

THE UNIVERSAL DECLARATION OF HUMAN RIGHTS

A history of its creation and implementation
1948 — 1998

M. GLEN JOHNSON
and **JANUSZ SYMONIDES**

Preface by
FEDERICO MAYOR
Director-General of UNESCO

HUMAN RIGHTS

UNESCO PUBLISHING
Human rights in perspective

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A HISTORY OF ITS CREATION AND IMPLEMENTATION

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PREFACE BY FEDERICO MAYOR, DIRECTOR-GENERAL OF UNESCO

PUBLISHED ON THE OCCASION OF THE

FIFTIETH ANNIVERSARY OF THE UNIVERSAL DECLARATION OF HUMAN RIGHTS

Human Rights in Perspective
UNESCO PUBLISHING

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PREFACE

Fifty years after its adoption, the Universal Declaration of Human Rights remains a landmark document, embodying principles which reflect humanity's most profound and enduring aspirations. In the first three lines of its Preamble, this exceptional text captures the essence of all that follows: *'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 impact of this United Nations document is such that, without necessarily knowing the text of the Declaration or the exact content of its thirty Articles, millions of people around the world lay claim every day to the rights that it enshrines. The aspiration to freedom, justice and peace is universal and is reflected in religious, spiritual and philosophical traditions all over the globe. It is this which makes human rights universal – they belong to no one system of thought, no one civilization, nation or organization, but are deeply embedded in the spirit of each member of the human family and find expression in every tongue.

Since the Declaration was adopted, the struggle to defend and implement human rights has met innumerable obstacles and yet has been sustained by a steadily growing ground swell of support. It is a paradox of human rights that while each one of us quite spontaneously identifies with those aspirations and principles, it can often require an effort of understanding and an act of the imagination to extend to others what seems quite naturally to belong to ourselves. The struggle for human rights is very often a struggle to ensure that those rights are extended in practice to women and girls, or to minority groups. This is an ongoing struggle, and each time human rights come under attack, it is always the most vulnerable whose rights are denied first.

Of course, the denial of human rights does not only result from a failure of understanding or of the imagination. It is often the result of a quite deliberate act of dispossession. The possession of human rights enables each of us to achieve our full potential; it entails the enjoyment of full citizenship, full participation in society and full claims to a share of society's resources. Denial of human rights involves dispossession at all these levels. It is because the struggle for human rights is never conclusively won that people everywhere need to be empowered to resist that dispossession.

This publication is intended as an act of empowerment and as a tool for people to use in claiming or reclaiming their rights. In order to defend human rights, one has to know them and to know the framework of laws and conventions which protect them. UNESCO's work in a number of areas, and particularly in the fields of literacy, lifelong learning and human rights education, gives people the basic tools they need to defend their rights and to understand how human rights – not only their own rights, but those of others – interact with the principles of peace, tolerance and sustainable development.

In this fiftieth anniversary year, it is my profound hope that the Universal Declaration of Human Rights will become one of the best known and most cherished texts in the history of humanity. Half a century ago, the women and men who drafted it transcended great differences in culture and language to create a universal statement. Half a century has passed, in which the Universal Declaration of Human Rights has transcended time, and proved its enduring relevance. It still speaks to new generations. More and more people not only know the rights enshrined in this and subsequent texts, but are also coming to understand that human rights are universal, indivisible and interdependent. This marks a crucial step towards what must remain our ultimate goal: the universal implementation of human rights.

FEDERICO MAYOR, DIRECTOR-GENERAL OF UNESCO

A handwritten signature in black ink, appearing to read 'Federico Mayor', positioned to the right of the typed name.

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THE UNIVERSAL DECLARATION OF HUMAN RIGHTS

PREAMBLE

Whereas 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,

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,

Whereas it is essential to promote the development of friendly relations between nations,

Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,

Whereas Member States have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,

Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge,

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 among the peoples of territories under their jurisdiction.

Article 1

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.

Article 2

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Furthermore, 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.

Article 3

Everyone has the right to life, liberty and security of person.

Article 4

No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

Article 5

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 6

Everyone has the right to recognition everywhere as a person before the law.

Article 7

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Article 8

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

Article 9

No one shall be subjected to arbitrary arrest, detention or exile.

Article 10

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 11

1. Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.
2. No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

Article 12

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Article 13

1. Everyone has the right to freedom of movement and residence within the borders of each State.
2. Everyone has the right to leave any country, including his own, and to return to his country.

Article 14

1. Everyone has the right to seek and to enjoy in other countries asylum from persecution.
2. This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

Article 15

1. Everyone has the right to a nationality.
2. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

Article 16

1. Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.
2. Marriage shall be entered into only with the free and full consent of the intending spouses.
3. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

Article 17

1. Everyone has the right to own property alone as well as in association with others.
2. No one shall be arbitrarily deprived of his property.

Article 18

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

Article 19

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 20

1. Everyone has the right to freedom of peaceful assembly and association.
2. No one may be compelled to belong to an association.

Article 21

1. Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.
2. Everyone has the right of equal access to public service in his country.
3. The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

Article 22

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

Article 23

1. Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.
2. Everyone, without any discrimination, has the right to equal pay for equal work.
3. Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.
4. Everyone has the right to form and to join trade unions for the protection of his interests.

Article 24

Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

Article 25

1. Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.
2. Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

Article 26

1. Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.
2. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.
3. Parents have a prior right to choose the kind of education that shall be given to their children.

Article 27

1. Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.
2. Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

Article 28

Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

Article 29

1. Everyone has duties to the community in which alone the free and full development of his personality is possible.
2. 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 requirements of morality, public order and the general welfare in a democratic society.

3. These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

Article 30

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.

A MAGNA CARTA FOR MANKIND: WRITING THE UNIVERSAL DECLARATION OF HUMAN RIGHTS

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Between April 1946 and December 1948 a small group of unusual men and women worked in the new institutional setting of the United Nations to write a document which has become a major touchstone in the global struggle for human rights. In meetings in New York, in Geneva and, finally, in Paris, they debated philosophy, law, cultural differences and practical politics; they argued over tactics and language and reached compromises in pursuit of larger goals. Finally, late in the night of 10 December 1948, their efforts were rewarded when the General Assembly of the United Nations adopted, without dissent, the Universal Declaration of Human Rights. This is the story of their work, their trials, their confusions, their debates, the pressures on them and, in the end, their success – a success which substantially exceeded their own assessment at the time.

The story begins with the presentation of the players in this rather dramatic effort and a description of the context in which they worked and the process by which the Declaration was written and adopted. The heart of the story examines the issues and problems encountered in the drafting process and explores the varied approaches to these issues. The impact of this event is then assessed by examining how the Declaration was regarded when it was adopted and how it has evolved over the fifty years since its endorsement by the General Assembly of the United Nations in 1948.

THE PLAYERS

The drama which produced the Declaration had a remarkable cast of characters. Central were the four main members of the United Nations Commission on Human Rights: Eleanor Roosevelt of the United States, the Chair of the Commission; P. C. Chang of China, its

Vice-Chair; Charles Malik of Lebanon, the Rapporteur; and René Cassin of France. The principal staff person of the Commission whose role far exceeded normal staff duties was John P. Humphrey, a Canadian lawyer who served as Director of the Division of Human Rights in the fledgling United Nations Secretariat. They were prodded and monitored by a remarkably skilled and committed group of representatives of non-governmental organizations, many of whom were continuing roles they had played in strengthening the human rights mandate which emerged from the United Nations Charter negotiations.

ELEANOR ROOSEVELT

Mrs Roosevelt, widow of the late American President whose name was practically synonymous with the war against fascism and the development of international institutions to foster peace and freedom, had been an unusually active and visible First Lady, but she was frightfully inexperienced in arenas usually reserved for international lawyers and diplomats. She had overcome a rather lonely and isolating childhood, a lack of extensive formal education and an unfulfilling experience as wife and mother to become a confident partner in one of the most unusual political alliances in history. She was the peripatetic eyes and ears for the physically handicapped president, travelling relentlessly, speaking widely, reporting to and prodding Franklin D. Roosevelt, peppering various officers of government with queries about individual problems in ways later institutionalized by governmental ombudsmen and, through it all, building a not inconsiderable political reputation in her own right.

After Franklin D. Roosevelt died, his inexperienced and politically insecure successor, Harry Truman, asked Mrs Roosevelt to join the first United States delegation to the United Nations. His purpose was frankly political – to have her on ‘his’ team and, at the same time, distance her from some of those politically touchy domestic causes with which she had become identified. Senior members of the United States delegation were appalled by the appointment and succeeded in ‘relegating’ her to the Third Committee (Social, Humanitarian and Cultural) where, they assumed, important issues would be eschewed and she could do no harm. It was natural, therefore, that she should also be selected to serve on the Economic and Social Council (ECOSOC) and eventually on its Commission on Human Rights.¹

1. For a more complete analysis of Eleanor Roosevelt’s role on the Commission on Human Rights, see M. Glen Johnson, ‘The Contributions of Eleanor and Franklin Roosevelt to the Development of International Protection for Human Rights’, *Human Rights Quarterly*, 9:1 (February 1987), pp. 19–48.

Eleanor Roosevelt was neither a scholar nor a profound thinker. Her contribution to the drafting of the Universal Declaration of Human Rights was not made in the realm of philosophy or legal analysis.² She was a doer, a prodder, a facilitator, a consensus builder. She was also a publicist; indeed, she considered herself a professional journalist. These were the skills she brought to her task as Chair of the Commission on Human Rights and its Drafting Committee. Without her skill in managing different human relationships and often conflicting cultural perspectives, it seems unlikely that we would have today a Universal Declaration adopted without dissent by the General Assembly and incorporated by reference so widely in other United Nations and national constitutional documents.³ It should also be said that the diligence and enthusiasm she brought to her task, coupled with her public standing in the United States and abroad, gave a stature to the whole effort which would have been unlikely without her.⁴

Readers interested in more complete treatments of Mrs Roosevelt's life and work should consult the 'semi-official' biography by Joseph P. Lash, *Eleanor and Franklin* (New York: Norton, 1971) and *Eleanor: The Years Alone* (London: André Deutsch, 1973) and the more recent, avowedly feminist interpretation in the first volume of a projected two-volume biography by Blanche Wiesen Cook, *Eleanor Roosevelt* (New York: Viking, 1992). Mrs Roosevelt's continuing involvement with the American political scene during and after her United Nations service is examined in Allida Black, *Casting Her Own Shadow: Eleanor Roosevelt and the Shaping of Postwar Liberalism* (New York: Columbia University Press, 1996).

2. She, herself, was among the first to recognize her limitations as Chair of the Commission on Human Rights. She once told readers of the six-times-a-week syndicated newspaper column she wrote from the 1930s until shortly before her death in 1962: 'The writing of a preliminary draft of the bill of rights may not seem so terrifying to my colleagues in the drafting group – Dr P. C. Chang, Dr Charles Malik and John Humphrey, all of whom are learned gentlemen. But to me it seems a task for which I am ill-equipped.'

'However, I may be able to help them put into words the high thoughts which they can gather from past history and from the actuality of the contemporary situation, so that the average human being can understand and strive for the objectives set forth. I used to tell my husband that, if he could make *me* understand something, it would be clear to all the other people in the country – and perhaps that will be my real value on this drafting commission!', Eleanor Roosevelt, *My Day*, release date 12 February 1947, text in Eleanor Roosevelt Papers (Hereafter ER Papers), Franklin D. Roosevelt Library, Hyde Park, N.Y.

3. This is the judgement of, among others, Porter McKeever, who worked with her at the United Nations. (Porter McKeever interview, 24 March 1979, Eleanor Roosevelt Oral History Project, Roosevelt Library.)

4. John P. Humphrey, who was Director of the Human Rights Division of the Secretariat at the time, sees this as her most important contribution. See his *Human Rights and the United Nations: A Great Adventure* (Dobbs Ferry, N.Y.: Transnational Publishers, 1984), p. 5. He made a similar point much earlier: see John P. Humphrey, 'International Protection of Human Rights', *The Annals*, Vol. 255 (January 1948), p. 15.

Mrs Roosevelt became in so many ways the persona of the human rights effort in the early post-war years that we sometimes forget that she was surrounded by an unusually able and interesting group of people, who were members of the Commission or who worked with the Secretariat and with various NGOs (non-governmental organizations).

P. C. CHANG

The Vice-Chair of the Commission was Dr P. C. Chang of China. Dr Chang was educated primarily in the United States, first as an undergraduate at Clark University and then as a graduate student at Columbia University, where he earned his Doctorate with a thesis on education and modernization in China. Although Western-educated and at home in Western academic settings – he served as a visiting professor at the University of Chicago and several British universities – Dr Chang was one of the few members of the Commission who consistently reminded his colleagues that a *Universal* Declaration had to incorporate philosophical systems other than those of the West, and he himself frequently cited Confucian principles to inform the discussion. Humphrey credits him with using his mastery of Confucian philosophy to find compromise language at particularly difficult points.⁵

CHARLES H. MALIK

Charles Malik of Lebanon served as Rapporteur of the Commission. A tall, striking Greek Orthodox Christian, Malik also served as President of ECOSOC and Chair of the Third Committee during the 1948 debates on the Universal Declaration. Educated in philosophy at the American University of Beirut (AUB), Freiburg and Harvard, where he took his Ph.D., Malik taught at AUB for many years. He succeeded Mrs Roosevelt as Chair of the Commission on Human Rights in 1951 and later became President of the General Assembly. Malik was a towering figure in more ways than one. United States State Department analysts said that he had ‘acquired a reputation of being a mental and metaphysical gymnast and, some say, an eccentric’.⁶ But he was destined to play a critical role in the drafting and adoption of the Declaration. In fact, Durward Sandifer, one of Mrs Roosevelt’s State Department aides, considered the two of them particularly responsible for the

5. Humphrey, *Human Rights and the United Nations*, op. cit., p. 23.

6. United States, Department of State, ‘Biographic Reports’, in *US Delegation Handbook*, No. 2, United Nations Commission on Human Rights, Third Session, Lake Success, N.Y., May–June 1948, in Box 4595, ER Papers, Roosevelt Library.

successful conclusion of the effort to draft and secure the adoption of the Universal Declaration.⁷ A firm believer in the natural law basis of human rights, Malik was often prickly, sometimes approaching dogmatism. He supported the unsuccessful but sometimes divisive effort to write a natural law foundation into the Declaration.⁸

RENÉ CASSIN

A fourth very significant member of the Commission was René Cassin, the distinguished French lawyer and philosopher who was later awarded the Nobel Peace Prize for his human rights work. One of France's leading jurists, Cassin had been President of the Law Faculty of the University of Paris. With the outbreak of the Second World War, he joined General de Gaulle in London where he became chief legal adviser and brought his considerable prestige to de Gaulle's resistance movement.⁹ The son of a Jewish merchant, Cassin's work on the Declaration and his other human rights work were significantly informed by his personal response to the Holocaust.¹⁰ An outstanding public speaker, Cassin was asked by the drafting committee to write an early draft of the Declaration. His handwritten draft, produced over a long weekend, is an interesting mix of the many suggestions which had been put forward by various governments and NGOs. Although the French and the Americans were sometimes at pains to outdo each other in their claims to have originated human rights, at least one American State Department official considered Cassin and Mrs Roosevelt to be the two outstanding members of the Commission, and a State Department memorandum noted that, in his work on the Commission on Human Rights, Cassin was 'very considerate of other members, easy to deal with and not insistent on his own ideas which were generally very constructive'.

7. Durward Sandifer interview, 27 April 1979, Eleanor Roosevelt Oral History Project, Roosevelt Library.

8. Some indication of his views can be gathered from his article on 'International Business-Government Relations', in Sol Linowitz, Charles H. Malik and Daniel Parker, *The Creative Interface: International Business-Government Relations*, Vol. 2 (Washington, D.C.: American University, 1970), pp. 3-48. See also Charles H. Malik, *War and Peace* (Stamford, Conn.: The Overbrook Press, 1950).

9. Unless otherwise indicated, biographical information and judgements are taken from United States, Department of State, *Biographic Reports*.

10. Johannes Morsink, 'World War II and the Universal Declaration', *Human Rights Quarterly*, 15:2 (1993), pp. 357-405.

OTHER COMMISSION MEMBERS

Mrs Roosevelt, Chang, Malik and Cassin were clearly the giants of the Commission and of the drafting and adoption of the Universal Declaration of Human Rights, but there were other Commission members who played crucial roles in various parts of the drama.

One of them was Professor Fernand Dehousse of Belgium. A socialist who had been Professor of Law at the University of Liège and editor of an underground newspaper during the German occupation, Dehousse was described by the State Department as 'intelligent, energetic and affable, although disposed to considerable directness in manner'.

Colonel William Hodgson of Australia, short of stature, with bushy grey hair, a heavily lined face, and a stubby moustache, was sufficiently lame from a First World War wound to require a cane. Holder of the Croix de Guerre, Colonel Hodgson was a complex character – chauvinistic, nationalistic, blunt, direct and sometimes irascible in fighting the battle of the small nations in a world of big powers.

Mrs Hansa Mehta, the Indian representative, an active member of the Indian National Congress, the independence movement, had served significant terms of imprisonment for her anti-colonial activities. President of SNDT Women's University, Mrs Mehta was evaluated by the United States State Department as an intelligent person, a clear thinker, but her effectiveness was somewhat limited by the fact that she spoke in a barely audible whisper.

JOHN P. HUMPHREY

The principal staff person in the Secretariat responsible for the work of the Commission on Human Rights was John P. Humphrey, the Director of the Division of Human Rights in the Secretariat's Department of Social Affairs. Humphrey, a hard-nosed and pragmatic Canadian international lawyer, was also a passionate idealist when it came to human rights. A former Dean of the Faculty of Law at McGill University, he was described by the State Department as someone who 'demonstrated unusual qualities of constructive leadership'. Equally at home in French and English and skilled as a civil servant, Humphrey became an important link between English- and French-speaking cultural perspectives, between scholars and pragmatists, between politicians and civil servants. He carried the main responsibility for gathering and analysing the background documents that informed the Commission's work. These he assembled in a 408-page 'Documented Outline' which

became the working document for the Commission.¹¹ Following extended service at the United Nations, Humphrey returned to McGill and continued his distinguished human rights work in Canada and around the world. He wrote widely on human rights matters generally and the Universal Declaration in particular, including a memoir of his United Nations human rights work published in 1984.¹²

NON-GOVERNMENTAL ORGANIZATIONS (NGOs)

This unusually talented and imaginative cast of characters worked in a close relationship with many representatives of non-governmental organizations. The institutionalization of NGO involvement was one of the remarkable innovations of the new United Nations system. Human rights work became the focus of some of the most extensive manifestations of that involvement. Individuals and organizations submitted drafts and comments to the Commission, and representatives of some NGOs regularly attended and even participated in Commission sessions, including sessions of its Drafting Committee. In this, they were continuing a tradition established in the drafting of the United Nations Charter. The most active NGOs were based in the United States, which seemed to reflect both the geographical realities of headquarters location and the involvement of these same NGOs during Charter-drafting. We will consider the contributions of some of these groups later. For now it will suffice to introduce them briefly.

The American Law Institute was responsible for the preparation of an important draft which was embraced and pressed by the Government of Panama whose foreign minister, Alfredo Alfaro, had been among its authors. Other significant drafts and comments were submitted by the American Federation of Labor, the Commission to Study the Organization of Peace of the American Association for the United Nations, the American Jewish Committee, the Federal Council of Churches, the Women's Trade Union League, the American Bar Association, etc. While United States NGOs predominated, communications were also received from some international NGOs including the Inter-American Bar Association, the International League for Human Rights, and NGOs not specifically recognized by the United Nations including peace groups, lawyers' groups and church groups, along with

11. United Nations, Economic and Social Council, Division of Human Rights, *Documented Outline*, UN Doc. E/CN.4/AC.1/3/Add.1, 2 June 1947, in Box 4594, ER Papers.

12. Humphrey, *Human Rights and the United Nations*, op. cit. Substantial excerpts from this book were also published in John P. Humphrey, 'Memoirs of John P. Humphrey: The First Director of the United Nations Division of Human Rights', *Human Rights Quarterly*, 5:4 (November 1983), pp. 387-439.

individuals from the United States, the United Kingdom, Germany, Canada, Australia, Argentina, Denmark, France and Palestine.¹³

The range of backgrounds and interests among the Commission members, the staff and the NGOs working with them undoubtedly deepened and broadened the perspective which informed the deliberations leading to the Declaration. But it also became a point of criticism among those more narrowly concerned with legal and political questions. For example, Frank Holman, President of the American Bar Association in 1948/49, who was to become a leading contemporary American critic of the international human rights effort, was convinced that United Nations human rights work should be firmly rooted in Anglo-American legal traditions. He charged the best-known English-speaking representatives, Mrs Roosevelt and Colonel Hogdson, along with sometime British representative Charles Dukes, a trade unionist, with insufficient legal background, and attacked other representatives, especially Soviet and East European, as too alien to the Anglo-American tradition.¹⁴

THE CONTEXT

This remarkable cast did not suddenly simply appear on the world stage to write an international bill of rights. They came together in a specific context – a context which provided the mandate for the work they were about to do. That context included two salient features – the global reaction to the widespread and horrendous violations of the most basic human rights which had characterized the Second World War and the hope and authority with which the United Nations had been invested at its inception.

REVULSION AT HUMAN RIGHTS VIOLATIONS

Except for the limited precedents of the International Labour Organisation and the not very satisfying efforts to protect minorities through treaties sponsored by the League of Nations, the standard assumption of international relations before the Second World War was that the treatment of citizens by their own governments, however offensive it might be, was *not* properly the concern of other governments or of international organizations.

13. Many of these communications can be found in File No. 605-5-1-2-3, Central Registry, 1946/47, RAG-1/:73, United Nations Archives, New York.

14. Frank E. Holman, 'International Proposals Affecting So-Called Human Rights', *Law and Contemporary Problems*, 14:3 (Summer 1949), pp. 479–80.

