declaration, protects aliens against expulsion, entitles everyone not to be compelled to testify against himself or herself or to confess guilt, provides for a right to compensation for miscarriage of justice, and also provides that no one shall be liable to be tried or punished again for an offense for which he or she has already been finally convicted or acquitted. The covenant prohibits any propaganda for war and any advocacy of national, racial, or religious hatred. It provides for the protection of ethnic, religious, and linguistic minorities. The declaration does not contain corresponding provisions.

The International Covenant on Economic, Social and Cultural Rights contains provisions on the right to work and to enjoy just and favorable conditions of work; the right to form and join trade unions and, subject to the law of the land, the right to strike; the right to social security, including social insurance and the protection of the family; the right to an adequate standard of living and freedom from hunger; the right to the enjoyment of the highest attainable standards of physical and mental health; the right to education; and the right to take part in cultural life.

The International Covenant on Economic, Social, and Cultural Rights and the International Covenant on Civil and Political Rights are legally binding human rights agreements. Both were adopted by the General Assembly in 1966 and entered into force ten years later, making many of the provisions of the Universal Declaration of Human Rights effectively binding. As of 19 April 2006, 153 states were party to the Covenant on Economic, Social, and Cultural Rights; and 156 states were party to the Covenant on Civil and Political Rights.

5. Measures of Implementation

The states parties to the Covenant on Economic, Social and Cultural Rights undertake to submit to the Economic and Social Council reports on the measures that they have adopted and the progress made in achieving the observance of the rights recognized in that covenant. Until 1986, the Economic and Social Council entrusted the task of examining such reports to a working group. Since then, this task has been carried out by the Committee on Economic, Social and Cultural Rights, an eight-member group of experts elected by the council to serve in their personal capacity. The committee submits to the council a summary of its consideration of the reports of states parties and makes suggestions and recommendations of a general nature.

Under the International Covenant on Civil and Political Rights, a Human Rights Committee was established to consider reports submitted by states parties on measures taken to implement the covenant's provisions and also to consider communications alleging violations under the Optional Protocol, which provides for consideration of communications from individuals who claim to be victims of violations of any rights set forth in the covenant. However, only claims against states parties to the protocol can be considered. The Optional Protocol entered into force 23 March 1976, and as of 19 April 2006, 105 states were party to it. The Second Optional Protocol to the International Covenant on Civil and Political Rights, which aims to abolish the death penalty, was adopted by the General Assembly 15 December 1989 and entered into force roughly two years later, when 10 states had ratified it. As of August 2002, 47 states were party to it.

Apart from the right of individual complaint under the specific procedure of the Optional Protocol, thousands of letters and reports alleging human rights violations are received each year by the UN. Communications containing complaints of violations of human rights are summarized and sent confidentially to the members of the Commission on Human Rights and its Sub commission on Prevention of

Discrimination and Protection of Minorities; copies of the complaint also are sent to the member states named. The identity of the writers is not disclosed unless they have consented to disclosure. Any replies from the government are forwarded to the commission and sub commission.

The sub commission, if it finds that the communications appear to reveal "a consistent pattern of gross and reliably attested violations" of human rights, may refer the situation to the commission, which, in turn, can decide to carry out a thorough study of the situation or to name an ad hoc committee to investigate it. All these procedures are confidential and are dealt with in private meetings until a report, if any, is made by the Commission on Human Rights to the Economic and Social Council.

The Commission on Human Rights and its sub commission also consider in public session each year the question of violations of human rights and fundamental freedoms, including racial discrimination and apartheid, in various countries and territories. For example, since 1967, an ad hoc working group of experts of the commission has reported regularly on allegations of ill-treatment of opponents of apartheid and other racist policies, and on the treatment of political prisoners and detainees, in South Africa and Namibia.

Since 1968, the commission has been considering the question of the violation of human rights in the territories occupied by Israel as a result of the 1967 hostilities in the Middle East, including violations of the 1949 Geneva Convention concerning the protection of civilian persons in time of war.

In 1975, the commission established a five-member working group to study the human rights situation in Chile. The group visited Chile in 1978 and submitted a report to the General Assembly and the commission. After the completion of the group's mandate, the commission appointed a special rapporteur in 1979 to continue to study the situation. The commission has also requested that studies or reports be prepared by special rapporteurs or by the Secretary-General on the human rights situation in Afghanistan, Bolivia, El Salvador, Equatorial Guinea, Guatemala, Iran, and Poland.

In addition, the commission and its subcommission have studied specific phenomena of particularly serious violations of human rights. Thus, working groups have been established—on southern Africa, on enforced or involuntary disappearances, on slavery, and on indigenous populations—and special rapporteurs have been appointed to examine the question of summary or arbitrary executions and questions concerning torture, religious intolerance, and the use of mercenaries.

6. Other Human Rights Conventions

The UN and two of the specialized agencies, the ILO and UNESCO, have prepared and put into force a number of conventions in the human rights field that, while not as comprehensive as the International Bill of Rights, deal with important specific rights. (Conventions on racial

discrimination and on the status of women are discussed in separate sections below.)

6.1 Prevention and Punishment of Genocide

In 1948, the General Assembly adopted the Convention on the Prevention and Punishment of the Crime of Genocide. The convention entered into force in 1951. As of 19 April 2006, it had been acceded to or ratified by 138 states. Under the convention, genocide means any of the following acts committed with intent to destroy in whole or in part a national, ethnic, racial, or religious group as such: (a) killing members of the group; (b) causing serious bodily or mental harm to members of the group; (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) imposing measures intended to prevent births within the group; and (e) forcibly transferring children of the group to another group. One result of the convention is that the states parties place it beyond doubt that genocide (and conspiracy, incitement, and attempt to commit it and complicity in it), even if perpetrated by a government in its own territory against its own citizens, is not a matter essentially within the domestic jurisdiction of states but one of international concern. States parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law that they undertake to prevent and to punish. Any contracting party can call upon UN organs to intervene.

6.2 Freedom of Association

The Freedom of Association Convention of 1948 (in force since 1950) was the first major achievement of the joint efforts of the UN and the ILO in the field of international legislation on human rights problems. By this convention, states parties undertake to give effect to the right of workers and employers, without distinction whatsoever, to establish and join organizations of their own choosing without previous authorization. In exercising the rights provided for in the convention, workers and employers and their respective organizations, like other persons or organized groups, shall respect the law of the land. However, the law of the land shall not be such as to impair, nor shall it be so applied as to impair, the guarantees provided in the convention.

Under the Right to Organize and Collective Bargaining Convention of 1949 (in force since 1951), workers shall enjoy adequate protection against acts of antiunion discrimination in their employment, particularly in respect to acts calculated to make the employment of a worker subject to the condition that the worker shall not join a union or shall relinquish trade union membership.