The bestial behaviour of fascist regimes on the eve of and during the Second World War, however, so offended the global conscience that statesmen and citizens alike began to search for international protection for some basic standard of human dignity and worth.¹⁵ As John Humphrey noted, the Nazi programme made people around the globe realize that the violation of human rights within a country could have important effects in neighbouring countries and eventually around the world, that 'the denial by Germany of the rights of Germans was part of a diabolical plan to usurp the rights of men and women everywhere' and that human rights were, therefore, intimately linked to international peace and security. The Second World War was widely viewed as 'a war for human rights'.¹⁶

As a result it seemed almost as natural as it was unprecedented for world leaders to include references to human rights when they articulated their war aims. The American President, Franklin D. Roosevelt, was among the first to do so in a 6 January 1941 address we have come to characterize as 'The Four Freedoms'. Clearly reacting to Nazi practices, Roosevelt identified those four central freedoms as freedom of speech and expression, freedom of worship, freedom from want and freedom from fear.¹⁷ The Atlantic Charter agreement between Roosevelt and the British Prime Minister Winston Churchill in August 1941 also contained references to international human rights obligations,¹⁸ and the Allied United Nations Declaration of 1942 broadened these commitments.¹⁹ By 1942, human rights had become an integral component of the military struggle against fascism. What remained was to work out and develop international methods for protecting human rights.

THE UNITED NATIONS HUMAN RIGHTS MANDATE

In this context of analysis and commitment, the major Allied powers began their preparation for a post-war general international organization to keep the peace and offer some sort

15. Recent scholarship has substantially enlarged our understanding of the links between the Second World War and the Universal Declaration. See Jan Herman Burgers, 'The Road to San Francisco: The Revival of the Human Rights Idea in the Twentieth Century', *Human Rights Quarterly*, 14:4 (November 1992), pp. 447–77; Morsink, 'World War II . . .', op. cit.; and Johnson, 'The Contributions of Eleanor and Franklin Roosevelt . . .', op. cit.

16. Humphrey, 'International Protection of Human Rights', op. cit., pp. 15–16.

17. *The Public Papers and Addresses of Franklin D. Roosevelt: War – And Aid to Democracies, 1940* (New York: Macmillan, 1941), pp. 663–72.

18. *The Public Papers and Addresses of Franklin D. Roosevelt: The Call to Battle Stations, 1941* (New York: Harper & Bros., 1950), pp. 314–15.

19. *The Public Papers and Addresses of Franklin D. Roosevelt: Humanity on the Defensive, 1942* (New York: Harper & Bros., 1950), pp. 3–5.

of protection for basic human rights. The major focus of their effort was the maintenance of international peace and security – to protect future generations, in the words of the United Nations Charter, from ‘the scourge of war’. Their attention to human rights was secondary, almost tangential – but real none the less – because Allied war aims had so often been cast in human rights terms. The United States, in particular, following President Roosevelt’s lead, was determined that global human rights should be incorporated into the Charter. Before the process was over, American leaders would find themselves caught between their British and Soviet allies, on the one hand, who were less keen on international human rights protections, and the representatives of smaller States and their own NGO consultants, on the other hand, who pressed for more extensive, precise and specific commitments in this area.

From the beginning, American NGOs had prodded the State Department to take human rights very seriously indeed as it worked to develop a charter for a new international organization. Members of the State Department’s Planning Group were frequent participants in the deliberations of groups such as the American Law Institute and the Commission to Study the Organization of Peace.²⁰ On the other hand, the United States Government was constantly cautioned by such important figures as Senator Arthur H. Vandenberg of Michigan, Senior Republican on the Foreign Relations Committee, to resist the temptation to do too much in the way of enforceable policies in the human rights area, where he realized cultural differences were likely to loom larger as time went on.²¹ To an administration determined not to repeat with the United Nations Charter President Wilson’s failure to secure Senate approval of the League of Nations Covenant, Senator Vandenberg’s views demanded careful attention.

The initial predisposition within the American Planning Group was to incorporate an international bill of rights into – or add it as a simultaneous supplement to – the charter creating a new international organization. Indeed, early planning groups actually drafted a version of a bill of rights giving traditional American emphasis to familiar civil and political rights and wrestling rather inconclusively with economic rights and enforcement measures. Difficulties of substance and language revealed in these discussions coupled

20. A good summary of this activity may be found in Alice M. McDiarmid, ‘The Charter and the Promotion of Human Rights’, *US Department of State Bulletin*, (10 February 1946), pp. 210–12.

21. See L. K. Hyde, Jr, *The United States and the United Nations: Promoting the Public Welfare – Examples of American Cooperation, 1945–1955* (New York: Manhattan Publishing Co. for the Carnegie Endowment for International Peace, 1960), pp. 38, 159.

with the sense of urgency attendant upon the whole Charter-drafting enterprise finally led American officials to conclude that adoption of a formal bill of rights would have to follow rather than accompany Charter adoption, as rather the American Bill of Rights had followed the adoption of the United States Constitution, an analogy made by the United States Secretary of State himself.²² They concluded that only a brief reference to human rights should be incorporated into the Charter itself.

Even this modest approach provoked objections from the Soviet Union and the United Kingdom. As the Allies worked out their joint proposals at Dumbarton Oaks, however, the United States delegation succeeded in including a reference to the promotion of human rights as a way of creating conditions of stability and well-being necessary to peaceful and friendly relations among nations.²³

Even before the Dumbarton Oaks Proposals could be considered at the San Francisco Conference on International Organization in May 1945, the United States had clear evidence that other states and NGOs had a somewhat different set of priorities for the proposed international organization, namely, greater emphasis on social and economic affairs in general and human rights in particular. A major demonstration of differing views came during the Mexico City Conference of American States in February and March 1945. There the United States found Latin American countries insistent that a higher priority be attached to human rights and that the proposed Economic and Social Council (under whose purview human rights would primarily fall) should be elevated to one of the primary organs of the United Nations.²⁴

At San Francisco, NGO consultants added their voices to demands that human rights commitments be made more prominent, more precise and more extensive in the Charter. The American Secretary of State, Edward Stettinius, who also served as President of the San Francisco Conference, paid tribute to the effectiveness of the NGOs on human rights

22. See 'Report to the President on the Results of the San Francisco Conference, by the Chairman of the United States Delegation, the Secretary of State, June 26, 1945', in United States, Congress, Senate, Committee on Foreign Relations, *Hearings on the Charter of the United Nations*, 79th Cong., 1st Sess., 9–13 July 1945 (Washington, D.C.: US Government Printing Office, 1945), p. 108.

23. These developments are summarized in the definitive study of the United States' role in the creation of the United Nations Charter: Ruth B. Russell, *A History of the United Nations Charter: The Role of the United States, 1940-1945* (Washington, D.C.: Brookings Institution, 1958), pp. 323–9, 423–4.

24. *Ibid.*, pp. 568–9.

issues when he submitted his report on the Conference to President Truman.²⁵ Their pressure persuaded the sponsoring powers – the United States, the United Kingdom, the Soviet Union and China – to propose a series of amendments to their own Dumbarton Oaks Proposals, amendments designed to upgrade ECOSOC and enhance the commitment to human rights.²⁶

Several Latin American countries joined in suggesting that the human rights provisions of the Charter be strengthened. Their efforts reflected, in part, an emphasis that had emerged from the Inter-American Conference in Mexico. That conference had called for the development of a Declaration of the International Rights and Duties of Man by the Inter-American Juridical Committee. Chile and Cuba both tried to introduce similar mandates at San Francisco and Panama urged that a Declaration of Essential Human Rights, which had been drafted by a multinational committee under the auspices of the American Law Institute, be attached to or incorporated into the Charter. None of these suggestions prevailed, but issues raised by them were discussed again during the drafting of the Universal Declaration.²⁷

The outcome of this effort was a Charter with no fewer than seven references to human rights, references which were to serve as a mandate for the Commission on Human Rights as it embarked on its quest for an international bill of rights. The Preamble of the Charter asserts a determination by the ‘Peoples of the United Nations . . . to reaffirm faith in fundamental human rights, in the dignity and worth of the human person . . .’. One of the important additions made at the San Francisco Conference was the inclusion among the purposes of the United Nations: ‘To achieve international co-operation . . . in promoting

25. See ‘Report to the President . . .’, op. cit., p. 105. Stettinius said: ‘In no part of the deliberations of the Conference was greater interest displayed by the group of American consultants, representing forty-two leading American organizations and groups concerned with American foreign relations, than in the opportunity accorded to extend the enjoyment of human rights and basic freedoms to all peoples. They warmly endorsed the additions to the statement of objectives. Beyond this they urged that the Charter itself should provide for adequate machinery to further these objectives. A direct outgrowth of discussions between the United States Delegation and the consultants was the proposal of the United States Delegation, in which it was joined by the other Sponsoring Powers, that the Charter (Article 68) be amended to provide for a commission on human rights. . . .’

26. See Humphrey, ‘International Protection of Human Rights’, op. cit., p. 16.

27. See James Frederick Green, *The United Nations and Human Rights* (Washington, D.C.: Brookings Institution, 1956), p. 15. The declaration mandated by the Mexico City Conference was completed before the Commission on Human Rights finished its work and became an important factor in the final framing of the Universal Declaration.

and encouraging respect for human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion . . . ' (Article 1). Similar, although slightly varied language appears in the description of the function and powers of the General Assembly (Article 13), ECOSOC (Article 62), and the Trusteeship System (Article 76). In Articles 55 and 56, members pledge co-operative effort to achieve, *inter alia*, 'universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion'. And, in what became probably the most important of the San Francisco amendments, adopted largely at the prodding of the United States NGOs, Article 68 mandates that ECOSOC, now defined as one of the main organs of the United Nations, set up commissions 'in economic and social fields and for the promotion of human rights'.²⁸

Although an extended analysis of the Charter provisions on human rights is beyond the scope of this chapter, a couple of important points should be noted. First, the language used is consistently that of promoting and encouraging human rights rather than protecting or guaranteeing. More compelling language had been considered – indeed, Panama, among others, had pressed vigorously for stronger wording – but rejected as subject to the possible interpretation that it carried a legally enforceable obligation.²⁹ As we shall see, this issue was to surface again during the drafting of the Universal Declaration.

Second, it is important to note that the domestic jurisdiction limitation on United Nations authority was directly related in its inception to human rights issues. In an attempt to meet Soviet and British objections to United States human rights proposals at Dumbarton Oaks, the American group had suggested the following compromise wording:

The International Organization should refrain from intervention in the internal affairs of any State, it being the responsibility of each State to see that conditions prevailing within its jurisdiction do not endanger international peace and security and, to this end, to respect the human rights and fundamental freedoms of all its people and to govern in accordance with principles of humanity and justice.³⁰

Although the direct link between human rights and domestic jurisdiction clauses was eventually eliminated from the Charter in favour of a more general and, some would

28. Ibid., pp. 15–23.

29. Russell, *op. cit.*, pp. 780–1.

30. Quoted in *ibid.*, p. 423. See also her discussion on pp. 423, 463–4.

argue, sweeping domestic jurisdiction limitation (Article 2(7)), the connection would surface again while the Universal Declaration was being drafted and, indeed, remains one of the continuing points of dispute some fifty years later. Even at the time, the difficulty of reconciling the apparent conflict between the Charter's mandate to promote human rights and its prohibition on interference in the internal affairs of Member States occasioned a good deal of discussion. René Cassin pointed to the exception to the non-intervention rule which was explicitly written into the Charter, namely that threats to international peace and security under Chapter VII could not be shielded by claims of domestic jurisdiction. When 'repeated or systematic violation of human rights by a given State within its borders results in a threat to international peace (as was the case of the Third Reich after 1933)', he argued, 'the Security Council has a right to intervene and a duty to act'.³¹ The Indian representative on the Commission on Human Rights, Mrs Hansa Mehta, offered an even more expansive interpretation. Referring to the Indian concern over South African discrimination against persons of Indian origin, she noted:

The Charter of the United Nations specifically mentions the promotion of human rights. . . . Where these rights are flagrantly violated it is the duty of the United Nations to step in for their protection. If a State accepts a policy of discrimination on the ground of race or colour that State must explain and justify its policy before the bar of the world. It cannot excuse itself by saying that it is a matter of domestic policy. . . . If human beings are to be shut out from the world and not even allowed to complain against their State on the plea that such complaints are domestic concerns, then the United Nations will fail in their duty to protect and promote the human rights to which they are bound by the Charter.

In accepting an international organization like the United Nations . . . the Member States agreed to surrender a part of their sovereignty.³²

Interpretations such as these disturbed not only the South Africans, who, as we shall see, eventually demonstrated their concern by refusing to vote for the Declaration, but also the Soviets and a number of Americans. In fact, one of the main reasons for the long-lived opposition to the international human rights effort by the American Bar Association was the fear that the Declaration and the Covenants which were to follow constituted a significant breach of the sovereignty guaranteed by Article 2(7).³³

31. René Cassin, 'The United Nations and Human Rights', *Free World*, No. 12 (September 1946), p. 16.

32. Hansa Mehta, 'International Bill of Human Rights', *The Aryan Path*, 21:3 (March 1950), p. 103.

33. See, for example, the article by the then President of the American Bar Association, Frank E. Holman, 'International Proposals Affecting So-called Human Rights', *Law and Contemporary Problems*, 14:3 (Summer 1949), pp. 479–89.

DRAFTING THE DECLARATION

ECOSOC held its first meeting in February 1946. It decided to begin to fulfil its human rights mandate by authorizing a preparatory group to be called the Nuclear Commission on Human Rights. The frame of reference given to the Nuclear Commission included submitting reports and proposals on an international bill of rights. That commission met in April/May 1946. It was composed of nine members elected by ECOSOC in their personal capacities rather than as representatives of their governments.³⁴ Mrs Roosevelt was elected Chair. Much of the work of the Nuclear Commission concerned establishing the full Commission and setting its terms of reference and pattern of work. It made its only report to ECOSOC, which responded in June 1946 by electing eighteen members. The Commission held its first session in January and February 1947. Its members, although chosen after technical consultation with the Secretary General in order to ensure balance and expertise, were instructed representatives of their governments.³⁵ Mrs Roosevelt was elected Chair of the full regular Commission as well, Chang was elected Vice-Chair and Malik was named Rapporteur.

DEFINING AN INTERNATIONAL BILL OF RIGHTS

In the Nuclear Commission and in the full Commission, members had first to determine what they were going to do. Both the Charter mandate and the terms of reference voted

34. At one point there had been an intent to specify in the Charter that the members of ECOSOC Commissions should be 'experts' in the appropriate fields rather than instructed delegates of their respective governments, but this had been abandoned in response to the argument that only official governmental representatives would ensure that recommendations could be implemented. So the Commission on Human Rights, among others, came to be staffed by instructed governmental representatives. See Russell, *op. cit.*, p. 794. See also James P. Hendrick, 'An International Bill of Human Rights', *US Department of State Bulletin* (15 February 1948), pp. 196–7.

35. Researchers who work on Eleanor Roosevelt's papers at Hyde Park can get a feel for the way in which instruction operated. Scattered through her files from the Commission on Human Rights are the handwritten notes passed to her by the Foreign Service Officers assigned to her by the State Department, usually James P. Hendrick. They say, 'Vote Yes here', or 'US Govt opposes this', or 'You're on your own here', or 'Use your own judgement'. Unfortunately for the researcher, there is usually no indication of the nature of the issue on which the instruction was being given. Hendrick comments that he discovered early on that these notes were more effective than the customary method of whispering in her ear from his usual position behind her. Although he doesn't say so, this was probably because Mrs Roosevelt was partially deaf. See handwritten explanatory note added by Hendrick to a carbon of a letter he wrote to Mrs Roosevelt on 29 March 1950, in James P. Hendrick Papers, Harry S. Truman Library, Independence, Mo., xerox copy in James P. Hendrick File, Small Collections, Roosevelt Library, Hyde Park, N.Y. See also Sandifer interview, pp. 14–18, where he discusses the role of the adviser in the American United Nations delegation.

by ECOSOC were broad and would have to be ordered in some way. An initial central question involved the very meaning of the term 'international bill of rights'. As members looked at national precedents from the French Declaration of the Rights of Man and the Citizen and the United States Bill of Rights, and the drafts submitted to them by various governments and NGOs, there seemed to be three possible approaches which could be employed either jointly or separately. One model would involve a simple declaration of goals or standards which, although lacking legal precision and standing, would have moral force as a pronouncement by the global community. A second model would involve a covenant or covenants, legally binding on States accepting them as treaties under international law. A third approach would be to focus on implementation by establishing international machinery to protect human rights.

From the start it seemed clear that the question of implementation would be the thorniest because it raised the issue of domestic jurisdiction in the most direct way. But the other two models raised questions of their own, which were resolved more by the evolution of events than by formal decision and which were debated through all the Commission and ECOSOC sessions until the adoption of the Universal Declaration by the General Assembly in December 1948.

One group argued that priority should be given to work on a general declaration since the people of the world expected prompt international action by the United Nations. A declaration would, presumably, be quicker of adoption because it would require neither legal precision in language nor the time-consuming process of national ratifications. Moreover, they argued, such a declaration would have enormous authority as the first statement of a human rights consensus by representatives of most of the countries of the world.

Against this, others advocated priority for work on a covenant. They argued that simple declarations were inadequate because they were unenforceable through either national or international processes. Global expectations, they argued, pressed for legally effective protections; a simple declaration might be little more than a cruel hoax. Moreover, some argued that global pressures for effective action might be at least partially dissipated by a widely publicized declaration, thereby making the adoption of binding covenants more difficult.³⁶

36. See, for example, the arguments of Mr Newlands, representative from New Zealand, in the Third Committee debates, United Nations, General Assembly, Official Records of the Third Session of the General

Without resolving this controversy, the Nuclear Commission signalled its preference for an international bill of rights which could be drafted rather rapidly.³⁷ But ECOSOC refused to choose among these alternatives, continuing to instruct the Commission to work on the declaration and the binding covenants along with the implementation procedures which, together, came to be referred to as the International Bill of Human Rights.

THE DRAFTING PROCESS

The Commission created a drafting committee composed of Malik, Chang and Mrs Roosevelt assisted by Humphrey, later enlarged by adding representatives of Australia, Chile, France, the Soviet Union and the United Kingdom. The Drafting Committee met initially on 9 June 1947. It worked with the 408-page 'Documented Outline' prepared by Humphrey and his staff.³⁸ The 'Documented Outline' contained a draft bill of rights prepared by the Secretariat,³⁹ annotated with references to: (a) observations made by members of the Commission on Human Rights at its first session in January-February 1947; (b) drafts and proposals submitted by the governments of Chile, Cuba, Panama, India and the United States; (c) provisions in the national constitutions of some fifty-five countries; and (d) draft declarations submitted by certain NGOs. The Commission on Human Rights also had before it a British draft convention and a précis of communications received from various NGOs.⁴⁰

Assembly, Part I, Social, Humanitarian and Cultural Questions, Third Committee, *Summary Records of Meetings, 21 September–8 December, 1948* (Lake Success, N.Y.: 1948), p. 34 (hereafter Third Committee, *Summary Records*).

37. UN Doc. E/38 Rev. 1, 21 May 1946, Commission on Human Rights, Report of the Commission on Human Rights to the Second Session of the Economic and Social Council, p. 6.

38. UN Doc. E/CN.4/AC/1/3/Add.1, *Documented Outline*.

39. In preparing the draft, Humphrey had drawn on the many earlier statements of human rights and drafts submitted by governments and NGOs. His description of the process is found in Humphrey, *Human Rights and the United Nations*, op. cit., pp. 31–2, in which he notes, 'The best of the texts from which I worked was the one prepared by the American Law Institute, and I borrowed freely from it.' His handwritten version of the Secretariat draft is among his papers deposited with the McGill University Library, Montreal, Canada. Responding to questions at the first session of the Drafting Committee, Humphrey asserted that no particular philosophy had guided the Secretariat draft, which simply attempted to 'include all the rights mentioned in various national constitutions and in various suggestions for an International Bill of Human Rights'. UN Doc. E/CN.4/AC.1/SR/1, 10 June 1947, Commission on Human Rights, Drafting Committee, First Session, *Summary Record of the First Meeting, 9 June 1947*, p. 5.

40. *United Nations Press Release*, 9 June 1947, in Box 4587, ER Papers.

Working with this material, the Drafting Committee debated the alternatives of a morally compelling declaration or a legally binding convention or treaty. By this time, American delegates were beginning to worry about problems which might arise if they had to submit a binding Covenant in the form of a treaty, with a text reflecting diplomatic compromise, for the advice and consent of the United States Senate.⁴¹ This growing concern reinforced the United States preference for the declaration approach, a predisposition already evident in Mrs Roosevelt's desire to accomplish something tangible as soon as possible. The British, however, took a different view, believing that a somewhat vague declaration of goals would have little value and preferring, as they had in League of Nations days, a treaty binding on ratifying States and carrying precise obligations.⁴²

In the end the Commission agreed to continue work on both but in fact devoted most of its attention to the declaration. The Drafting Committee appointed a temporary working group composed of Cassin, Malik, Wilson of the United Kingdom and Mrs Roosevelt, and that group in turn asked Cassin to come up with a draft declaration working from the Secretariat Outline. This he did over a long weekend in June. His draft, modified slightly by the other members of the temporary working committee, became the text from which the full Drafting Committee worked to prepare the document it eventually submitted to the Commission.⁴³ The Drafting Committee devoted only brief attention to the draft convention submitted by the United Kingdom. In the end, it forwarded to the Commission a slightly altered and rearranged version of the United Kingdom draft as a report rather than a recommended draft.⁴⁴ As Eleanor Roosevelt noted, the Declaration was clearly the more carefully drafted and fully considered of the two.⁴⁵

41. See Memorandum of Conversation between Mrs Roosevelt, Senator Austin and Messrs Ross, Winslow and Hendrick, 3 July 1947, in Box 4587, ER Papers.

42. Green, *op. cit.*, p. 26.

43. See UN Doc. E/CN.4/21, United Nations, Economic and Social Council, Commission on Human Rights, Drafting Committee on an International Bill of Human Rights, First Session, Report of the Drafting Committee to the Commission on Human Rights (1 July 1947), pp. 3–4. The Cassin draft, the original of which is in the United Nations Archives in New York, has become somewhat controversial. It has been used to support a claim that Cassin was the 'father of the Universal Declaration'. At the other extreme, it has been criticized as little more than an alternative French translation of various other outlines. Humphrey discusses this matter at some length in his book cited above, pp. 42–5.

44. UN Doc. E/CN.4/21, Report of the Drafting Committee, *op. cit.*, pp. 64–7.

45. See Memorandum of Conversation between Mrs Roosevelt, Senator Austin and Messrs Ross, Winslow and Hendrick, 3 July 1947, in Box 4587, ER Papers.

Implementation questions received even less attention. In fact, only one meeting was devoted to the issue, and the Drafting Committee reported to the Commission only the rather inchoate observations made by individual members during that meeting.⁴⁶

By the time the full Commission reassembled for its second session in December 1947, it had before it three reports: a brief draft declaration of general principles favoured by the United States, a binding covenant essentially as submitted by the United Kingdom and almost random comments on measures for implementation.⁴⁷

At its session that December, the Commission continued to work on all three fronts – declaration, convention (now called covenant) and measures for implementation – by dividing into three working groups. The session lasted only two weeks, but the Commission made a good deal of progress refining the declaration. By the end of the session, it had a fairly finished draft ready for submission to governments for comment. Although it remained in less finished form (it was still essentially the United Kingdom draft), the draft covenant was also submitted to governments for comment.

At its third session in June 1948, the Commission considered comments received from governments. It turned out that such comments were rather few in number and rather tentative in substance.⁴⁸ Shortness of time and the cumbersome nature of most governmental bureaucracies combined with the low priority many governments gave to human rights issues to limit the number and completeness of responses. Nevertheless, the Commission revised the draft and recommended it to ECOSOC, which, after a brief discussion, recommended it to the General Assembly.

When the General Assembly met in Paris in September 1948, it had before it the draft declaration as approved by the Commission on Human Rights some three months earlier. The draft declaration was referred to the Third Committee (Social, Humanitarian and Cultural) of which Malik was the Chair and where Mrs Roosevelt represented the United States. Cassin and a number of other Commission members also represented their countries on the Third Committee.

46. UN Doc. E/CN.4/21, Report of the Drafting Committee, op. cit., pp. 4–5.

47. Green, op. cit. p. 25.

48. See UN Doc. E/CN.4/82/Add.4, United Nations, Economic and Social Council, Commission on Human Rights, *Comments from Governments on the Draft International Declaration of Human Rights, Draft International Covenant on Human Rights and Measures for Implementation*, 27 April 1948.

The careful work of the Commission did not prevent the Third Committee from debating the document at length. In fact, it held eighty-five meetings on the declaration plus another twenty meetings of its various subcommittees.⁴⁹ Although many issues already debated in the Commission were reargued and numerous amendments were offered, voted upon and, in several cases, adopted, the document which finally emerged from the Third Committee on 6 December was strikingly similar in style and wording to the Commission draft.

After a dramatic debate, although brief when compared with that of the Third Committee, and only one successful amendment, the General Assembly adopted the Universal Declaration of Human Rights on 10 December 1948, by a vote of 48 to 0 with 8 abstentions. The abstentions came from the nations of the 'Communist bloc' plus South Africa and Saudi Arabia. The reasons for these abstentions will become clear later. Mrs Roosevelt, in particular, had worked especially hard to secure unanimity, personally lobbying many wavering delegates,⁵⁰ and, after the vote, the delegates paid her the highly unusual tribute of a standing ovation.

49. See Third Committee, *Summary Records*. See also Malik's summary of the Third Committee's work, in United Nations, Official Records of the Third Session of the General Assembly, Part I, Plenary Meetings of the General Assembly, *Summary Records of Meetings, 21 September–12 December 1948* (Paris: Palais de Chaillot), p. 860 (hereafter, General Assembly, *Summary Records*).

50. Porter McKeever, who worked with her at the United States Mission to the United Nations in those years, tells the interesting story of Mrs Roosevelt's discovery that the Pakistani representative to the Third Committee intended to vote against the Declaration because she believed the provision for a right to change one's religion was contrary to the dictates of Islam – a view which, in fact, led the Saudi Arabian delegate to abstain in the final vote. Mrs Roosevelt raised the question with Sir Mohammed Zafrullah Khan, the Chair of the Pakistani delegation, who asserted that, although that view was technically correct, the Koran also taught that hypocrisy was a more serious sin; persons should therefore not profess a religion in which they did not believe. Pakistan voted for the Declaration. See McKeever interview, 24 May 1979, Eleanor Roosevelt Oral History Project. Sir Mohammed Zafrullah Khan quoted the Koran in the General Assembly debate: 'Let he who chooses to believe, believe, and he who chooses to disbelieve, disbelieve', and he told the delegates, 'it formally condemned not lack of faith but hypocrisy'. General Assembly, *Summary Records*, p. 890. See also Joseph P. Lash, *Eleanor: The Years Alone* (London: André Deutsch, 1973), p. 79. Herbert Evatt, the Australian President of the General Assembly, singled out Mrs Roosevelt for particular praise noting it was 'particularly fitting that there should be present, on that occasion, the person who, with the assistance of many others, has played a leading role in that work, the person who had raised to even greater heights even so great a name: Mrs Roosevelt, the representative of the United States of America'. General Assembly, *Summary Records*, p. 934.

DEFINING HUMAN RIGHTS

When John P. Humphrey and his staff in the Secretariat set about fulfilling their instruction to prepare a documented outline from which the Commission on Human Rights could work, he and the Commission inaugurated an intellectual discussion of global dimensions which continues to this day. There had been discussions of the content of human rights before. Indeed, wars had been fought to establish a particular notion of human rights. But these earlier debates had been among people who shared a common culture, held common values and lived in some degree of geographic proximity to one another. They looked for different strands in their common culture to support varied emphases in human rights. What Humphrey and the Commission tried to do was vastly different and far more complex. They sought a common conception of human rights that would command acceptance despite huge differences in culture, political systems, geographic location and economic circumstance. In fact, some considered it the main virtue of the Universal Declaration that it answered affirmatively and positively the fundamental question of whether it was possible to agree on a universal standard in the human rights area.⁵¹ Herbert Evatt, the Australian President of the General Assembly at the time, expressed such a view when he said: 'For the first time in history, the international community as a whole has spoken its collective mind about the fundamental freedoms and rights for which individual nations have fought and suffered and died through the centuries.'⁵² Finding that collective mind and reaching that agreement, however, were not easy tasks.

THE ASSUMPTION OF CONSENSUS

Many of those involved, especially those whose background was in Western Europe or the United States, began with the assumption that human rights were clear-cut concepts on which there was widespread agreement. Indeed, there was relatively little discussion of the substantive content of human rights during the United States Government's preparatory work for the United Nations Charter. It was quickly agreed that human rights

51. See, for example, a draft memorandum titled 'Study on Human Rights Covenants by Consultative Council of Jewish Organizations' in Files of Oscar Schachter, Director, General Legal Division, United Nations, Box 52, United Nations Archives, New York. See also the comments of René Cassin in Third Committee, *Summary Records*, p. 62.

52. Herbert V. Evatt, 'The World's Most Powerful Influence for Peace', *United Nations Bulletin* (1 January 1949), p. 2. See also the comments of the British delegate in the General Assembly debate, cited in Hersch Lauterpacht, 'The Universal Declaration of Human Rights', *British Year Book of International Law 1948* (London: Oxford University Press, 1948), p. 371.

referred to such familiar concepts as political liberties and judicial guarantees subsumed later under the now more familiar phrase civil and political rights. Economic security rights occasioned some discussion, growing out of Franklin D. Roosevelt's formulation of freedom from want as one of the 'Four Freedoms' back in 1941, and there was some brief debate over a proposed right to education because it touched the American belief in the separation of Church and State. Most of the human rights discussion at that time, however, revolved around questions of international implementation rather than substantive content.⁵³

Another indication of assumed agreement may be found in an exercise conducted in December 1943 by the Universities Committee on Post-War International Problems, in cooperation with the World Peace Foundation. It assembled groups of faculty from forty-six colleges and universities in the United States to discuss an analysis of post-war international human rights prepared by Professor Quincy Wright, the distinguished political scientist from the University of Chicago. The results of those discussion groups were analysed by Charles A. Baylis in the *Public Opinion Quarterly*. Baylis found a consensus on the substantive character of human rights, a consensus which largely mirrored Western concepts of civil and political rights. While Baylis reported these informed citizens as recognizing distinctions between various types of rights such as universal and relative, or negative (essentially civil and political) and positive (essentially economic) rights, distinctions which were to become far more familiar later on, he found a consensus that only those familiar to Western liberal thought could command enough support for immediate international action. Others would require much longer to achieve; immediate international implementation in those areas would have to be restricted to programmes of education and propaganda.⁵⁴

One of the few attempts prior to the work of the United Nations Commission on Human Rights to develop a broader consensus on content was that undertaken under the auspices of the American Law Institute. In 1942, the Institute appointed a committee of lawyers and political scientists from several different countries representing many different cultural and philosophical systems. It included people from Germany, France, Italy, Poland, India, the United Kingdom, Spain, China, Canada and Panama, as well as the United States. There were also persons familiar with Syrian, Lebanese, Chinese and Soviet thought and

53. Russell, *op. cit.*, pp. 324–6.

54. Charles A. Baylis, 'Towards an International Bill of Rights', *The Public Opinion Quarterly*, 8:2 (Summer 1944), pp. 244–53.

experts on international law. The Committee, chaired by William Draper Lewis, Director of the American Law Institute, worked for nearly two years to produce a 'Statement of Essential Human Rights', the statement Humphrey described as the best of those he had to work with when developing his draft.⁵⁵ Although the Institute decided it should not formally champion the draft, it was taken up by the Panamanian Government, whose former president had been a member of the Committee. Panama tried unsuccessfully at San Francisco to have this draft incorporated into the Charter and again to have it adopted at the first session of the General Assembly.

The draft consists of eighteen short articles enunciating familiar freedoms of religion, opinion, speech, assembly and association, freedom from wrongful interference, arbitrary detention, discrimination on grounds of race, religion, sex and from retroactive laws, as well as rights to fair trial, ownership of property and participation in government. It also includes economic rights such as rights to education, work, reasonable conditions of work, food and housing and social security. Article 18 incorporates a very interesting notion that these rights are limited by the rights of others and the 'just requirements of the democratic State'.⁵⁶ A Preamble adorns a longer version which includes commentaries on each article. It is worth quoting because it reflects certain philosophical assumptions which were to become issues during the various debates in the Commission on Human Rights:

Upon the freedom of the individual depends the welfare of the people, the safety of the State and the peace of the world.

In society complete freedom cannot be attained; the liberties of the one are limited by the liberties of others, and the preservation of freedom requires the fulfilment by individuals of their duties as members of society.

The function of the State is to promote conditions under which the individual can be most free.

To express those freedoms to which every human being is entitled and to assure that all shall live under a government of the people, by the people, for the people, this declaration is made.

There was some disagreement within the Committee appointed by the American Law Institute and it was unable to achieve complete consensus, a fact which gave the Institute

55. Humphrey, *Human Rights and the United Nations*, op. cit., p. 43.

56. The text of the Statement was published and distributed in 1945. It is printed in UN Doc. A/148, 24 October 1946, *Statement of Essential Human Rights Presented by the Delegation of Panama*, and also in *The Annals*, Vol. 243 (January 1946), pp. 18–26.

itself pause and contributed to its decision to refrain from putting the draft forward with Institute endorsement.⁵⁷

FUNDAMENTAL DIFFERENCES OF CULTURE AND VALUES

By the time the United Nations Commission on Human Rights was organized, the belief in a consensus based largely on culturally specific assumptions remained strong, although the effort by the American Law Institute Committee had begun to reveal some of the problems of realizing such a consensus. Early on in the deliberations of the Commission, substantive differences began to emerge more clearly. In particular, the Commission found itself debating the basis on which rights could be claimed, the competing values of Marxist and liberal theories, and the contrasting perspectives of Western and non-Western legal and philosophical traditions.

Natural law versus positivism

One of the most persistent problems in human rights discourse involves the basis on which rights can be claimed. Western notions of rights grew out of a natural law tradition that human beings had rights because they were so endowed by nature and, some said, nature's God. This was, of course, the philosophical presupposition behind the American Declaration of Independence – men are 'endowed by their Creator with certain unalienable Rights . . .' – and the French Declaration of the Rights of Man and Citizen – proclaimed 'in the presence and under the auspices of the Supreme Being. . .'. Whether one included the more explicitly religious character of this argument or not, it still involved basing rights on some supranational and extra-human phenomenon. This notion of human rights reflected one of the dominant interpretations of the appropriate grounding for international law, one which was elaborated by a bevy of eighteenth-century European philosophers cited repeatedly in the debates over the Universal Declaration.

A contrasting view of the basis for claiming rights was found in the more recent idea of positivism that rights (and, indeed, law itself) are determined by the actions and behaviour of human beings and, by extension, of States.⁵⁸ In this view, representing the triumph

57. See also American Law Institute, *Proceedings*, 32 (1943/44), pp. 32–4. The minutes of the Committee (1942–43) and other materials used by the Committee – a rich source of early ideas – may be found in DAG-18/2.1.1-1 and DAG-18/2.1.1-2, United Nations Archives, New York.

58. A brief summary of these different perspectives may be found in Michael Akehurst, *A Modern Introduction to International Law*, 6th ed. (London: Allen & Unwin, 1987), pp. 13–15.

of rationalism, States and human beings are unconstrained by extra-human law, but voluntarily and rationally enter into self-limiting behaviour in order to maximize their opportunities for national or self-fulfilment. Human rights, like international law, are discovered, therefore, by examining the limits States place on their own actions.

In the deliberations of the Commission, this fundamental philosophical disagreement was reflected in the argument over the proposal to include in the Preamble some reference to God or nature as the source of the rights proclaimed in the Declaration. The Netherlands championed this view and tried in the Third Committee debate to amend the draft declaration in this way. Even in the General Assembly debate, the Netherlands delegate, Dr J. H. van Roijen, regretted that 'man's divine origin and immortal destiny had not been mentioned in the declaration, for the fount of all those rights was the Supreme Being, who laid a great responsibility on those who claimed them. To ignore that relation was almost the same as severing a plant from its roots, or building a house and forgetting the foundation'.⁵⁹ Although the Netherlands proposal received substantial support, especially from several European countries, it was resisted by a number of others, both those which took a positivist stance and those non-Western countries which viewed natural law theories as emblematic of Western cultural values.

Liberalism versus Marxism

A second and, in some ways, more difficult and persistent conflict emerged between the representatives of Western liberalism and those of Marxist States. It was joined at three levels at least: (1) philosophical, (2) historical, and (3) practical. At the philosophical level, Marxism's notion of rights was group-based, suspicious of what it saw as the alienating and fragmenting individualism of Western liberalism. Economic access and well-being were considered essential prerequisites to effective enjoyment of political and civil rights, an ordering which reversed Western liberal priorities. Moreover, Marxists believed that human rights could only be achieved within the framework of societal needs and rights; human rights would only exist when the rights of States were ensured, for States were the main instruments for achieving human rights. Marxists believed that the State, representing society as a whole, had a special obligation to ensure the observance of rights and to ensure economic welfare, ideas upsetting to classical liberal thought as interference with freedom. Marxists viewed civil and political rights in capitalist societies

59. General Assembly, *Summary Records*, p. 874. See also Third Committee, *Summary Records*, pp. 755–6.

as nothing more than bourgeois rights, that is, rights which could be exercised, at best, by the capitalist class and which, at worst, could be used as an instrument of oppression against the working class.

At the historical level, Marxist countries argued that they had achieved a level of equality in access to economic resources which still eluded Western capitalist societies. They took pride in that achievement. They resented the Western emphasis on political and civil rights and considered it an attempt to mask inadequate performance in the area of economic equality. Representatives from Western Europe, the United States and Latin America, however, emphasized violations of civil and political rights in Marxist countries in objecting to Soviet and East European proposals regarding the Universal Declaration.

At the practical level of international politics, these conflicts of philosophy and historical interpretation were mobilized in the service of an emerging Cold War. The Western powers, especially the main Western powers, increasingly saw in human rights a major justification for the Cold War and a significant weapon with which to counter the Soviet Union. The Soviet Union came to view the human rights debate at the United Nations at least partly as a Western attack.

Rarely was this perspective made clearer than in the speech Mrs Roosevelt delivered at the Sorbonne in Paris in September 1948.⁶⁰ The speech, delivered in French, was largely written for Mrs Roosevelt by the United States Department of State. It received wide attention in Europe and was described by one American analyst as 'a Cold War speech designed to show the world that the United States, not the Soviet Union, was the real champion and exemplar of human rights and that this was what the Cold War was all about'.⁶¹ The debate was carried back into the General Assembly debates where Western delegates, including Mrs Roosevelt, attacked Soviet violations of civil and political rights, and the Soviet Union and its allies not only defended their record on these issues but attacked the United States and other Western countries for high rates of unemployment, unequal access to education and inadequate leisure for workers which, they alleged, violated rights to work, education and leisure.

60. Eleanor Roosevelt, 'The Struggle for Human Rights', *Department of State Bulletin* (10 October 1948), pp. 457–66.

61. A. Glenn Mower, Jr, *The United States, the United Nations and Human Rights: The Eleanor Roosevelt and Jimmy Carter Eras* (Westport, Conn.: Greenwood Press, 1979), p. 35.

An indication of the fundamental nature of these differences arose during the first session of the Commission in January 1947. Commenting on a draft submitted by the American Federation of Labor, the Yugoslav representative, Dr Ribnikar, argued that economic conditions in the modern era had given rise to a collective spirit which meant that the social ideal or goal was for the interests of society and the individual to be identical. Both Malik and Miss Sender, the representative of the American Federation of Labor, were quick to take issue with Dr Ribnikar. Asserting that this perspective was a recipe for tyranny, they defended the individual political and civil basis of rights.⁶² The Soviet Union was neither persuaded nor deterred; Andrei Vyshinsky, a leading Soviet international lawyer whose clash with Mrs Roosevelt on the issue of refugees in the first General Assembly session had become something of a United Nations legend, returned to the theme in the General Assembly debate on the Declaration, asserting that in the Soviet system 'The State and the individual were in harmony with each other; their interests coincided.'⁶³

During the Commission's work, these philosophical, historical and political differences created perhaps fewer difficulties than might have been anticipated. The Soviet representatives were changed rather frequently, sometimes did not participate fully in the deliberations and generally did not appear to attach very much importance to the work of the Commission. They did, however, offer both general and specific amendments to various drafts of the Declaration. With few exceptions, their recommended changes were defeated overwhelmingly by the majority of the Commission members; subsequent efforts met the same fate in both the Third Committee and the plenary session of the General Assembly.

Generally, the Soviets and their allies offered amendments designed to achieve or support several principles related to their own philosophical, historical and political perspectives. For example, in the Third Committee debate on the Commission draft in 1948, Mr Modzelewski of Poland urged that the Declaration should include the following principles: (1) that the granting of political rights is useless unless social and economic rights are guaranteed; (2) that the granting of rights should be dependent on the fulfilment of obligations; (3) that rights should be granted to all people including those in trust or non-self-governing territories; (4) that the adoption of the Declaration should not entail

62. Hendrick, 'An International Bill of Human Rights', *op. cit.*, p. 197.

63. General Assembly, *Summary Records*, p. 929.

any interference in the domestic jurisdiction of sovereign States; and (5) that freedom of speech and expression should not be extended to fascists.⁶⁴

It should not be thought that differences over the appropriateness of economic and social rights were exclusively between Marxist societies and Western liberalism. Many Western socialists and representatives of what we later have come to call Third World countries also attached high importance to incorporating some version of economic and social rights into a declaration. Indeed, in this effort, many of them took Franklin Roosevelt's idea of freedom from want as their text. The official United States position tended to be the most conservative, viewing economic and social rights as nothing more than statements of goals and aspirations, not as rights in the sense of creating claims for governmental action.⁶⁵ Marxist States tended to be the most radical, emphasizing the primacy of economic and social rights over civil and political rights and placing the rights of States at least on a level of equality with individual rights. But the issues of the appropriate emphasis on economic and social rights and the rights and responsibilities of States were argued with varied nuances and emphases by many representatives in the Commission and in the Third Committee. The argument foreshadowed important differences of emphasis which would continue to spark debate throughout the process of drafting the two major human rights covenants and beyond.

Western versus non-Western

Drafting the Universal Declaration revealed broad philosophical differences about the appropriate content of human rights. It should be noted, however, that the differences debated at that time and the perspectives which informed the final version of the Declaration were framed essentially within the European philosophical tradition. Natural law and positivist traditions as well as those of the Marxists were all firmly rooted in the evolution of European philosophy and law. Non-European traditions of law and philosophy which might suggest alternative or supplementary ideals or formulations of human rights rarely intruded into the deliberations. Even those members of the Commission who represented non-European countries were, themselves, largely educated in the European tradition, either in Europe or the United States or in the institutions established in their own

64. Third Committee, *Summary Records*, pp. 46–7. See also the summary of the comments by the Soviet representative, Mr Pavlov, in *ibid.*, pp. 57–9.

65. See, for example, Mrs Roosevelt's speech on the night the Universal Declaration was adopted. Eleanor Roosevelt, 'General Assembly Adopts Declaration of Human Rights: Statement by Mrs Franklin D. Roosevelt', *Department of State Bulletin*, 19 (19 December 1948), p. 751.

countries by representatives of European colonial powers. Although there were occasional references to relevant ideas in non-European traditions such as Confucian or Islamic thought, a European and American frame of reference dominated the deliberations from which the Universal Declaration emerged.⁶⁶

Thus, Third World perspectives, subsequently so prominent in the United Nations system, were underrepresented in the process of drafting the Universal Declaration. Of course, many of the 'new' States which joined the United Nations after the adoption of the Declaration in 1948 embraced it and, in a significant number of cases, incorporated it by reference in their own constitutions. Many regional organizations outside Europe also incorporated the Declaration by reference in various treaties and resolutions.

Moreover, many of the issues which would become central to charges that international human rights discourse reflected only Western values were in fact debated in one form or another in the process of drafting the Universal Declaration. For example, the Soviet Union, Western European socialists and several representatives of the Asian and Latin American countries emphasized the right of economic development which was later embodied in United Nations resolutions after the United Nations majority had shifted. And those voices were heard – so much so that Mrs Roosevelt could tell readers of her 'My Day' newspaper column in 1947: 'We will have to bear in mind that we are writing a bill of rights for the world and that one of the most important rights is the opportunity for development.'⁶⁷

66. For a somewhat more extended discussion of the problems of cultural and philosophical differences in defining human rights, see M. Glen Johnson 'Human Rights in Divergent Conceptual Settings: How do Ideas Influence Policy Choices?', in David Cingranelli (ed.), *Human Rights: Theory and Measurement* (London: Macmillan, 1988), pp. 41–59, especially 42–5. For a different perspective, see Jack Donnelly, 'Human Rights and Human Dignity: An Analytical Critique of Non-Western Conceptions of Human Rights', *American Political Science Review* (1982), pp. 303–16. See also Jack Donnelly, *Universal Human Rights in Theory and Practice* (Ithaca, N.Y./London: Cornell University Press, 1989) and the work of Alison Dundes Renteln, especially her 'The Unanswered Challenge of Relativism and the Consequences for Human Rights', *Human Rights Quarterly*, 7 (1985), pp. 514–40 and her 'Relativism and the Search for Human Rights', *American Anthropologist*, 90 (1988), pp. 56–72. See also Michael J. Perry, 'Are Human Rights Universal? The Relativist Challenge and Related Matters', *Human Rights Quarterly*, 19:3 (1997), pp. 461–509. Two important non-Western contributions to this discussion may be found in R. Pannikar, 'Is the Notion of Human Rights a Western Concept?' *Diogenes*, 120 (1982), pp. 75–102, and S. P. Sinha, 'Human Rights: A Non-Western Viewpoint', *Archiv für Rechts- und Sozialphilosophie*, 67 (1981), pp. 76–91. A useful collection of perspectives on this vexing issue may be found in Abdullahi Ahmed An-Na'im (ed.), *Human Rights in Cross-Cultural Perspectives: A Quest for Consensus* (Philadelphia: University of Pennsylvania Press, 1992).

67. Eleanor Roosevelt, 'My Day', release date 6 February 1947, ER Papers, Roosevelt Library.

Similarly, concern that Western liberal values privileged individualism to the exclusion of community values was articulated not only by adherents of Marxism in their emphasis on the rights of States but also by those who did not want to abandon the sense of collective responsibility and identity characteristic of many Asian and African cultures. Thus, Mrs Hansa Mehta, the Indian representative on the Commission, noted at one point:

Extreme individualism is as bad as extreme socialism and the Universal Declaration of Human Rights strikes a mean in trying to reconcile the two extreme ideologies. . . .

It is upon the recognition of this fact, upon the reconciliation of the two ideologies, that the future of world peace depends. The task before the Commission on Human Rights is to prepare a Covenant that will satisfy these two extremes.⁶⁸

Thus, while most of those writing the Universal Declaration were products of Western education and conducted their discussions largely in the Western idiom, and while the language of the Declaration is rooted in Western ideas and philosophy, the cultural perspectives which have lately been advanced to support critiques of universal human rights as a manifestation of Western dominance were, in fact, debated at length in the Commission, the Third Committee and the General Assembly at the time. And it was this realization that appears to have informed the debates and the final declaration in Vienna in 1993 in which the universality of human rights was reaffirmed by a global majority much larger and more diverse than the one which adopted the Universal Declaration in 1948.⁶⁹

DEBATING SPECIFIC RIGHTS

In addition to the broad differences which informed the general debate over the Declaration, many of the specific articles generated substantial disagreements over substance and wording. Indeed, each and every article was debated at length in the Commission, its Drafting Committee and in the Third Committee.⁷⁰

68. Mehta, op. cit., p. 101.

69. UN Doc. A/CONF.157/24, 25 June 1993, *Vienna Declaration and Programme of Action* adopted at the World Conference on Human Rights, Vienna, 1993.

70. Unless otherwise indicated, the discussion of the debate on specific articles is documented in Third Committee, *Summary Records*, pp. 32–790, 847–90.

For example, Article 1 of the Declaration as finally adopted 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.' It raised a number of problems throughout the drafting process. For one thing, the question of the natural law basis of human rights was raised by the question 'endowed by whom?'. After substantial debate, including proposals to insert 'by nature' or references, with varying degrees of specificity, to the deity, it was decided to finesse the whole question by asserting that humans were endowed with rights simply by virtue of being human.

Some feminists felt that the phrase 'all human beings' did not sufficiently assert that the rights detailed in the Declaration belonged equally to women and men. They feared that, in some countries, at least, the omission of explicit reference to women would permit leaders from cultures based on male dominance to continue to read rights as something belonging to men only.⁷¹ Other delegates, including Mrs Roosevelt, insisted that the reference to all human beings clearly included women, a view reinforced by the non-discrimination provision in Article 2: 'Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.'

Some representatives felt that Article 1 asserted a belief rather than a right and should, therefore, be incorporated into the Preamble rather than into the body of the document.

The non-discrimination provisions of Article 2 also occasioned considerable debate, mainly over the inclusion or exclusion of some particular status from the listing of grounds for discrimination. Some countries, notably South Africa, argued that non-discrimination should apply only to certain *fundamental rights*, a category which, in their view, excluded a number of rights incorporated into the Declaration, among them the right to participate in government.

The second paragraph of Article 2, applying the non-discriminatory clause regardless of the dependent status of the country or territory to which a person belonged, raised a number of problems. In the first instance, some representatives took the view that at least

71. See, for example, the comments of Mrs Bodil Begtrup of Denmark in General Assembly, *Summary Records*, p. 892.

some of the rights specified in the Declaration should not necessarily apply to residents of colonies or trust territories.⁷² Others raised constitutional problems for federal systems, arguing that central governments as members of the United Nations might not have constitutional authority to implement some of these rights in their constituent political units.⁷³

Article 3 providing for the right to life, liberty and the security of person raised questions of when life began and the conditions, if any, under which the State had the right to impose a death penalty or to restrain liberty.

Article 4 prohibiting slavery and servitude prompted concern over the issue of 'voluntary' servitude. The debate over this question put into sharp relief the problem of finding language which would mean the same thing to people whose native tongues differed so much.

Even this brief recitation illustrates the complexities and difficulties in finding acceptable language for the Declaration. Similar summaries could be provided for every article in the Declaration. It may be more useful, however, to focus on several articles which raised very important and rather controversial issues, especially those linked to the fundamental divisions outlined above. These articles fall into two broad categories. The first of these is the area of social rights or what some have called private rights, rights involving matters governed by cultural traditions often embodied in law. These private rights include such things as religion (Article 18) and marriage (Article 16) and remain among the most controversial portions of the Declaration even after half a century. For instance, Christina Cerna, in her assessment of the Vienna Declaration and Programme of Action which came out of the World Conference on Human Rights (1993), notes that those rights which have attracted most controversy are 'private rights which relate to the private sphere or personal life of the individual',⁷⁴ such as religion, marriage, children, family planning and many of the issues of women's rights. With the exception of some of the women's rights discourse,

72. Interestingly, the United Kingdom proposed the only successful amendment to the Third Committee draft when it came before the Plenary of the General Assembly. That amendment removed a separate article assuring the applicability of rights in non-self-governing territories and inserting it, instead, as a second paragraph in Article 2. See General Assembly, *Summary Records*, p. 803.

73. See, for example, the comments of Lester Pearson of Canada in *ibid.*, pp. 899–900.

74. Christina M. Cerna, 'Universality of Human Rights and Cultural Diversity: Implementation of Human Rights in Different Socio-cultural Contexts', *Human Rights Quarterly*, 16 (1994), p. 46.

especially that focusing on violence and exploitation within the home, most of the other aspects of these so-called 'private rights' were, in fact, debated at length in the process of drafting the Universal Declaration.

A second broad category involves the area of economic rights which so divided the Western liberals from the Marxists and which also continues to be contentious after more than half a century. These include rights to work, to social security, to rest and leisure, etc., and are generally incorporated into Articles 22–26 of the Declaration, along with the right to property (Article 17).

Article 29, dealing with duties and State responsibilities, also raised fundamental questions. This Article, along with some of the others mentioned, will be treated in some detail in order to explore the human rights discourse reflected in the Commission and United Nations debates of fifty years ago.

Marriage

The marriage provisions of Article 16 touched on some of the most central issues of cultural traditions, for most societies define and regulate marriage in very detailed and varied ways by both law and custom. Indeed, few customs are as central to the maintenance and perpetuation of a given culture as those surrounding the institution of marriage. To assert, as the final version of the Declaration does, that men and women have the right to marry without limitation 'due to race, nationality or religion', that they are entitled to equal rights in marriage, that both intending spouses must freely and fully consent to the marriage, and that the family is 'the natural and fundamental group unit of society and is entitled to protection by society and the State', undercuts some deeply rooted cultural beliefs in almost every society in the world.

Beliefs in racial or religious constraints on the choice of marriage partners were – and are – widely prevalent in Europe and the Americas as well as in many parts of what we now call the Third World. It has not been particularly unusual to find such constraints embodied in law. In fact, Frank Holman, then President of the American Bar Association, included in his critique a concern that the Declaration would mean that 'mixed marriages between the races are allowable without regard to State or national law or policy forbidding such marriages'.⁷⁵ Concern on this point was so widespread that the non-discrimination

75. Holman, *op. cit.*, p. 483.

clause of Article 16 was not included in the draft submitted by the Commission but was added through an amendment proposed by Mexico.

Many societies have practised arranged marriages in such a way as to limit – if not to eliminate – the consent of the intended spouses. The notion that it would be proper for the wife to be treated in a manner different from the husband is a view not only widely held but often sanctioned by principles of law and religion. Finally, although the view that the family is ‘the natural and fundamental group unit of society’ was not substantially challenged in the debates of the 1940s (as it might be today by gay-rights activists and others), there was real doubt about the wisdom of assigning to the State a responsibility for protecting the family unit,⁷⁶ a provision added to the Commission draft as a result of an amendment proposed by the Soviet Union. There was also considerable discussion of the desirability of a more explicit expression of a right to divorce and to equal treatment of men and women in divorce and a Soviet amendment to this effect was initially adopted by the Third Committee. In the end, however, the less explicit version asserting equal rights ‘as to marriage, during marriage and at its dissolution’ prevailed.

Although many of the other rights embodied in the Declaration contradicted standard practice in many societies, those practices, including such things as torture, restriction of freedom of speech, the press, etc., were not practices which would be defended in principle or justified by reference to religion or law – at least not in the same way as the cultural values surrounding marriage regulations. A passage from the Official Summary of the comments by the Saudi Arabian delegate during the Third Committee debate on this article illustrates the point:

In Saudi Arabia, marriage constituted a sort of social contract defined by law and that system had successfully survived some fourteen centuries. A Moslem woman could own, inherit and dispose of property, and that without her husband’s consent. In the event of a divorce, she automatically received a sum of money which the husband had agreed to pay before their marriage was celebrated. Her material fate did not depend therefore on the decision of a tribunal, a decision often long delayed in some countries. Those two instances were sufficient illustration of the extent to which Islamic law was explicit on the smallest details of marriage.

He wished, in that connection, to emphasize the fact that apparently the authors of the draft declaration had, for the most part, taken into consideration only the standards recognized by

76. See, for example, the comments of the Netherlands delegate in Third Committee, *Summary Records*, p. 368.

western civilization and had ignored more ancient civilizations which were past the experimental stage, and the institutions of which, for example, marriage, had proved their wisdom down through the centuries. It was not for the Committee to proclaim the superiority of one civilization over all others or to establish uniform standards for all the countries of the world.⁷⁷

Religion

Similar, although perhaps even more intensely felt, questions involving differing cultural perspectives arose during the debate on what became Article 18 guaranteeing freedom of religion. Two issues dominated the comments of the members of the Commission and the Third Committee – the assertion of a right to manifest religion or belief and a right to change one’s religion. Both were kept in the final draft but not without pointed debate in the first instance and not without provoking abstention in the final General Assembly vote in the second.

As might be expected, the right to freedom of religion aroused the intense interest of a number of religious groups. Some of them were keen to shape the expression of this right in particular ways. The right to manifest religion or belief was a reworking and expansion of a right to worship which had appeared in some earlier drafts. The effort to enlarge and specify the right to worship can be seen in a letter from one of the most active NGO representatives, O. Frederick Nolde of the World Council of Churches, to Eleanor Roosevelt. He urged that the Declaration recognize a right to ‘corporate’ worship, a right to act socially on religious conviction, and a right to religious ‘observance’ rather than simply worship.⁷⁸

The resulting broader expression of a right to manifest religion or belief prompted some delegates – notably some from the Arab Middle East and some from the Far East – to question whether such a provision might not be interpreted as guaranteeing the right of proselytizing missionaries to undertake whatever activities seemed appropriate to them. Some delegates then recalled the abuses of the medieval crusades and other more recent missionary activity in the Far East.

Even more seriously, the Saudi Arabian delegate objected to the right to change one’s religion. He considered the guarantee of such a right an infringement upon the cultural

77. Ibid., p. 370.

78. Letter, O. Frederick Nolde to Eleanor Roosevelt, 10 December 1947, in Box 4587, ER Papers, Roosevelt Library.

principles of Islamic States. Saudi sponsored amendments to delete this provision were repeatedly defeated by substantial majorities. And, in the end, as we have seen, the Saudis found the insistence on a right to change one's religion so significant as to require their abstention from the final General Assembly vote.

Property

The debate over the right to own property (Article 17) highlighted another sort of cultural and political difference. The simple and rather abbreviated language of the Commission draft left a number of questions unresolved. Most of these revolved in one way or another around the potential social uses of property. The Soviet Union in particular and some other countries as well made several attempts to insert language which would suggest broader principles of public purposes of property. Most notably, the Soviets sought to qualify the right to own property with a reference to the legal principles of each State and, in the second paragraph of what became Article 17, to prohibit 'illegal' rather than 'arbitrary' deprivation of property. Although several Western delegates expressed sympathy for aspects of Soviet goals on these points, language could not be found which would command majority support, and the Commission draft was adopted without amendment.

Economic and social rights

Articles 22–26 of the Universal Declaration introduce yet another series of issues, for they deal with what have come to be called economic and social rights – rights to social security, to work, to rest and leisure, to an adequate standard of living, health care, food, clothing, housing, etc., and to education. These 'new' concepts of rights were also more troublesome than those about which the delegates were more accustomed to arguing. To take but one article from this group for discussion, the issue of a right to work (Article 23) was so confusing that the Third Committee initially failed to adopt *any* article.⁷⁹ After lengthy procedural debate, the Committee found a way to adopt the article after all.⁸⁰

Controversy arose less over the general principle of a right to work than over subsidiary points. The right to form trade unions was one of those points. Some delegates found such a guarantee unnecessary since it was already covered in the general provision of freedom of association (Article 20). For others, the question was one of a closed shop in which trade-union membership was required of workers as a condition of employment.

79. Third Committee, *Summary Records*, p. 539.

80. *Ibid.*, p. 689.

In the end, the right to join a trade union was made explicit but a right to refrain from joining was omitted in deference to closed-shop advocates.

Another section of Article 23 raised a separate issue. In its final version, it provided that each worker 'has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection'. Many delegates saw problems with this section. Among other things, they argued that the language was so vague and imprecise as to raise serious questions of interpretation, that this placed an obligation on government to provide supplemental social protection, and that the notion of gauging remuneration by its adequacy to meet the needs of family came dangerously close to remuneration for need rather than work, a concept too Marxist in character for some. In the end, most delegates found the notion of a right to work so compelling that they dared not let their unhappiness with particular aspects of the article lead to the kind of negative vote which had nearly prevented inclusion of this right in the Declaration. The Article was adopted in the Third Committee by 39 to 1 with 2 abstentions. The United States cast the lone negative vote (while Canada and China abstained). Mrs Roosevelt explained with some embarrassment that her government was too worried about the issues mentioned above.⁸¹ Similar concerns about new governmental obligations in the economic and social field worried capitalist countries, especially the United States, when the other economic rights articles were debated and adopted.

Education

Article 26 provided for a right to education – another one of the economic and social rights. By the time the Commission draft was amended several times, this article had revealed a number of controversial issues. First there was the complex issue of compulsory education, included on the grounds that children had a right to fundamental education regardless of possible desires of their parents or others in the society to abridge such a right. On the other hand, many delegates wanted to protect what they saw as parental rights in the matter of their children's education; they included a provision that parents have a right to 'choose the kind of education that shall be given to their children'.

81. Ibid., p. 690. Interestingly, Mrs Roosevelt herself was probably more sympathetic to these provisions than was the government she represented. Years later she remembered herself as warmly embracing this as a new governmental obligation. See M. Glen Johnson, 'Contributions of Eleanor and Franklin Roosevelt . . .', op. cit., pp. 35-7.

The Commission had included in its draft a statement of the purpose of education which, it said, should be 'directed to the full development of the human personality, to strengthening respect for human rights and fundamental freedoms and to combating the spirit of intolerance and hatred against other nations and against racial and religious groups everywhere'.⁸² To this, the Third Committee added, on a joint Mexican and United States amendment, the aim to promote 'the activities of the United Nations for the maintenance of peace'.⁸³ The Third Committee also amended the Commission text to alter the language of some of the other stated purposes of education.

Duties

Finally, the debate over what became Article 29 of the Universal Declaration reminded the delegates of some of the fundamental differences in perspective which had informed the entire debate. That Article expressed the claims of society against which the rights of the individual had to be balanced and proclaimed the duties the individual owed to the society of which he or she was a part. In this sense, it involved an expression of the limitations on the rights outlined in the earlier Articles. It was a delicate matter to find language which would enunciate the societal needs which all delegates recognized without going so far as to justify improper societal or State infringement on the rights of the individual.

Concern over the place of duties in the Declaration had surfaced early in the deliberations over the document. The Secretariat Outline led off in Article 1 with a statement of duties: 'Everyone owes a duty of loyalty to his State and to the [international society] United Nations. He must accept his just share of responsibility for the performance of such social duties and his share of such common sacrifices as may contribute to the common good.' A second draft article read: 'In the exercise of his rights everyone is limited by the rights of others and by the just requirements of the State and of the United Nations.'⁸⁴ Several members of the Drafting Committee were disturbed by the apparent emphasis being given to duties to the State but none was more outspoken than Charles Malik. Almost as soon as the Drafting Committee began to examine the Secretariat Outline, he declared it 'odd'

82. UN Doc. E/800, Economic and Social Council, Commission on Human Rights, Report to the Economic and Social Council on the Third Session of the Commission, held at Lake Success, New York, from 24 May to 18 June, 1948, 28 June 1948, p. 11.

83. Third Committee, *Summary Records*, p. 604.

84. See UN Doc. E/CN.4/AC.1/3, Commission on Human Rights, Drafting Committee, Draft Outline of International Bill of Rights (Prepared by the Division of Human Rights), 4 June 1947.

that limitations on human rights and freedoms should be placed at the beginning.⁸⁵ Returning to the same issue at the next meeting of the Drafting Committee, Malik characterized the initial statement in the draft Article 1 as 'astounding' and

pointed out that it might be questioned whether an individual owed such a duty of loyalty regardless of the characteristics of his State. In considering a Bill of Rights, he went on, it was odd that men ought first to be told that their freedom is limited. If this were done it would be a Bill not of Human Rights but of what man owes society. It was precisely because the balance had been tipped against the individual and in favour of society that human rights had been violated.⁸⁶

In the end, expression of duties was placed near the end of the document and the idea of duties owed to the *State* was eliminated in favour of a more palatable duty to one's *community*. Article 29 declared that 'everyone has duties to the community in which alone the free and full development of his personality is possible'. Limitations on rights were incorporated into this Article rather than given the added prominence of a separate Article and more cautious language was found than appeared in the original Secretariat Outline. The second paragraph read: '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 requirements of morality, public order and the general welfare in a democratic society.'

Finding the delicate balance of language was complicated by the divergent philosophical views of the delegates. At one extreme, Soviet and other Marxist delegates began with the assumption that individuals only achieve their full potential within the framework of the collectivity, that the connection between the individual and society had to be the foundation of any concept of rights. In their view, it was crucial that any declaration give due and adequate attention to the rights of the State. At the other extreme were delegates who were very nervous about appearing to give the State or the collectivity any handle to restrain individual rights for fear that, based on the lessons of history, such a handle would be abused. The New Zealand delegate, Mrs Newlands, for example, thought concepts of morality and public order far too vague to be used to justify limitations

85. UN Doc. E/CN.4/AC.1/SR.2, 13 June 1947, Commission on Human Rights, Drafting Committee, First Session, *Summary Records of Second Meeting*, p. 9 in Box 4595, ER Papers.

86. UN Doc. E/CN.4/AC.1/SR.3, 13 June 1947, Commission on Human Rights, Drafting Committee, First Session, *Summary Records of Third Meeting*, p. 9, in Box 4595, ER Papers.

on individual rights. She preferred only the concept of general welfare.⁸⁷ And René Cassin successfully proposed inserting the word *justes* (initially rendered as ‘legitimate’ in English but finally translated as ‘just’ to suggest something more profound than the more legalistic term) before stating the requirements which would permit limiting individual rights.⁸⁸

‘RIGHTS’ OMITTED FROM THE DECLARATION

The Commission and the Third Committee debated several items which did not, in the end, find their way into the Declaration. Five of these require our brief attention here – the right of petition, the protection of the rights of minorities, the issue of the applicability of the Declaration to dependent or partly dependent territories, the right to resist oppression and women’s rights.

Petition

The right of petition, so important in the constitutional history of several members, had been under consideration by the United Nations Commission on Human Rights almost from the beginning. The issue was thrust upon it partly because people from various parts of the world, given hope by the news that a Commission on Human Rights had been created at the United Nations, sent to it petitions expressing their grievances. But the Commission interpreted its mandate narrowly on this point. Early on, for example, Humphrey noted in a memo to Henri Laugier, his boss in the Secretariat, that the idea that the Commission on Human Rights might receive petitions of a general nature posed no problems, but that any suggestion that it might receive specific complaints raised serious questions under Article 2(7) of the Charter unless the complaint involved something which was deemed to be a threat to international peace and security within the meaning of the Charter.⁸⁹ The full story of the Commission’s approach to petitions – a story of caution, timidity and missed opportunities – is beyond the scope of this chapter. Here we are concerned primarily with the question of whether or not to incorporate a right of petition into the Universal Declaration.

87. Third Committee, *Summary Records*, p. 645.

88. *Ibid.*, p. 643.

89. Humphrey memorandum to Laugier, 28 August 1946, in Box 52, Oscar Schechter Files, United Nations Archives. Additional comments relevant to the specific issue of petitions and the general questions of the legal authority of the United Nations in the human rights area are to be found in Humphrey memorandum to Laugier, 2 October 1946, in File 605–1, Central Registry File, RAG-1/:73, United Nations Archives, in which he takes issue with a legal opinion on the Commission on Human Rights written by Wellington Koo.

The Commission had included in its report a draft article on the right of petition with the sole comment that the Commission had not discussed this draft article since measures of implementation were not discussed at the third session of the Commission. That draft provided for the right of persons to address petitions for redress of alleged human rights abuses to 'the public authorities of the State of which he is a national or in which he resides, or with the United Nations'.⁹⁰

The debate provoked by this draft and suggested amendments revealed a number of divergent perspectives. Some delegates, including Mrs Roosevelt, considered petition intimately tied to matters of implementation and, therefore, appropriate to subsequent consideration rather than inclusion in the Declaration. Reflecting another perspective, the Soviet Union, Mexico and other countries argued that any provision suggesting a right of petition to the United Nations would undermine the principle of national sovereignty and violate provisions of non-interference in matters essentially within the domestic jurisdiction of Member States contained in Article 2 of the Charter. In contrast, Cassin and Perez Cisneros of Cuba argued strongly that the right of petition was an essential human right. Although it turned out to be impossible to add such an article to the Declaration, a Cuban amendment pressing the right of petition was adopted by the Third Committee as an addition to the basic resolution mandating further work on implementation.⁹¹

The Commission did, in fact, take up the question of petition in its discussion of implementation procedures,⁹² but many years went by before the right of petition to an international body was recognized, and even then only by some States.

Rights of minorities

The possibility of including an article on the rights of minorities in the Universal Declaration raised a number of complicated problems. It is somewhat ironic that no such article was ultimately incorporated into the Declaration because League of Nations work in this area provided some of the precedent on which the Commission built. Nevertheless, both the Commission and the Third Committee found the balance of the argument required further consideration before any provisions on minority rights could be adopted.

90. UN Doc. E/800, Report to the Economic and Social Council on the Third Session of the Commission, p. 12.

91. Third Committee, *Summary Records*, pp. 694–715.

92. See Mehta, *op. cit.*, pp. 101–3.

In part, the issue was deferred because it was felt that the fundamental rights of individual members of minority groups were already included in the Declaration since those individuals were a part of the 'everyone' to whom the Declaration applied. Additional rights which might be claimed as members of a minority raised the complicated question of collective versus individual rights and most members of the Commission felt full consideration of that issue would require additional deliberation.⁹³ Moreover, ECOSOC had created a special Sub-Commission on the Prevention of Discrimination and the Protection of Minorities and many delegates felt that the inclusion of a statement on minorities in the Universal Declaration at this stage would prejudice the work of that body. Although the Soviet Union was particularly forceful in arguing for incorporating protection of minorities into the Declaration, the Third Committee voted to defer the issue for further deliberation.⁹⁴

Dependent territories

Yugoslavia proposed an additional article to make it even more explicit that the rights detailed in the Declaration would apply to persons who resided in trust or dependent territories. Although substantial East–West propaganda surfaced in the discussion of this proposal, especially attacks on Western colonialism, the majority decided the substance of the proposal was covered in the language of Article 2 of the Declaration and did not require an additional article. Interestingly, however, it was during the debate on the Yugoslav proposal that René Cassin suggested that the intent that the Declaration should apply to everyone everywhere in the world could be made clearer by changing the title of the document from International Declaration of Human Rights to Universal Declaration of Human Rights, a suggestion ultimately and enthusiastically adopted.⁹⁵

Right to resist oppression

Proposals by Cuba and Argentina to incorporate some reference to a right to resist oppression were ultimately withdrawn in recognition of the complex issues they raised. Similar proposals had been made at the Bogotá Conference of Latin American States which had produced the human rights declaration envisioned at the Mexico City Conference in 1945. There, too, however, they had been referred for further deliberation. Finally, it was decided to incorporate a brief reference to resistance to oppression in the Preamble of the Universal

93. Interesting reflections on this issue may be found in Jan Berting et al. (eds.), *Human Rights in a Pluralist World: Individuals and Collectivities* (Westport/London: Meckler for the Netherlands Commission for UNESCO and the Roosevelt Study Center, 1990).

94. Third Committee, *Summary Records*, pp. 732–6.

95. *Ibid.*, p. 742.

Declaration rather than as a separate article. Thus the Preamble contains the assertion that 'it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law'.

Women's rights

We have already noted that the Commission debated proposals for a specific article dealing with women's rights. In the end such proposals were rejected as unnecessary in light of the non-discrimination clause in Article 2 and the use of the inclusive word 'everyone' to identify those who possessed the rights enumerated in the Declaration. The substantive content of debates over women's rights has evolved significantly new dimensions since the Commission debated the issue. In those days the notion of protecting women's rights involved little more than placing women on an equal footing with men, and the debate in the drafting process was over the extent to which a special article was needed to do that. Only later, as a result of the work of feminist legal scholars, has it been recognized that effective protection of women's rights may require a substantively expanded concept of rights. Women, more frequently than men, may find their rights violated in the home, in acts of domestic violence and other patterns of behaviour within marriage, areas beyond the traditionally more public spheres of human rights discourse.⁹⁶ Such a perspective found little expression in the debates surrounding the drafting of the Declaration but can be seen to some extent in the Convention on the Elimination of All Forms of Discrimination against Women⁹⁷ adopted by the General Assembly in 1979 and, even more fully, in the Vienna Declaration and Programme of Action⁹⁸ of 1993 and the Beijing Women's Conference⁹⁹ of 1995, where the slogan 'Women's Rights are Human Rights' gained wider currency.

THE IMPACT OF THE DECLARATION

Probably no other document of any kind, certainly no other statement of human rights, has ever been debated so extensively and intensively by such a diverse group of people representing such varied cultures and backgrounds. It was a remarkable achievement

96. Celina Romany, 'State Responsibility Goes Private: A Feminist Critique of the Public/Private Distinction in International Human Rights Law', in Rebecca J. Cook (ed.), *Human Rights of Women: National and International Perspectives* (Philadelphia: University of Pennsylvania Press, 1994), pp. 85–115.

97. UN Doc. A/RES/34/180, 18 December 1979, Convention on the Elimination of All Forms of Discrimination against Women.

98. UN Doc. A/CONF.157/24, 25 June 1993, *Vienna Declaration . . .*, op. cit.

99. UN Doc. A/CONF. 177/20, 17 October 1995, *Report of the Fourth World Conference on Women*.

merely to have reached such wide agreement on such a text. But the delegates and the peoples they represented were interested not only in reaching agreement on a text but in strengthening the resources available to those struggling to assert their human rights.

We now turn to an examination of the impact of their work. Much of the impact of the Universal Declaration of Human Rights is difficult to assess because it involves changed behaviour and heightened consciousness. But we can usefully examine the expectations of those who drafted the Declaration and some of the changes in human rights which can be traced to it.

CONTEMPORANEOUS ASSESSMENTS OF LEGAL AND MORAL STATUS

For the most part, those involved in drafting the Universal Declaration of Human Rights believed it to have no legal standing. They thought themselves involved in an exercise of moral suasion which was also the first step toward a legally binding set of agreements. Although she expressed the now oft-quoted hope that the Declaration would be a kind of 'Magna Carta for Mankind', Mrs Roosevelt consistently voiced the United States' view that the legally binding work on human rights would follow the moral imperatives stated in the Universal Declaration. Most other delegates shared her view and they repeatedly said so in the debates of the Commission, ECOSOC, the Third Committee and the General Assembly. It was not that they did not intend to engage in an exercise with meaning in international law. Like Mrs Roosevelt, they had every intention that their efforts would ultimately result in statements having legal force. The initial declaration, however, was simply a statement of goals and aspirations rather than a legally binding document. Indeed, the very text of the document itself seemed to embrace such an interpretation when it announced that the General Assembly proclaimed the Declaration as a 'common standard of achievement' toward which all individuals and societies would constantly 'strive' by 'progressive measures'. This is the language of moral rather than legal obligation.

Language stressing moral over legal obligation did not work its way into the final draft without the concerted effort of a number of governments to limit as far as possible any suggestion that the Declaration would enunciate principles legally enforceable by the United Nations or under broader international legal jurisdiction. The United States Government in particular wanted to avoid any possible suggestion that the Declaration would be internationally enforceable in a legal sense. On 20 November 1947, her State Department aide, James P. Hendrick, sent a handwritten note to Mrs Roosevelt after a working session with Robert A. Lovett, then Acting Secretary of State:

Mr Lovett had a very real objection to the implication which he got from the [draft] declaration that all the rights therein contained were immediately enforceable. I had the choice of trying to force him to swallow the declaration in its present form, in view of the many persons who had worked on it and approved it, or of trying to meet his objection by a very simple change in the Preamble of the declaration. It occurred to me that if he raised the objection (and indeed others have raised it in the past) his fresh viewpoint might well be typical of the intelligent public whom primarily we want to satisfy. In addition it seemed desirable to obtain as whole-hearted support from him as we could get. So I yielded, and the Preamble of the declaration now calls on United Nations members to 'promote' these rights rather than 'enforce' them.

I hope you will agree this was the wisest course; but I also hope that if you disagree you will call up Dean Rusk and tell him exactly how you feel. If you feel strongly, I believe that Mr Rusk can get this position changed back again.¹⁰⁰

Alice M. McDiarmid, Assistant in the Division of International Organization Affairs at State, followed with a more formal instruction the next day:

In the view of the Acting Secretary of State the Declaration of Human Rights should not be so phrased as to give the impression to individual citizens or governments that there is a contractual obligation on the part of governments or of the United Nations to guarantee the human rights enumerated in the Declaration. In fact the Declaration is largely a statement of aspirations rather than established facts.¹⁰¹

And a revised draft of the Declaration was attached to reflect this view.¹⁰²

Legal scholars generally agreed that a Declaration adopted by the General Assembly alone without formal ratification by governments could not create – or even define – legal obligation. One of the most prominent legal minds of the day found in its alleged legal impotence a reason to disdain the Declaration. In his influential report to the Conference of the International Law Association in Brussels in September 1948, Sir Hersch Lauterpacht made this scathing indictment:

100. Hendrick's letter to Eleanor Roosevelt, 20 November 1947, in 'Geneva and Human Rights' File, Box 4587, ER Papers.

101. McDiarmid memorandum to Eleanor Roosevelt, 21 November 1947, in 'Geneva and Human Rights' File, Box 4587, ER Papers.

102. The reader will recall that a similar question arose in San Francisco about the language in the human rights sections of the Charter – and that it was resolved in a similar way. See above.

A declaration of this nature might possess a moral value if it sprang from bodies whose business it is to propagate views and to mould opinion. When coming from such a source the word of enlightenment and exhortation may be as potent as a deed. When emanating from Governments it is a substitute for a deed. What the conscience of mankind expects from Governments is not the proclamation of the idea of the rights of man or even the recognition of the rights of man. What the conscience of the world expects from that quarter is the active protection of human rights and the assumption for that purpose of true and enforceable obligations.¹⁰³

At the time, then, most observers – scholars as well as diplomats – shared the view that the Declaration created only moral and not legal obligations. Indeed, when the Commission on Human Rights created three working groups at its December 1947 session, the Working Group on Implementation reported its conclusion that

the question of implementation had much more to do with the Convention than with the Declaration. The latter indeed was in the last analysis to take the form of a recommendation by the General Assembly of the United Nations, and was consequently not legally binding in the strict sense of the term. It therefore appeared to the Working Group a manifest impossibility to contemplate measures for the fulfillment of an obligation that was not one.¹⁰⁴

Even in these early stages, however, some suggested that there were subtle but profound legal implications in the Universal Declaration. It may not be surprising that some of the Latin American States which had unsuccessfully urged more compelling language were among those arguing for a more expansive interpretation of the Declaration.

The Panamanian representative, for example, argued that Article 2(7) of the Charter did not prevent the Declaration from being applicable under international law. As he saw it, the Charter itself, by naming human rights as an international concern and assigning the United Nations certain human rights responsibilities, had defined human rights as an international matter – not one that fell ‘exclusively [*sic*] within the domestic jurisdiction’ provisions of the Charter.¹⁰⁵ Carrying this line of reasoning one step further even while accepting the technical validity of the assertion that only a covenant would be legally binding, the Chilean representative suggested that any violation of the Declaration would

103. Lauterpacht, *op. cit.*, p. 372.

104. UN Doc. E/CN.4/53, 10 December 1947, Commission on Human Rights, Second Session, Draft Report of the Working Group on Implementation, p. 2, in Box 4595, ER Papers.

105. Mr de Leon of Panama in Third Committee, *Summary Records*, p. 43.

be a violation of the United Nations Charter itself because it would involve a violation of one of the principles of the United Nations. The Declaration, he argued, was merely an explicit statement of rights granted by the Charter.¹⁰⁶ In this view, the Charter internationalized human rights; the Declaration was simply an elaboration, a catalogue, a directory of the rights granted in the international convention that was the Charter of the United Nations.

A few others seemed to agree, at least in part. Count Carton de Wiart of Belgium suggested that while the Declaration had unprecedented moral value, it also had 'the beginnings of a legal value'.¹⁰⁷ Professor Cassin, a leading international lawyer in his own right, seemed unwilling to view the Declaration as something of *only* moral value. He too suggested it would have some legal standing if for no other reason than that it was the first declaration by an international group having its own 'legal competence'.¹⁰⁸ Moreover, he told the General Assembly that

while it [the Declaration] was less powerful and binding than a convention, it had no less legal value, for it was contained in a resolution of the Assembly which was empowered to make recommendations; it was the development of the Charter which had brought human rights within the scope of positive international law. That being so, it could not be said that the declaration was a purely theoretical instrument. It was only a potential instrument; but that fact in no way detracted from the binding force of the provisions of the Charter.¹⁰⁹

In contrast to the Latin Americans and Professor Cassin, who seemed to be looking for interpretations which would increase the potency of the Declaration, the South African Government found such interpretations both persuasive and troubling. South Africa consistently tried to pare down the rights listed in the Declaration, arguing that only those which were universally embodied in already existing constitutions and legal systems should be included. When the Commission on Human Rights submitted a draft of the Declaration to Member States for comment early in 1948, South Africa responded with a strong criticism of the text, asserting that it was sloppily drafted and incorporated many asserted rights which were not widely recognized. Only 'fundamental' rights should be included, they argued, and 'fundamental' should be defined narrowly. The major reason

106. Mr Santa Cruz of Chile in *ibid.*, p. 50.

107. General Assembly, *Summary Records*, p. 880.

108. Cassin in Third Committee, *Summary Records*, p. 62.

109. General Assembly, *Summary Records*, p. 866.

for this position was the South African Government's view of the legal and political importance of the Declaration:

It seems to be realized that a declaration of this nature, if passed by the Assembly, would not create legal rights and obligations. That is why, perhaps, it has been drawn with so little regard for precision and particularity, or for the true scope of fundamental rights and freedoms. But it will undoubtedly be invoked as a source of moral rights and obligations, and may therefore lead not only to intensified internal unrest and agitation, but also to repeated embarrassment and agitation before the United Nations and their various organs. It is of the greatest importance, therefore, that it should not be passed in a form so completely unacceptable.¹¹⁰

The South African representative repeated the same position in the Third Committee debates;¹¹¹ these concerns clearly prompted his government's abstention in both the Third Committee and the General Assembly. In the General Assembly debate, the South African interpretation was carried a step further, linking the Chilean interpretation to South African worries. If the interpretation was accepted that the Declaration was 'an authoritative definition of fundamental rights and freedoms which had been left undefined in the Charter', those States which voted in favour of the Declaration 'would be bound in the same manner as if they had signed a convention embodying those principles. . . .'¹¹² The leading American critic of the Declaration, American Bar Association President Frank Holman, appeared to agree. Writing in *Law and Contemporary Problems*, he asserted:

The proposal involved in an 'International Bill of Rights' is that by and through the use of a treaty, or even without that and simply by and through the adoption of a Declaration by the United Nations Assembly with the approval of the State Department, the fundamental rights and liberties of the citizens of this country will be defined and declared, and in effect legislated, for them without their having any voice about it, either by their own votes or through the votes of their duly elected representatives. This is a dangerous, far-reaching and revolutionary change in the process of constitutional government. . . .¹¹³

Professor Humphrey, the Canadian legal scholar who was Director of the Human Rights Division of the Secretariat, took something of a middle position. While he accepted the

110. See UN Doc. E/CN.4/82/Add.4, *Comments from Governments*.

111. Third Committee, *Summary Records*, p. 39.

112. Mr Andrews of South Africa in General Assembly, *Summary Records*, p. 910.

113. Holman, *op. cit.*, pp. 488–9.

technical accuracy of the view that a resolution of the General Assembly, by itself and absent of any ratification by Member States, could not create legal obligations, he also believed that the Declaration had important legal potential and that governments like the United States and others, which asserted the non-binding nature of the Declaration at every possible opportunity, both overstated the case and did a disservice to the cause of human rights.¹¹⁴

EVOLVING IMPORTANCE OF THE DECLARATION

Although few asserted at the time of its adoption by the General Assembly that the Declaration was legally binding in any comprehensive sense, in the intervening period it has come to be widely regarded as legally binding – at least in part – on all States. Three main instrumentalities contributed to this development. First, many States have incorporated the Universal Declaration by reference into their own constitutional and statutory law and judicial interpretations. This is especially true of a significant number of African States which have referenced the Universal Declaration in the Constitutions which marked their emergence from colonial rule. Second, regional intergovernmental organizations, both specifically human rights organizations and more general ones, have incorporated the Universal Declaration by reference into their charters or endorsed it in resolutions of one sort or another. Finally, the United Nations itself, and many of its Specialized Agencies, have repeatedly invoked the Declaration in resolutions and declarations. In fact, Humphrey notes that all the States which abstained in the General Assembly vote of 10 December 1948, except South Africa, have now voted for General Assembly resolutions or declarations which obligate States to observe the Universal Declaration.¹¹⁵

Many, probably most, international lawyers view the repeated invocation of the Universal Declaration by such groups as evidence that most of its provisions have now become international customary law, binding on all States in a legal sense.¹¹⁶ For example,

114. See Humphrey, *Human Rights and the United Nations*, op. cit., pp. 73–4.

115. Ibid., pp. 75–6. Green, op. cit., pp. 35–6, provides some specific examples of the incorporation of the Declaration into various national and international documents. See also Egon Schwelb, 'The Influence of the Universal Declaration of Human Rights on International and National Law', in *Proceedings of the American Society of International Law*, Vol. 53 (1959), pp. 217–29, and Hurst Hannum, 'The Status of the Universal Declaration of Human Rights in National and International Law', *Georgia Journal of International and Comparative Law*, 25:1, 2 (1995/96), pp. 287–397.

116. Humphrey, *Human Rights and the United Nations*, op. cit., pp. 75–6.

W. Ofuathey-Kodjoe, writing in 1995, could assert: 'We are now at a point in the development of international law where it can be stated authoritatively that every individual has guaranteed to him or her a range of human rights,'¹¹⁷ among which he lists most of the civil and political rights and some of the economic, social and cultural rights included in the Universal Declaration.

Even while writing the Universal Declaration, the Commission accepted that it was only the first step in the development of an international bill of rights. The two major International Covenants – on Civil and Political Rights and on Economic, Social and Cultural Rights – along with enforcement measures were to fulfil the mandate initially given by ECOSOC. The Commission and ECOSOC viewed the Declaration in part as a kind of agenda for the elaboration of human rights by the United Nations. And indeed much of the work of the Commission and other United Nations agencies in the field of human rights is foreshadowed by the various articles of the Declaration as well as the debates over rights omitted from the document. In some ways, the Declaration can be read as a table of contents for a collection of binding conventions and resolutions elaborating international human rights.¹¹⁸ As Hurst Hannum observes:

The Universal Declaration of Human Rights has been the foundation of much of the post-1945 codification of human rights, and the international legal system is replete with global and regional treaties based, in large measure, on the Declaration. Initially adopted only as 'a common standard of achievement for all peoples and all nations', the Declaration today exerts a moral, political, and legal influence far beyond the hopes of many of its drafters.¹¹⁹

That international lawyers view the Declaration as legally binding has not meant, of course, that it has been uniformly observed. In fact, Humphrey seems clearly and regrettably accurate when he observes: 'There is unfortunately little reason for thinking that human rights, with the possible exception of economic, social and cultural rights and the rights of certain classes of people not to be discriminated against, are better respected now than they were before 1948.'¹²⁰

117. W. Ofuathey-Kodjoe, 'The United Nations and the Protection of Individual and Group Rights', *International Social Science Journal*, XLVII:2 (June 1995), p. 317.

118. See, for instance, United Nations, Department of Public Information, *The United Nations and Human Rights, 1945–1995* (New York: United Nations, 1995).

119. Hannum, *op. cit.*, p. 289.

120. Humphrey, *Human Rights and the United Nations*, *op. cit.*, p. 76.

Nor has it meant that the controversies over the Declaration or the effort to establish universal standards of human rights have come to an end. Indeed, it may be that the increasing influence and involvement of non-Western States which were only tangential participants in the dialogues of the 1940s have given renewed currency to the question of how universal the Universal Declaration really is. The issue, particularly articulated in some of the more assertive and economically advanced countries of Asia, dominated the 1993 United Nations World Conference on Human Rights in Vienna and its Asian preparatory meeting in Bangkok. After sometimes acrimonious debate, the Vienna Declaration affirmed the universality of human rights, but Christina M. Cerna seems clearly correct in her analysis of the Vienna Conference when she observes that 'achieving universal acceptance of international human rights norms is a process, and different norms occupy different places on the continuum'.¹²¹ As Egon Schwelb once observed, the Universal Declaration, both in its universality and in its legal status, 'perhaps, is law in the making'.¹²²

CONCLUSION

In the fifty years since Eleanor Roosevelt, P. C. Chang, Charles Malik, René Cassin, John Humphrey and others struggled to frame a declaration that would have universal validity and command global allegiance, many things have changed. The United Nations majority shifted from a Western liberal one to Third World predominance. The Cold War strengthened, then eased, strengthened and eased once more, and, finally, faded away. The United Nations, once marginalized by Cold War rivalries, is again struggling to define for itself a more central role in the global arena. A network of communication has developed to link human rights activists in ways that create a truly international human rights community. Part of the work of the NGOs which prodded the American planners of post-war international organization, part of the work of Eleanor Roosevelt both at the United Nations and after, was to place human rights on the global agenda. Their effort has been rewarded by an almost unimaginable expansion of attention to human rights throughout the world. That item is on the international agenda as never before.

Still, in spite of all those changes – indeed perhaps because of them – the achievement of those who drafted and adopted the Universal Declaration seems even more impressive.

121. Cerna, *op. cit.*, p. 752.

122. Schwelb, *op. cit.*, p. 229.

In just thirty-three months in the midst of recovery from war, the birth of the Cold War, the early experiment of the United Nations especially in the economic and social field, they forged agreement on a text which transcended differences in language, nationality and culture – not fully, of course, but to an extent unprecedented in international relations. Some sense of how remarkable their achievement was can be gained by reflecting for a moment on the fact that it was to take another eighteen years to forge agreement on the main human rights covenants and another eleven years beyond that before sufficient States had ratified them in order for them to come into effect. Moreover, now, fifty years after the adoption of the Declaration, a number of prominent countries, including the United States, have yet to ratify one or more of the United Nations International Covenants on Human Rights. Work on implementation has been sporadic and piecemeal at the United Nations and only a little more successful in some regional contexts.

The story of their work brings us to several conclusions. First, theirs was an effort unusually co-operative in the international context. In spite of personal and cultural differences, they worked together, drafting and reworking each other's drafts, tinkering with language to accommodate differing points of view, examining their own cultures and concepts illuminated by other visions. They were all the authors of the Declaration and they were all remarkable individuals.

But, in many ways, Mrs Roosevelt was the most remarkable of them all. Of her, perhaps, less was expected, for she was not learned in philosophy or law, but she brought to her work two indispensable qualities which no one else could have brought and which were probably essential to the successful completion of the work on the Declaration: an international stature in political and humanitarian circles, which gave prominence to the work of the Commission, and a skill and drive in managing both the Commission and her own government, without which the Declaration would almost certainly have been delayed if not scuttled altogether.

While the legal authority of the Declaration continues to grow, violations of human rights by States with increasing access to new and more advanced technical methods of cruelty and surveillance continue to provoke revulsion among those who share Mrs Roosevelt's vision of a freer and more compassionate world. But perhaps Mrs Roosevelt herself provided the best clue to the most important impact of the Declaration. She liked to remind audiences that the quest for global human rights had to begin at home – in every village and city everywhere in the world. She would ask rhetorically:

Where, after all do universal human rights begin? In small places, close to home – so close and so small that they cannot be seen on any maps of the world. Such are the places where every man, woman and child seeks equal justice, equal opportunity, and equal dignity, without discrimination. Unless these rights have meaning there they have little meaning anywhere.

Perhaps the most important effect of the Universal Declaration of Human Rights is found not in its legal status or even in its precise language or the rights it lists or omits, but in the symbol it provides for the thousands of people in villages and cities throughout the world who struggle to make human rights a reality in their own communities. They can know from the work of those remarkable men and women more than half a century ago that the best minds and noble spirits of the international community share in their struggle.

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UNESCO AND THE UNIVERSAL DECLARATION OF HUMAN RIGHTS

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The Constitution of UNESCO states that the purpose of the Organization 'is to contribute to peace and security by promoting collaboration among the nations through education, science and culture in order to further universal respect for justice, for the rule of law and for human rights and fundamental freedoms'. UNESCO was born out of the assumption that political and economic arrangements are not sufficient to secure lasting peace, which must be founded upon the intellectual and moral solidarity of mankind, as well as upon the full respect of justice and human rights. For this very reason, the principles set forth in the Universal Declaration of Human Rights of 1948 have, from the moment of its adoption, continuously inspired its activities.

UNESCO was, in fact, actively involved in the drafting of the Universal Declaration. In 1947, at the request of the United Nations Commission on Human Rights, the Director-General sent a questionnaire to a number of personalities – philosophers and writers – in various Member States, asking their opinion on theoretical problems posed by the Universal Declaration. Answers dealing with the general philosophy and procedures of human rights, as well as with concrete issues, were subsequently presented to the Commission.

The day after the adoption of the Universal Declaration of Human Rights on 11 December 1948, the General Conference voted a resolution proclaiming the importance of the Declaration for all UNESCO activities, in particular for those dealing with education and international understanding. Moreover, the General Conference asked the Director-General to actively disseminate the information concerning the Declaration within the Secretariat to ensure that all programme units be inspired by its provisions. A similar resolution was adopted on 12 December 1948 by the Executive Board.

Like other Specialized Agencies of the United Nations system, UNESCO implements rights formulated in the articles of the Declaration which fall within its fields of competence. This applies, primarily, to Article 26, 'Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages . . .'; Article 27, 'Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits'; and Article 19, 'Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.'

As far as activities relating to human rights are concerned, great importance is also attached to Article 1, 'All human beings are born free and equal in dignity and rights . . .', and Article 2, 'Everyone is entitled to all the rights and freedoms . . . without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion . . .', for without a struggle against all forms of discrimination, all other rights – to education, culture, scientific progress and information – would be empty of meaning.

In the fifty years following the adoption of the Declaration, the Organization has undertaken numerous activities to achieve a full implementation of its articles. The General Conference has adopted a number of standard-setting instruments¹ codifying and concretizing the rights proclaimed, and established special procedures for their protection. It has encouraged multidisciplinary research, operational activities and publications on many aspects of human rights and has been very active in the struggle against all forms of discrimination. Last but not least, through teaching and information, UNESCO has aimed at the creation of a culture of human rights and a climate conducive to their universal recognition and protection.

UNESCO'S STANDARD-SETTING INSTRUMENTS

THE RIGHT TO EDUCATION

In accordance with its mandate, UNESCO has adopted a number of normative documents, conventions and recommendations ensuring the enjoyment of the right to education for

1. See *UNESCO and Human Rights, Standard-Setting Instruments, Major Meetings, Publications, Selection of Documents*, with introduction by Janusz Symonides and Vladimir Volodin (Paris: UNESCO, 1996).

everyone. The best known among these is the Convention Against Discrimination in Education, which was adopted on 14 December 1960 by the General Conference and which entered into force in 1962. This Convention, which responds simultaneously to Articles 2 and 26 of the Universal Declaration, is not only directed at the elimination of discrimination in education but also concerns the adoption of measures aimed at promoting equality of opportunity and treatment in this field. However, the obligations of States Parties differ in each of these cases. Under Article 3 of the Convention, States Parties are obliged to undertake immediate measures to eliminate and prevent discrimination, whereas in relation to equality of opportunity, they are to apply national policy, by methods appropriate to the circumstances and to national usage.

At the same time as the Convention, the General Conference also adopted the Recommendation Against Discrimination in Education, in order to avoid the difficulties which Member States might have – for various reasons, in particular those due to their federal structure – in ratifying the Convention.

The right to education is intimately linked with the right to teach. In 1966 an intergovernmental conference convened by UNESCO, with the participation of the International Labour Organisation, adopted the Recommendation Concerning the Status of Teachers. In its preamble it underlines that the right to education is a fundamental human right and recognizes the essential role of teachers in educational advancement and the importance of their contribution to the development of man and modern society. The Recommendation deals mainly with preparation for the teaching profession, further education for teachers, employment and career, the rights and responsibilities of teachers, conditions for effective teaching and learning etc. But it also formulates guiding principles and educational objectives and policy stressing, *inter alia*, the fact that advances in education depend largely on the qualifications and ability of teaching staff in general and on the human, pedagogical and technical qualities of individual teachers.

A joint ILO/UNESCO Committee of Experts on the Application of the Recommendation Concerning the Status of Teachers was set up by the fourteenth session of the UNESCO General Conference and the 167th session of the Governing Body of the ILO. The Committee's terms of reference are to examine the reports received from governments on action taken by them on the Recommendation. Several of the Recommendation's provisions are directly connected with the exercise of human rights, particularly those relating to non-discrimination in the training and employment of teachers and the right of association of teachers.

In 1962, the General Conference adopted a Recommendation Concerning Technical and Vocational Education. There were two reasons for this. One was to underline the importance given to the role of technical and vocational education in sustaining the complex structure of modern civilization and continued economic progress. The other was to meet the needs of Member States, in particular of developing countries, for guidance in planning and improving their education systems. Rapid technological and educational changes and the increasing importance of this type of education led the General Conference to revise this first Recommendation and to adopt a second one in 1974.

In 1989, the General Conference adopted a Convention on Technical and Vocational Education which took into account Convention No. 142 and Recommendation No. 150 adopted by the International Labour Conference in 1975. It also reflected the need for an international legal instrument for the reinforcement of international collaboration in the development of technical and vocational education.

The Third International Conference on Adult Education, which met in Tokyo in 1972, urged UNESCO to explore the possibility of preparing a recommendation concerning the development of adult education. Four years later, in 1976, a Recommendation on this subject was adopted which underlines that, in the context of lifelong education, the development of adult education is necessary in order to achieve a more rational and more equitable distribution of educational resources between young people and adults. Adult education must not be considered as an entity in itself but as an integral part of a global scheme for lifelong education and learning. Each Member State should recognize adult education as an essential, specific component of its education system and as a permanent element of its social, cultural and economic development policy.

UNESCO's activities for the implementation of the right to education are by no means limited to the preparation of normative documents. The Organization also undertakes operational programmes assuring access to education of refugees, migrants, minorities, indigenous people, women and the handicapped.

The fight against illiteracy is an absolute priority among the Organization's activities, since collective development proceeds from the education given to each individual human being.²

2. The UNESCO Medium-Term Strategy (1996–2001) contains provisions concerning the promotion of lifelong education for all. The Approved Programme and Budget for 1998–1999, in its Major Programme I

THE RIGHT TO PARTICIPATE IN CULTURAL LIFE

One of the first UNESCO standard-setting documents to formulate, though very generally, cultural rights, was the Declaration of the Principles of International Cultural Co-operation (1966). It states, *inter alia*, that every people has the right and the duty to develop its own culture, that international cultural co-operation should cover all aspects of intellectual and creative activities relating to education, science and culture. In Article IV(4) it underlines that international co-operation should 'enable everyone to have access to knowledge, to enjoy the arts and literature of all peoples, to share in advances made in science in all parts of the world and in the resulting benefits, and to contribute to the enrichment of cultural life'.

Subsequently, the UNESCO Intergovernmental Conference on Cultural Policies of 1970 concluded that Article 27 of the Universal Declaration implies that the duty of those responsible for communities goes beyond simply respecting the right of their members to participate in cultural life. They must provide them with the effective means to do so.

The Recommendation on Participation by the People at Large in Cultural Life and Their Contribution to It (1976) is the final result of a series of statements on cultural policies made during intergovernmental conferences convened by UNESCO. It defines *access to culture* as those concrete opportunities available to everyone, in particular through the creation of the appropriate socio-economic conditions, for freely obtaining information, training, knowledge and understanding, and for enjoying cultural values and cultural property. *Participation in cultural life* means the concrete opportunities guaranteed for all – groups and individuals – to express themselves freely, to communicate, to act and to engage in creative activities in order to obtain the full development of their personalities, a harmonious life and the cultural progress of society. The Recommendation stresses the need for Member States to democratize the instruments for cultural activity so that individuals can participate freely and fully in cultural creation and its benefits.

'Education for All throughout Life', foresees a number of actions to support a more integrated implementation by UNESCO of the Plan of Action for the Eradication of Illiteracy by the Year 2000 and the Framework of Action which was adopted by the Jomtien World Conference on Education for All (1990). The programme is designed to give a further impetus to the renewal of education systems and thus make education for all, throughout life, a reality.

In 1980, taking into account the important role that artists play in the life and evolution of society, the General Conference adopted the Recommendation Concerning the Status of the Artist. Subsequently, UNESCO organized a series of symposia, studies and meetings to determine the status of the artist in contemporary society. In this context, an 'artist' is defined as any person who creates or gives creative expression to, or re-creates, works of art, who considers artistic creation to be an essential part of his or her life, who contributes in this way to the development of art and culture. The Recommendation defines the status of the artist, with particular reference to conventions governing copyright and the rights of performers.

The Universal Declaration of Human Rights (Article 27, paragraph 2) foresees that 'everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author'. To guarantee this right, UNESCO convened in 1952 the Intergovernmental Copyright Conference which adopted the Universal Copyright Convention, later revised in 1971 to meet the needs of developing countries. This Convention ensures the widest possible dissemination of creative works at the lowest possible cost, while safeguarding the authors' rights. The Organization has also sponsored an International Convention for the Protection of Performers and Producers of Phonograms and Broadcasting Organizations (Rome, 1961) and a Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms (Geneva, 1971).

Apart from its standard-setting and operational activities, the Organization promotes research and intellectual reflection on cultural development, cultural plurality and cultural rights. It is worth while to note that already in 1968 UNESCO organized an experts' meeting on cultural rights as human rights.

The interrelation between culture and development was studied by the World Commission on Culture and Development (WCCD), established in 1992, as part of the World Decade for Cultural Development. The main objective of the WCCD, chaired by Mr Javier Pérez de Cuéllar, was to prepare the first *World Report on Culture and Development*.

A recent activity of special importance was the Intergovernmental Conference on Cultural Policies for Development (Stockholm, Sweden, 30 March to 2 April 1998), which discussed practical ways of recasting cultural policies in a human development framework. It adopted an Action Plan for Cultural Policies for Development and formulated twelve principles underlining that

Access to and participation in cultural life being a fundamental right of individuals in all communities, governments have a duty to create conditions for the full exercise of this right in accordance with Article 27 of the Universal Declaration of Human Rights.

THE RIGHT TO PARTICIPATE IN SCIENTIFIC PROGRESS

Few of the standard-setting documents adopted by the General Conference are relevant to the promotion of this right. The Recommendation on the Status of Scientific Researchers adopted in 1974 underlines that each Member State should use scientific and technological knowledge to enhance the cultural and natural well-being of its citizens and to further the ideals and objectives of the United Nations. Furthermore, they should actively promote the interplay of ideas and information among scientific researchers throughout the world. This is vital to the healthy development of science and technology, and should urge States to take all necessary measures to ensure that scientific researchers can participate in international scientific and technological gatherings and travel abroad. Scientific researchers should be able to publish results of their work and enjoy appropriate legal protection, in particular the protection afforded by copyright law.

Previously, the question of academic freedom had been discussed mainly from the point of view of the professional status of various groups. However, in 1989, UNESCO, in co-operation with the World University Service, organized the International Seminar on Factors and Conditions Conducive to Academic Freedoms. Thus the way was opened for the preparation of a comprehensive normative instrument on academic freedoms to codify such rights as, for example, the freedom of scientific research, the right to publish, communicate and distribute results of research, the right to teach and the right to participate in international intellectual co-operation.

In co-operation with the Raoul Wallenberg Institute for Human Rights and Humanitarian Law, UNESCO organized in 1992 a seminar on academic freedom in Lund, Sweden, where the concept of academic freedom and the rights and responsibilities surrounding its implementation were discussed. This seminar was followed by a UNESCO/CEPES (European Centre for Higher Education) Conference held at Sinaia, Romania, on academic freedom and university autonomy. In 1993 a seminar organized by UNESCO and the Human Rights Centre of Poznan University in Poland elaborated a preliminary draft declaration on academic freedom, enumerating the rights of members of the academic community. This draft, with minor changes, was approved by the Montreal Congress on Education for Human Rights and Democracy (March 1993).

In 1996, an International Colloquium on Academic Freedom organized by UNESCO and the International Institute for Human Rights Studies in Trieste, Italy, took a further step in the debate on this subject.

Over the last decade, UNESCO has done work on the human and cultural implications of scientific and technological progress and, at a conference organized by UNESCO in Brasilia in 1985, participants urged the use of science and technology for peaceful ends, and rejected 'any application that places the survival of humanity in jeopardy'. Despite the limited number of standard-setting instruments dealing with the right to participate in scientific progress, it is fully reflected in activities of the UNESCO Science Sector.³

In its activities concerning bioethics, UNESCO has attached special attention to the human genome. On 10 November 1997, the General Conference adopted by consensus a Universal Declaration on the Human Genome and Human Rights (Doc. 29C/21), the result of four years of deliberations and work of the UNESCO International Bioethics Committee. It provides an answer to several ethical and legal concerns linked, in particular, with the threat that research on the human genome may open the door to dangerous deviations contrary to human dignity and fundamental human rights. It establishes limits on interventions in the genetic heritage of humanity and in individuals which the international community has a moral obligation not to transgress. The Declaration recognizes the fundamental unity of all members of the human family and their inherent dignity and diversity, and proclaims that the human genome is, symbolically, the heritage of humanity.

With regard to the crucial question of research on the human genome, the Declaration takes a balanced position, underlining that, on the one hand, no research or application concerning the human genome in biology, genetics and medicine should prevail over the respect for human rights, fundamental freedoms and human dignity. It states, on the other hand, that freedom of research, which is necessary to the progress of knowledge, is part of freedom of thought. However, certain practices, such as reproductive cloning of human beings, are contrary to human dignity and shall not be permitted (Article 11).

3. Major Programme Area II: *The Sciences in the Service of Development* (Approved Programme and Budget for 1998–1999, p. 39).

THE RIGHT TO INFORMATION

Freedom of information is rightly regarded as one of the prerequisites for the exercise of human rights and constitutes a very potent confidence-building measure. Accordingly, Article I, paragraph 2(a) of the UNESCO Constitution stipulates that the Organization will 'collaborate in the work of advancing the mutual knowledge and understanding of peoples, through all means of mass communication and to that end recommend such international agreements as may be necessary to promote the free flow of ideas by word and image'.

In implementing the right to information, UNESCO strives to eliminate various barriers to the free movement of books, publications and other printed materials. Four agreements have been prepared for this purpose.

In 1948 the General Conference adopted an agreement for facilitating the international circulation of visual and auditory materials of an educational, scientific and cultural character. This agreement introduced exemption from all customs duties and quantitative restrictions for materials originating in the territory of any Contracting State.

In 1950 the Florence Agreement on the Importation of Educational, Scientific and Cultural Materials was designed to abolish customs duties and remove the trade barriers which impede exchanges of visual and auditory materials and of several other items. Twenty-six years later a Protocol was added to this Agreement. Furthermore, under the provisions of the Convention Concerning the International Exchange of Publications of 1958, the Contracting States grant exemption from customs duties for both imported and exported material.

A Convention Concerning the Exchange of Official Publications and Government Documents between States (1958) facilitated the international exchange of official publications. In 1978, a Declaration on Fundamental Principles Concerning the Contribution of the Mass Media to Strengthening Peace and International Understanding, to the Promotion of Human Rights and to Countering Racialism, Apartheid and Incitement to War was adopted.

The end of ideological rivalry between East and West allowed UNESCO to adopt a clear-cut strategy concerning freedom of information and free flow of ideas. The Organization took an unequivocal position on this subject, foreseeing the encouragement of the free

flow of information and promotion of the wider and better balanced dissemination of information, *without any obstacle to the freedom of expression*. The Major Programme on Communication, Information and Informatics⁴ is inspired by the principle of freedom of expression and its corollary: freedom for all to choose their information. This is reflected in action aimed at promoting press freedom, pluralism and media independence, and at supporting efforts in Member States to set up independent, pluralist media. The ultimate aim of this strategy is to provide practical responses to the challenges arising from the process of democratization going on in many countries and the demands of sustainable development.

The Medium-Term Strategy (1996–2001) provides for projects encouraging the free flow of information as well as strengthening communication capacities, particularly in the developing countries. Meetings have been convened in different regions of the world to train journalists and to confirm the role of the media (Paris, France, 1989, 1990; Windhoek, Namibia, 1991; Almaty, Kazakstan, 1992; Santiago, Chile, 1994; Sana'a, Arab States, 1996; and Sofia, Bulgaria, 1997). Declarations on promoting independent and pluralistic media were adopted at the meetings in Windhoek, Almaty and Sofia. UNESCO has made the promotion of a free and independent press the cornerstone of its communication development strategy. It also supports the International Freedom of Expression Exchange (IFEX), an international communication network which disseminates information about attacks on freedom of speech and press freedom.

UNESCO'S CONTRIBUTION TO THE ELIMINATION OF ALL FORMS OF DISCRIMINATION

ELIMINATION OF RACISM AND RACIAL DISCRIMINATION

The UNESCO stand on racism was formulated in its Constitution. The Preamble stresses that 'the great and terrible war which has now ended was a war made possible by the denial of the democratic principles . . . by the propagation, in their place, through ignorance and prejudice, of the doctrine of the inequality of men and races'. Article I adds that human rights and fundamental freedoms 'are affirmed for the peoples of the world, without distinction of race, sex, language or religion, by the Charter of the United Nations'.

4. See Approved Programme and Budget for 1998–1999, Major Programme Area IV, pp. 91–110.

In 1948, the United Nations Economic and Social Council urged UNESCO to adopt a programme for disseminating scientific facts designed to remove racial prejudice. In response to this appeal, UNESCO sponsored a vast programme of research on the scientific basis of race. In 1950, a group of eminent experts prepared a *Statement on Race*, followed in 1951 by a *Statement on the Nature of Race and Race Differences*. Both these statements emphasized that biological differentiation of races is without foundation and unequivocally rejected theories of racial superiority. They underlined that race is not so much a biological phenomenon as a 'social myth'. For this reason it would be better, when speaking of humankind, to drop the term 'race' altogether and speak of ethnic groups.

In 1964, a *Statement on the Biological Aspects of Race* was drafted. While recognizing that there are obvious physical differences between populations living in different geographical areas of the world, the 1964 text emphasized the predominance of historical, social and cultural factors over biological factors in the explanation of these differences. In 1967, UNESCO convened a multidisciplinary expert meeting with a much broader representation of specialists in the social and biological sciences which worked out the fourth *Statement on Race and Racial Prejudice* and thus contributed towards elucidating the genesis of racist theories and racial prejudice.

From the earliest years of the Organization's existence, many General Conference resolutions denounced discrimination, racism and racial prejudice. Thus, in 1950, the General Conference stressed the particularly dangerous character of racism. In 1954, it stated that 'discrimination as enumerated in Article 2 of the Universal Declaration of Human Rights . . . is one of the greatest dangers to peace and to human dignity'. In 1960, it noted that 'every display of racial intolerance or alleged national superiority . . . constitutes a threat to international peace, security and understanding'. Many other resolutions follow the same lines.

In 1978, the General Conference at its twentieth session solemnly adopted, by acclamation, the Declaration on Race and Racial Prejudice. While UNESCO's earlier statements on race had been drawn up by groups of experts and carried the authority of the outstanding specialists who prepared them, the Declaration was the outcome of a meeting of government representatives of Member States and, as a standard-setting document, it imposed on them obligations foreseen in the UNESCO Constitution. It states that all human beings belong to a single species and are descended from a common stock. The differences between the achievements of various peoples can only be attributed to geographical, historical, political, economic, social and cultural factors. Such differences can under no circumstances serve

as a pretext for any rank-ordered classification of nations or peoples. Racial prejudice, historically linked with inequalities in power and reinforced by economic and social differences between groups, is totally without justification.

The Declaration proclaims the right of all individuals and groups to be different. However, diversity of lifestyles and the right to be different may not under any circumstances serve as a pretext for racial prejudice. The Declaration not only qualifies apartheid as one of the most serious violations of the principle of equality in dignity and rights but goes further, stating that apartheid 'is a crime against humanity, and gravely disturbs international peace and security'.

The State has prime responsibility for ensuring human rights and fundamental freedoms and it should take all appropriate steps to prevent, prohibit and eradicate racism, racist propaganda, racial segregation and apartheid. The Declaration calls upon international organizations to co-operate and assist, inasmuch as their respective fields of competence and means allow, 'in full and complete implementation of its principles'.

During the fifty years of activity aimed at the elimination of racism and racial discrimination, UNESCO has organized numerous meetings and prepared a number of studies dealing with various aspects of the question. Probably one of the best known UNESCO studies is the booklet *The Race Question in Modern Science*, first published in the 1950s, which contained contributions from leading figures in the world of science.

THE STRUGGLE AGAINST APARTHEID

The position taken by UNESCO on racial problems has been unequivocal and brought about the decision of the Government of the Union of South Africa to withdraw from the Organization on 31 December 1956. In 1966 the General Conference requested the Director-General not to invite the Republic of South Africa to attend conferences or take part in other UNESCO activities, until such time as the South African Government abandoned its policy of racial discrimination. Then, in 1967, the Organization published *Apartheid and Its Effects on Education, Science, Culture and Information*, a second, updated edition of which appeared in 1972.

In 1970, the sixteenth General Conference called for positive action to support the African liberation movements and, to that end, invited the Director-General 'to send a mission to the Organization of African Unity (OAU) and, after examination of its report by the

Executive Board, evolve concrete programmes for assistance to (a) refugees from colonial territories and (b) other people striving to liberate themselves from colonial domination and all forms of apartheid'.

Subsequently programmes of assistance for the liberation movements of Namibia and South Africa were launched. Assistance has been primarily in the field of education and has consisted of granting fellowships and school stipends.

In addition to studies on the theoretical and ideological basis of apartheid, training programmes for South African and Namibian key personnel were organized in the United Republic of Tanzania and Zambia and at the Institute of Social Studies, The Hague (Netherlands). These programmes were aimed particularly at increasing knowledge in the social sciences. Courses were also provided for South African graduate students on the repercussions of apartheid on the South African economy and the impact of apartheid on women. Furthermore, working groups on women and apartheid, economics and apartheid, and culture and apartheid were organized.

In co-operation with the OAU, UNESCO published a number of monographs: *Race, Class and the Apartheid State* by Harold Wolpe; *Endgame in South Africa?* by Robin Cohen; and *A History of Resistance in Namibia* by Peter Katjavivi. In addition, a strip cartoon, *Fighting Apartheid: A Cartoon History*, was prepared in co-operation with the International Defence and Aid Fund for Southern Africa in London.

In the framework of the Special Project – Contribution to the Elimination of Apartheid: Towards an Apartheid-free World, UNESCO continued promoting actions of solidarity against apartheid and improving the training of cadres from the liberation movements recognized by the OAU. Several meetings were organized devoted to the study of various political alternatives for an apartheid-free society, including problems of promoting a culture of peace and democracy in South Africa.

Since the abolition of the system of apartheid in South Africa, UNESCO has started activities to assist the construction of a democratic, non-racial, apartheid-free society in South Africa. As part of these efforts aimed at promoting education for human rights, tolerance, democracy and peace, UNESCO Chairs were established in Windhoek, Namibia (UNESCO Chair for Democracy and Human Rights), and Fort Hare, South Africa (UNESCO 'Oliver Tambo' Chair of Human Rights), to contribute to the implementation of a pluralistic culture in South Africa.

IMPROVING THE STATUS OF WOMEN – TOWARDS THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN

Since its early years, UNESCO has been very active in combating all forms of inequalities based on gender within the Organization's fields of competence. Apart from the adoption in its standard-setting documents of numerous provisions aimed at the elimination of discrimination in education, professional and public life, UNESCO has promoted highly valuable ongoing research, which has yielded fuller knowledge of the situation of women throughout the world and better understanding of the nature of existing inequalities. All its activities are based on the assumption that international organizations can contribute to the emancipation of women and girls through research, information, education and training.

In 1976, the General Conference of UNESCO at its nineteenth session (Resolution 19C/16.1) invited the Director-General to present biannually a special report describing the activities carried out by the Organization in its fields of competence as a contribution to improving the status of women.

These activities have mainly concentrated on the promotion of equality between women and men in different societies and in different fields, particularly in education, in cultural as well as economic and political life, and in the field of communication and information.

The Organization has sponsored studies and research on the universality of women's rights. An international meeting of experts in Baku (former USSR) in 1987, while noting that the principle of women's rights emerged in Europe in the eighteenth century, emphasized its universal scope. In 1988/89, an extensive programme on one of the most worrying aspects of discrimination against women, female prostitution, was completed. A 1986 meeting in Madrid recognized prostitution as a flagrant violation of human rights. Among the activities that have taken place in 1997/98, mention should be made of the support for institutions and networks specializing in women's studies and the creation of UNESCO Chairs on women's issues concerning greater participation of women in all spheres of life.

As far as educational equality of men and women is concerned, UNESCO has organized a number of meetings dealing with the implementation in various regions of the world of the right of women to education. Since, with very few exceptions, illiteracy rates are higher for women than for men, the Organization has launched a number of operational activities known as literacy, functional literacy and civic education projects for women.

It is also conducting a series of research and action projects on the participation of women in cultural life and communication. A book on women and decision-making in the media, *The Invisible Barrier*, was published in 1987. Recently, studies were carried out on the contribution of the media to strategies for the advancement of women, on the role of women in the mass media and on women's training in the communication professions. The Organization co-operates closely with two United Nations bodies, the Committee on the Elimination of Discrimination Against Women and the Working Group on Contemporary Forms of Slavery.

Efforts are being stepped up to promote equality between men and women in accordance with the objectives formulated by the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (1979), the Nairobi Forward-Looking Strategies for the Advancement of Women (1985), and the Beijing Declaration and Platform for Action (1995).

The Organization continues to support action to combat violence and discrimination against women. In co-operation with Member States, national institutions, non-governmental organizations and United Nations agencies, activities to strengthen preventive action against traffic in women and to limit the effects of female prostitution (forced labour in the formal and informal sphere) in migration-related phenomena are being reinforced. More specifically, UNESCO gives priority attention to women and girls in countries ravaged in the recent past by armed conflict, with the aim of alleviating the effect of violence, and providing education to refugees and displaced persons. Thus, for example, it has provided assistance to women and children who were victims of rape as a tool of war in Bosnia and Herzegovina (Resolution 11.1.II.6, as adopted by the twenty-seventh General Conference of UNESCO).

Women's increasing initiatives in conflict resolution, their struggle for democracy and human rights in the Mediterranean region, as well as their increasingly prominent role in sustaining economic and social development, place them at the core of UNESCO's Mediterranean and Culture of Peace Programme. The main objective of the programme is to promote the status of women within the region, and to encourage exchanges and co-operation. These are the necessary conditions for establishing peace and security in this area through the respect of equality of individuals and cultures.

THE STRUGGLE AGAINST INTOLERANCE

Discrimination and intolerance often go hand in hand.⁵ The Organization has taken steps to organize a real 'crusade' against intolerance and, at its instigation, the United Nations General Assembly proclaimed 1995 the United Nations Year for Tolerance, inviting it to assume the role of lead organization for the Year.

The General Conference of UNESCO in 1995 adopted the Declaration of Principles on Tolerance. In Article 1, it explains that

Tolerance is respect, acceptance and appreciation of the rich diversity of our world's cultures, our forms of expression and ways of being human. It is fostered by knowledge, openness, communication and freedom of thought, conscience and belief. Tolerance is harmony in difference. It is not only a moral duty, it is also a political and legal requirement.

Article 2 stresses that tolerance requires that economic and social opportunities be made available to each person without any discrimination. States should ratify existing international human rights conventions and draft new legislation where necessary to ensure equality of treatment and opportunity for all groups and individuals in society. Education, as stated by the Declaration, is the most effective means of preventing intolerance.

The Plan of Action for the Follow-Up to the United Nations Year for Tolerance presents the causes and factors contributing to manifestations of intolerance around the world. It speaks about the mobilization of the United Nations system and underlines that the rights and responsibilities regarding tolerance and the right to be different are firmly established in human rights law.

UNESCO'S PROCEDURES FOR THE IMPLEMENTATION OF CONVENTIONS AND RECOMMENDATIONS CONCERNING HUMAN RIGHTS

SUBMISSION AND EXAMINATION OF THE REPORTS OF MEMBER STATES

In accordance with UNESCO's Constitution (Article IV, paragraph 6), the General Conference receives and considers reports sent to the Organization by Member States on actions taken

5. As underlined by the UNESCO Medium-Term Strategy 1996–2001.

subsequent to the adoption of recommendations and conventions. Member States submit their reports to the Organization 'at such times and in such a manner as shall be determined by the General Conference'. The Rules of Procedure concerning recommendations to Member States and international conventions⁶ stipulate that initial special reports relating to any convention or recommendation adopted shall be transmitted not less than two months prior to the opening of the first ordinary session of the General Conference following that at which such a recommendation or convention was adopted. The Rules of Procedure provide that the General Conference, in addition to the initial special reports, may further request Member States to submit, by prescribed dates, additional reports to include information on the laws, regulations and statistics regarding the State's educational, scientific and cultural institutions and activities.

Apart from the Constitution, several UNESCO conventions and recommendations contain provisions concerning reports. Thus Article 7 of the Convention against Discrimination in Education provides that 'States Parties to this Convention shall, in their periodic reports submitted to the General Conference of UNESCO on dates and in a manner to be determined by it, give information on the legislative and administrative provisions which they have adopted'. At the present time the reports by the States Parties are drawn up on the basis of a detailed questionnaire prepared by the Committee on Conventions and Recommendations and adopted by the General Conference. The replies are analysed by the Secretariat and examined by the Committee. The Committee then draws up a report for submission to the Executive Board, which transmits it with its comments to the General Conference.

Another example is the resolution for the implementation of the Declaration on Race and Racial Prejudice, which urges Members States 'to communicate to the Director-General all necessary information concerning steps they have taken to give effect to the principles set forth in the Declaration'.

CONCILIATION AND GOOD OFFICES PROCEDURE

To supplement and strengthen the system of implementation of the Convention against Discrimination in Education, the General Conference adopted on 10 December 1962 the

6. Adopted by the General Conference of UNESCO at its fifth session and modified at its seventh and seventeenth sessions.

Protocol instituting a Conciliation and Good Offices Commission responsible for seeking the settlement of any disputes which might arise between States Parties to that Convention. The Protocol, binding at present thirty-one States, entered into force on 24 October 1968.

This Commission is permanent and consists of eleven members of high moral standing and acknowledged impartiality elected by the General Conference for a term of six years from a list of persons nominated by the States Parties. The members serve in their personal capacity. The General Conference endeavours to elect persons of recognized competence in the field of education and persons having judicial or legal experience. Consideration is also given to equitable geographical distribution of membership and to the representation of the different cultures as well as of the principal legal systems. If a State to a dispute has no member of its nationality, it may choose a person to sit on the Commission as an ad hoc member.

In accordance with Article 12, if a State Party considers that another State Party is not giving effect to a provision of the Convention, it may, by written communication, bring the matter to the attention of that State; the receiving State should then give an explanation within three months. If the matter is not settled to the satisfaction of both parties within six months, either State has the right to refer the matter to the Commission.

Initially recourse to the Commission was opened to States Parties to the Protocol. From the beginning of the sixth year after the entry into force of the Protocol, that is, after 24 October 1974, the Commission was also made responsible for seeking the settlement of disputes between States that are parties to the Convention but not parties to the Protocol, if the States in question so agree. However, it may deal with a case only after exhausting domestic remedies.

The Commission's mandate is, after obtaining all information, to ascertain the facts and make available its good offices to the States concerned in order to find an amicable solution of the matter. In every case it draws up a report which is sent to the States concerned and then communicated to the Director-General for publication. If a solution is found, the report is brief and confined to the facts and solutions reached. If not, the report indicates, in addition to the facts, recommendations of the Commission whose members are entitled to attach separate opinions.

PROCEDURE FOR THE IMPLEMENTATION OF THE CONVENTION
FOR THE PROTECTION OF CULTURAL PROPERTY
IN THE EVENT OF ARMED CONFLICT, WITH REGULATIONS
FOR THE EXECUTION OF THE CONVENTION

During a period of armed conflict, the protection of cultural property belonging to the cultural heritage of mankind is a prerequisite for the exercise of human rights in the cultural field. It follows therefore that the procedure for the implementation of this Convention can be considered intimately linked to other UNESCO procedures for the protection of human rights.

The Hague Convention of 1954⁷ (with the Regulation) established a special procedure for its execution in which the Director-General of UNESCO was required, upon the entry into force of the Convention (7 August 1956), to compile an international list of persons nominated by the parties and qualified to carry out the functions of the Commissioner-General for Cultural Property. In the case where a party to the Convention is engaged in an armed conflict, it appoints a representative for cultural property situated in its territory and also entrusts a neutral State (Protecting Power) with the task of defending its interests in the country with which it is in conflict. Sometimes a Commissioner-General is appointed by joint agreement between the country to which he will be accredited and the Protecting Power acting on behalf of the opposing party. Commissioners-General chosen jointly from the international list of persons, in conjunction with representatives for cultural property and delegates of Protecting Powers, deal with all matters referred to them in connection with the application of the Convention.

The Commissioners-General for Cultural Property are principally responsible for ensuring that the provisions of the Convention are observed. They have the right, with the agreement of the parties to which they are accredited, to order an investigation or to conduct it themselves, to make any representations to the parties engaged in conflict or to the Protecting Powers which they deem useful for the application of the Convention.

Last but not least, the Commissioners-General may draw up reports on the application of the Convention and communicate them to the interested States and to their Protecting

7. See Janusz Symonides, 'Towards the Amelioration of the Protection of Cultural Property in Times of Armed Conflict: Recent UNESCO Initiatives concerning the 1954 Hague Convention', *Héctor Gros Espiell Amirocum: Human Person and International Law*, Vol. II (Brussels: Bruylant, 1997).

Powers. Copies of the reports are sent to the Director-General of UNESCO. The priority given to the reports, as well as the fact that they are prepared by neutral, eminent persons with high moral authority, guarantee their impact on international public opinion, which is taken into account by the belligerents. The procedures for the application of the Convention on the initiative of the Director-General were implemented for the first time during the 1967 Middle East conflict.

COMMUNICATIONS (COMPLAINTS) PROCEDURE ESTABLISHED FOR THE EXAMINATION OF HUMAN RIGHTS VIOLATIONS

The General Conference of UNESCO at its nineteenth session in 1976 invited the Director-General and the Executive Board to study the procedures to be followed in the examination of cases and questions submitted to UNESCO concerning the exercise of human rights in its spheres of competence. A Working Party of the Executive Board prepared a study which became a basis for the Decision 104 EX/3.3 adopted by the Executive Board at its 104th session in 1978. In accordance with this decision, UNESCO does not play the role of an international judicial body or arbitrator but helps to reach solutions to particular problems concerning human rights by initiating consultations, in conditions of mutual respect, confidence and confidentiality.

In the exercise of its competence, UNESCO is called upon to examine *cases* concerning violations of human rights that are individual and specific, and *questions* of massive, systematic or flagrant violations of human rights. While *cases* are examined in private meetings of the Committee on Conventions and Recommendations of the Executive Board, *questions* may be examined by the Executive Board and the General Conference in public meetings. The possibility of examining questions has not been put into practice.

To be considered admissible, a communication has to meet a number of conditions enumerated in paragraph 14(a) of the decision. *Inter alia*, it must not be anonymous. It may originate from a person or a group of persons who can be reasonably presumed to be victims of an alleged violation of human rights falling within UNESCO's competence in the fields of education, science, culture and information. Or it may originate from any person, group of persons or non-governmental organizations having reliable knowledge of these violations. Communications which are manifestly ill-founded, offensive or based exclusively on information disseminated through the mass media are inadmissible.

The Executive Board decision did not specify which human rights fall within UNESCO's fields of competence. In practice, it has been accepted that the following belong to this category: the right to education; the right to share in scientific advancement and enjoy its benefits; the right to participate freely in cultural life; and the right to information, including freedom of opinion and expression. These rights may imply the exercise of others, in particular: the right to freedom of thought, conscience and religion; the right to seek, receive and impart information and ideas through any media and regardless of frontiers; the right to protection of the moral and material interests resulting from any scientific, literary or artistic production; and the right to freedom of assembly and association for the purposes of activities connected with education, science, culture and information.

The procedure established is as follows: the Director-General acknowledges receipt of a communication and informs its author of conditions governing its admissibility. After agreement has been obtained from the author for his or her name to be divulged, the communication is transmitted to the government concerned. Together with any replies from the government, it is then examined in private session by the Committee on Conventions and Recommendations in the presence of a representative of the government concerned, who may provide additional information and/or answer questions from members of the Committee. The Director-General notifies the author of the communication and the government concerned of the Committee's decision on the admissibility of the communication. Communications which warrant further consideration are acted upon by the Committee, in order to bring about a friendly solution designed to advance the promotion of human rights. The Committee reports in a confidential document to UNESCO's Executive Board, which may take whatever action it considers appropriate, including endorsing a report and appealing to the government concerned to take measures to restore the necessary safeguards of human rights.

From 1978 to 1998, 482 communications were examined by the Committee on Conventions and Recommendations. They came from individuals as well as from such non-governmental organizations as Amnesty International, the International Association of Democratic Lawyers, the International Human Rights Law Group, the World Federation of Teachers' Unions, the Women's International Democratic Federation. Almost half of the communications were declared inadmissible. Though the number of communications presented to UNESCO is relatively small, nevertheless the procedure is effective as it has led to the settlement of 280 cases between 1978 and 1997.

EDUCATION FOR HUMAN RIGHTS

The Universal Declaration of Human Rights proclaims in its Preamble that every individual and every organ of society '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 . . .'. Article 26 of the Universal Declaration adds that 'Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms'.

UNESCO'S SPECIFIC MANDATE

It is quite natural that, among the members of the United Nations family, a special role in the area of teaching of human rights is assigned to and fulfilled by UNESCO, as the promotion of human rights is inscribed in its Constitution. The United Nations Economic and Social Council, in its Resolution 314(XI) of 1950, invited UNESCO to encourage and facilitate teaching about the Universal Declaration in schools and adult education programmes and through the press, radio and other media. The International Conference on Human Rights, which met in Tehran in 1968, called upon UNESCO to develop its programmes aimed at making children aware of respect for the dignity and rights of man and at ensuring that the principles of the Universal Declaration prevail at all levels of education, particularly in institutions of higher learning, where future teachers are trained.

The specific role of UNESCO in the teaching of human rights has also been recognized by the United Nations Commission on Human Rights, which, in 1971, urged it to examine the need to envisage a systematic study and development of an independent scientific discipline of human rights, taking into account the principal legal systems of the world. The goal was to facilitate understanding, comprehension, study and teaching of human rights at university level and, subsequently, at other educational levels.

It is worth noting that the first teaching aid, *The Universal Declaration of Human Rights: A Guide for Teachers*, was published by UNESCO as early as 1951 and translated into eight languages. Several years later UNESCO carried out, in co-operation with international non-governmental organizations, a survey of methods, materials and programmes for human rights education. The results were published in 1952. In the following years an impressive number of books devoted to the teaching of human rights were prepared and disseminated by the Organization.

UNESCO's long-term goal is the establishment of a comprehensive system of education and training for peace, human rights and democracy that is intended for all groups of people and embraces all levels of education, whether formal or non-formal. The Organization's strategy consists in mobilizing both individuals and institutions (governments, educators, the media, families, parliaments, businesses, trade unions, non-governmental organizations, etc.) so that everyone may receive an education and appropriate training. This is particularly aimed at people who are in difficult circumstances, such as women, children, the elderly or disabled, minorities and indigenous people, refugees, displaced persons and those living in extreme poverty.

The Organization collaborates first and foremost with governments in framing national policies and strategies designed, in particular, to improve curricula and textbooks, teaching methods and the actual functioning of educational institutions so that they come to lead the field in the exercise of human rights, the practice of democracy, learning to be tolerant and appreciating cultural diversity.

Education for human rights and democracy has received and continues to receive special emphasis, not only through the adoption and implementation of the new United Nations and UNESCO policy instruments and action plans mentioned above but also through efforts to disseminate widely the texts of international human rights instruments.

An important role in the development of education for human rights is played by the Advisory Committee on Education for Peace, Human Rights, Democracy, International Understanding and Tolerance. This committee was created by the General Conference (27C/Resolution 5.8) and was established by the Director-General in December 1994, in accordance with the statutes adopted by the Executive Board. So far the Committee has held three sessions at UNESCO Headquarters in Paris, the first from 19 to 21 April 1995, the second from 26 to 28 March 1996 and the third from 7 to 9 July 1997.

ASSOCIATED SCHOOLS PROJECT AND RECOMMENDATION OF 1974

In 1953 UNESCO launched the Associated Schools Project (ASP) for International Co-operation and Peace. It started with thirty-three secondary schools in countries which were invited to organize social programmes and to undertake experiments in teaching about foreign countries and peoples, human rights and the activities of the United Nations. Since its very inception in 1953, the Associated Schools Project Network (ASPnet) has played a significant role in the development of innovative educational methods and

approaches and teaching materials in favour of a culture of peace. Efforts are being made to double the number of participating institutions – from 3,000 in 1993 to 6,000 by 1999 – while ensuring a significant qualitative development of the project. In April 1998 there was a total of 4,810 Associated Schools in 153 Member States.

Many participating teacher-training colleges, primary and secondary schools concentrate their work on human rights. The results are disseminated in various UNESCO publications (including the bulletin, *International Understanding at School*, and the newsletter, *Looking at the ASP-Network*) and discussed at various seminars and meetings. Several hundred ASP schools throughout the world are participating in the Second Worldwide Project Day of Solidarity in favour of human rights.

At its eighteenth session in 1974, the General Conference of UNESCO adopted the Recommendation Concerning Education for International Understanding, Co-operation and Peace and Education Relating to Human Rights and Fundamental Freedoms. Human rights are understood as being ‘those defined in the United Nations Charter, the Universal Declaration of Human Rights and the International Covenants on Human Rights, that is the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights of 1966’.

The Recommendation calls upon Member States to take steps to ensure that the principles of the Universal Declaration of Human Rights and of the International Convention on the Elimination of All Forms of Racial Discrimination become an integral part of the developing personality of each child, adolescent, young person and adult, by applying these principles in daily education at all levels. It urges Member States to encourage a wider exchange of textbooks, especially those concerning history and geography, and to take measures for the study and revision of textbooks and other educational materials to ensure that they are accurate, balanced, up-to-date and without prejudice, and enhance mutual knowledge and understanding between peoples.

The Intergovernmental Conference on Education for International Understanding, Co-operation and Peace and Education Relating to Human Rights and Fundamental Freedoms, held in Paris in 1983, recommended extending the scope of the 1974 Recommendation to the whole of the education system, including non-formal and higher education.

In 1985, the UNESCO General Conference at its twenty-third session decided that the permanent system of reporting on steps taken by Member States should also apply to

the 1974 Recommendation. Accordingly, the first synthesis of national reports was submitted to the General Conference at its twenty-fifth session in 1989. It covered both the achievements and the problems identified by Member States in promoting education for international understanding, co-operation and peace, and education for human rights and fundamental freedoms. It should be noted that questions linked with full and comprehensive implementation of the 1974 Recommendation are periodically discussed by the Consultative Committee.

By maintaining a regular dialogue with the Ministers of Education of Member States, UNESCO benefits from their direct support and involvement. The International Conference on Education of October 1994 amply illustrated the way Ministers of Education made, under the auspices of UNESCO, certain specific commitments for action at the national level for promoting human rights education and international understanding. Responding to the needs of Member States, the International Conference on Education adopted a Declaration and took note of the Integrated Framework of Education for Peace, Human Rights and Democracy.

UNESCO CHAIRS ON HUMAN RIGHTS

An important role is played by a network of UNESCO Chairs on Human Rights. As specified in agreements signed between UNESCO and the interested universities, the purpose of the Chairs is to promote an integrated system of research, training and information activities in the field of education for human rights. They facilitate and promote national, subregional and regional collaboration between researchers and teachers. The UNESCO Chairs conduct specialized courses and programmes, organize numerous conferences, prepare newsletters and publications aimed at the dissemination of knowledge on human rights. At present such Chairs exist in Addis Ababa (Ethiopia), Amman (Jordan), Baku (Azerbaijan), Bogotá (Colombia), Bratislava (Slovakia), Bucharest (Romania), Buenos Aires (Argentina), Caracas (Venezuela), Catavi (Benin), Fianarantsoa (Madagascar), Fort Hare (South Africa), La Laguna, Barcelona (Spain), Mexico City (Mexico), Moscow (Russian Federation), Minsk (Belarus), Nablus (Palestinian Authority), Oran (Algeria), Prague (Czech Republic), Rabat (Morocco), São Paulo (Brazil), Seoul (Republic of Korea), Sofia (Bulgaria), Stadtschlaining (Austria), Tbilisi (Georgia), Thessaloniki (Greece), Torun (Poland) and Windhoek (Namibia).

The first meeting of chairholders of UNESCO Chairs on Human Rights, Democracy, Peace and Tolerance took place at Stadtschlaining, Austria, in April 1998. The participants

adopted the *Stadtschlaining Appeal to Promote Human Rights, Democracy and Peace*, and signed a Memorandum of Co-operation strengthening links between Chairs and foreseeing a number of joint projects.

PREPARATION AND DISSEMINATION OF EDUCATIONAL MATERIALS AND MANUALS

The preparation of educational aids for higher and non-formal education remains a priority for UNESCO. A preliminary version of a *Manual of Human Rights Education for Primary and Secondary Levels* was broadly disseminated in 1997. Volume 1 of the *Manual on Human Rights*, designed for universities, was published in 1998 in English. It covers a range of themes which take into consideration current developments and trends in the field of human rights, and the need to promote knowledge and research on them in institutions of higher education and learning.

Two important educational aids on democracy and human rights have been prepared and published. One book, *Democracy: Questions and Answers*, was first published in 1995 in English and has since appeared in twenty-six other language versions. Another popular teaching aid is *Human Rights: Questions and Answers*. The third edition of the English version was published in 1996. It is available in twenty-nine other languages.

Major International Human Rights Instruments, which is updated each summer, is another useful educational tool. It includes data on the state of ratification of human rights instruments, both universal and regional, and has proved to be a valuable reference for human rights education. Since 1987 UNESCO has also been publishing a *World Directory of Human Rights Research and Training Institutions*. The fourth edition appeared in 1998. The *Directory* provides information notably on research themes and on specialists working in the field of human rights, as well as on international co-operation. It thus helps to establish collaboration between institutions and enables the creation of networks of research and training institutions.

EDUCATION FOR THE RIGHTS OF THE CHILD

The Convention on the Rights of the Child, elaborated from the very beginning with the help of UNESCO, falls partly into the field of competence of the Organization. The Convention protects the cultural rights of the child, providing for the child's freedom to seek, receive

and impart information and ideas of all kinds; the right of the child to education, and States Parties' obligations to respect and promote the rights of the child to participate fully in cultural and artistic life. To make the Convention known to the general public, the Organization helps to translate it into local languages and prepares various publications, such as the *UNESCO Courier* on 'Children in Danger' (October 1991). The Organization also encourages non-governmental organizations to publish and distribute materials relevant to the Convention.

UNESCO also gives attention to questions such as discipline in school, relationship between staff and children, the care of children in schools, the openness and tolerance of the education system. Deeply concerned with violence in schools and on the screen, the Organization undertook an international comparative study of research on violence within schools, the results of which were published in 1997. In 1994 an international round table on non-violence, tolerance and television was organized in New Delhi. Furthermore, in 1995, the Organization and the Government of Sweden co-financed and co-organized at Lund an international conference on violence on the screen and the rights of the child. In response to recommendations made at these two meetings, an international clearing house on screen violence was created in February 1997 at Göteborg (Sweden) with the assistance of UNESCO. They use a worldwide electronic network to disseminate information.

THE INTERNATIONAL CONGRESS ON THE TEACHING OF HUMAN RIGHTS, VIENNA, AUSTRIA, 1978

The International Congress on the Teaching of Human Rights, held in Vienna from 12 to 16 September 1978, was an occasion for UNESCO to assemble for the first time more than 100 experts – teachers, educators, activists and governmental officials – from all over the world. For this very reason the Congress is a landmark in the development of education relating to human rights and fundamental freedoms.

In its final document, the Congress stressed that human rights education and teaching should be founded on the principles on which are based the Charter of the United Nations, the Universal Declaration of Human Rights, the International Covenants on Human Rights, and other international human rights instruments. The indivisibility of all human rights should be recognized. The goals of human rights education must be: to foster an attitude of tolerance, respect and solidarity; to provide knowledge about human rights; and to develop the individual's awareness of the ways and means by which human rights can

be translated into social and political reality. Furthermore, the Congress recommended: (a) the preparation of a six-year plan for human rights education; (b) conducting a preliminary study on the question of the desirability of preparing a UNESCO Convention on human rights teaching and education; and (c) setting up a voluntary fund for the development of knowledge of human rights through education and information.

A draft plan for the development of human rights teaching between 1981 and 1987 was prepared by a UNESCO experts meeting in 1979. It embraced a number of measures relating to teaching aids, curricula and programmes, as well as structures addressed to UNESCO, Member States and international organizations. A Voluntary Fund for the Development of Knowledge of Human Rights was created by the UNESCO Executive Board. During its twenty-fifth session in 1989, the General Conference adopted a decision that the preparation of an Integrated Plan for International Education on Peace and Human Rights (second phase) be concluded as soon as possible.

THE INTERNATIONAL CONGRESS ON HUMAN RIGHTS TEACHING, INFORMATION AND DOCUMENTATION, MALTA, 1987

A new cornerstone in the developing of human rights education was laid when the International Congress on Human Rights Teaching, Information and Documentation was organized by UNESCO in Malta from 31 August to 5 September 1987. This conference was prepared by an informal consultation in 1985, which underlined the importance of audiovisual materials in human rights education, as well as a need for wide exchanges of experiences, methods and teaching techniques.

The Congress adopted a series of recommendations noting the progress made in the field of human rights education since the Vienna Congress. One of these was that Member States establish a complete system of human rights teaching and education available to all citizens and all population groups and covering all levels of education, with the broad participation of various public organizations and media. The Congress recommended that the Director-General co-operate with Member States in the development of programmes of human rights teaching and education within the framework of formal and non-formal systems of education. He was also asked to encourage the inclusion of human rights teaching at all levels of formal education and to assist Member States in developing new educational methods and materials which would strengthen human rights education. Other topics broadly discussed during the Congress included teacher training and protection of teachers, research on human rights education, international co-operation

and the role of non-governmental organizations, as well as human rights information and documentation.⁸

**THE INTERNATIONAL CONGRESS ON EDUCATION FOR HUMAN RIGHTS
AND DEMOCRACY, MONTREAL, CANADA, 1993**

UNESCO, in co-operation with the Canadian Commission for UNESCO and the United Nations Centre for Human Rights, organized an international congress in Montreal from 8 to 11 March 1993. Its principal aim was to summarize the activities undertaken since the Malta Congress of 1987, to analyse difficulties concerning education for human rights and to give a new impetus to its development. The title of the congress reflected the inherent link between human rights and democracy, thus taking into account the democratization processes which are actively being undertaken around the world. More than 250 specialists from more than 60 countries, as well as representatives of inter-governmental and international non-governmental organizations, attended the meeting.

Problems related to education for human rights and democracy at different levels – in primary, secondary and technical schools, and institutions of higher education, as well as in non-formal education – were discussed at length. The Congress adopted the World Plan of Action on Education for Human Rights and Democracy which determines the main aims of education in these fields and concrete methods for achieving them. It was envisaged to create a committee which would follow up the implementation of this World Plan. During the Montreal Congress a document devoted to academic freedom was also elaborated and approved.

INTERNATIONAL CO-OPERATION

In order to encourage an exchange of information on human rights teaching and research, and strengthen co-operation among members of human rights teaching and research institutes, UNESCO organizes annual meetings of directors of human rights institutes. To honour institutions, organizations or individuals for outstanding work, the UNESCO Prize for the Teaching of Human Rights was created by the Executive Board in 1978.

8. The reports of the Director-General on the implementation of the Malta Recommendations were presented and debated during the twenty-fifth, twenty-sixth and seventy-seventh sessions of the General Conference.

The prize was first awarded in 1978 to Mr Momtaz Soysal (Turkey) for his work in developing human rights teaching at university level. In 1979, UNESCO awarded the prize to Mr Paul Morren (Belgium), in 1981 to Mr Ali Sadeh Abou-Heif (Egypt), in 1983 to Mr Felix Ermacora (Austria), in 1986 to Mr Hector Fix Zamudio (Mexico), in 1988 to the Bolivian Permanent Assembly of Human Rights, in 1990 to Mr Václav Havel, President of the Czech and Slovak Federal Republic, in 1992 to the Arab Institute of Human Rights in Tunisia, in 1994, to the Philippine Commission on Human Rights and to Mr José Zalaquett Daher (Chile). The last time, in 1996, this prize was awarded to Mr Jean-Bertrand Aristide, former President of the Republic of Haiti, and an honourable mention was awarded to Ms Gloria Ramirez, General Director of the Mexican Academy of Human Rights.

This presentation of the Organization's efforts to develop human rights education would not be complete without mentioning its fruitful co-operation with numerous non-governmental organizations, international and national institutes and the whole community of teachers and researchers in this field. UNESCO, in co-operation with them, prepares teaching material, manuals and curricula, and organizes the training of certain professional categories such as law-enforcement personnel, journalists and the military. It assists in the organization of annual training courses and training schools on human rights all over the world.

UNESCO took an active part in the preparation of the World Conference on Human Rights held in Vienna in June 1993, and in its work. In response to a request from the Conference Secretariat to the Specialized Agencies to provide information in their field of competence, UNESCO contributed five documents relevant to the objectives of the Conference. Throughout the preparatory process, UNESCO not only prepared a number of written contributions and organized a series of meetings linked with the World Conference on Human Rights but also actively participated in the four sessions of the preparatory committee and in regional meetings, promoting its view on the organization and agenda of the World Conference as well as on substantial issues, in particular those linked with human rights education and democracy.

From UNESCO's point of view, one of the main results of the World Conference on Human Rights concerns the recognition of the importance of human rights education. The Conference in the *Vienna Declaration and Programme of Action* (Part II, paragraph 81) stated the following:

Taking into account the World Plan of Action on Education for Human Rights and Democracy, adopted in March 1993 by the International Congress on Education of Human Rights and Democracy of the United Nations Educational, Scientific and Cultural Organization, recommends that States develop specific programmes and strategies for ensuring the widest human rights education and the dissemination of public information, taking particularly account of the human rights needs of women.

Upon the recommendation of the World Conference, the United Nations General Assembly proclaimed in 1994 the United Nations Decade for Human Rights Education (1995–2004).

UNESCO, which had substantially contributed to the elaboration of the Plan of Action for the Decade, has an important role to play in planning and initiating the process of implementation of the activities during the Decade, in close collaboration with the Office of the High Commissioner for Human Rights. In its decision regarding the United Nations Decade for Human Rights Education and UNESCO's role and responsibilities foreseen in the Plan of Action for the Decade, the Executive Board took note of the important role assigned to the Organization in this Plan. It urged Member States to extend full support to the Secretariat in the design, implementation, evaluation and review of programmes of education for human rights, peace and democracy. In particular, it encouraged UNESCO National Commissions to participate actively in developing national plans of action for human rights education, for an effective implementation of the activities of the Organization.

In the development of human rights education, UNESCO is by no means alone among intergovernmental universal and regional organizations. It is accompanied and helped by the United Nations as well as by many Specialized Agencies and regional organizations. The co-ordination of human rights promotion and protection is entrusted to the United Nations High Commissioner for Human Rights. Regular co-operation is maintained on the basis of the Memorandum of Understanding signed between the High Commissioner and the Director-General of UNESCO in 1995.

In order to encourage Member States to elaborate national strategies, plans and programmes for human rights education, UNESCO convenes regional meetings. The first of the series, the Regional Conference on Human Rights Education in Europe, organized at Turku, Finland, from 18 to 21 September 1997, contributed to the evaluation of national policies and programmes and more effective implementation of strategies for promoting human rights education.

UNESCO'S ACTION TO COMMEMORATE THE FIFTIETH ANNIVERSARY OF THE UNIVERSAL DECLARATION OF HUMAN RIGHTS

The fiftieth anniversary of the Universal Declaration is an excellent opportunity to redouble efforts and to promote and protect human rights for all. The United Nations General Assembly, by its Resolution 51/88 of 12 December 1996, invited all Specialized Agencies to contribute to this event. The overall co-ordination of the United Nations system activities linked to the fiftieth anniversary of the Universal Declaration is entrusted to the High Commissioner for Human Rights.

The general aim of these activities is to increase the efforts of the international community to make human rights a reality worldwide, to prevent human rights violations, to build a global partnership for human rights and to make human rights, along with peace, democracy and development, the guiding principles of the twenty-first century.

A Plan of Action for the commemoration of the anniversary by UNESCO was approved by its Executive Board and the General Conference⁹ with the following objectives:

- To disseminate as widely as possible the message of the Universal Declaration, in particular among youth.
- To give a new impetus to human rights education, stemming from the assumption that the right to human rights education is itself a human right and that it is an obligation of States.
- To make an assessment of the state of implementation of human rights which are considered a priority by UNESCO and to reflect on practical ways and means to strengthen their implementation and universal observance: right to education (Article 26 of the Declaration); right to participate freely in the cultural life of the community, to enjoy the arts and to share benefits of scientific advancement (Article 27); right to freedom of opinion and expression, including the right to seek, receive and impart information and ideas (Article 19).
- To reflect on problems and challenges in the field of human rights, in particular those linked to scientific and technological progress; to underline the universality,

9. 'Fiftieth Anniversary of the Universal Declaration of Human Rights: UNESCO Action', General Conference, twenty-ninth session, Paris, 1997, Doc. 29C/17, 29 October 1997.

indivisibility, interdependence and interrelation of all human rights – civil, cultural, economic, political and social – and to promote worldwide recognition of the fact that peace, democracy, development and respect for human rights and fundamental freedoms are interdependent and mutually reinforcing.

Through National Commissions, Associated Schools, UNESCO Chairs, UNESCO Clubs, Centres and Associations, national human rights institutions, non-governmental organizations, both national and international, and training and research institutes in the field of human rights, the Organization has encouraged the planning, co-ordination and undertaking of special activities related to the fiftieth anniversary. In order to sensitize world public opinion on the significance of the Universal Declaration, its content and its role in the promotion and protection of human rights and fundamental freedoms, a number of publications and special issues of UNESCO periodicals have been prepared in 1998 (e.g. the *UNESCO Courier* and the *International Social Science Journal*).

Dissemination of the message of the Universal Declaration has been ensured through many channels such as: the integration of human rights education into all levels and forms of education curricula, training/learning methods and daily practice in schools; the promotion of teacher training; support for the publication of the Declaration in various national languages; dissemination of the text in schools (a joint letter of UNESCO's Director-General and the United Nations High Commissioner for Human Rights has been addressed to all Ministers of Education); posters, publication of excerpts of the Declaration on the covers of exercise books, etc. Dissemination of the texts of other human rights instruments has also been encouraged and carried out, in particular those related to the rights of women, such as *The Manifesto – Towards a Gender-Inclusive Culture through Education*.

A separate item was included in the agenda of the World Conference on Higher Education (October 1998) in order to promote human rights education at the university level and to ensure that all students, irrespective of their specialization, partake in human rights training.

Among numerous conferences and seminars linked with the commemoration, a special role was given to the International Conference on Human Rights: Fifty Years After – Achievements, Problems, Challenges, held in Paris in December 1998, which culminated and summed up reflection linked with the anniversary of the Universal Declaration of Human Rights.

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BINDING INTERNATIONAL INSTRUMENTS

UNIVERSAL INSTRUMENTS

General instruments

International Covenant on Economic, Social and Cultural Rights (1966). United Nations, *Treaty Series*, Vol. 993, p. 3. Entered into force on 3 January 1976.

International Covenant on Civil and Political Rights (1966). United Nations, *Treaty Series*, Vol. 999, p. 171. Entered into force on 23 March 1976.

Declaration regarding Article 41 of the International Covenant on Civil and Political Rights (concerning the competence of the Human Rights Committee to receive and consider communications by one State Party against another). Entered into force on 28 March 1979.

Optional Protocol to the International Covenant on Civil and Political Rights (1966). United Nations, *Treaty Series*, Vol. 999, p. 171. Entered into force on 23 March 1976.

Second Optional Protocol to the International Covenant on Civil and Political Rights Aiming at the Abolition of the Death Penalty (1989). A/RES/44/128. Entered into force on 11 July 1991.

Instruments concerning specific issues

Prevention of discrimination

ILO Convention (No. 100) concerning Equal Remuneration for Men and Women Workers for Work of Equal Value (1951). United Nations, *Treaty Series*, Vol. 165, p. 303. Entered into force on 23 May 1953.

ILO Convention (No. 111) concerning Discrimination in Respect of Employment and Occupation (1958). United Nations, *Treaty Series*, Vol. 362, p. 31. Entered into force on 15 June 1960.

UNESCO Convention against Discrimination in Education (1960). United Nations, *Treaty Series*, Vol. 429, p. 93. Entered into force on 22 May 1962.

UNESCO Protocol Instituting a Conciliation and Good Offices Commission to be Responsible for Seeking the Settlement of any Disputes which may Arise between States Parties to the Convention against Discrimination in Education (1962). United Nations, *Treaty Series*, Vol. 651, p. 363. Entered into force on 24 October 1968.

International Convention on the Elimination of All Forms of Racial Discrimination (1965). United Nations, *Treaty Series*, Vol. 660, p. 195. Entered into force on 4 January 1969.

Declaration Regarding Article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination (concerning the competence of the Committee on the Elimination of Racial Discrimination to receive and consider communications from individuals or groups). Entered into force on 3 December 1982.

Amendments to Article 8 of the International Convention on the Elimination of All Forms of Racial Discrimination (concerning the financing of the Committee on the Elimination of Racial Discrimination). Adopted on 15 January 1992 at the Fourteenth Meeting of the States Parties to the Convention and endorsed by Resolution 47/111 of 16 December 1992 of the General Assembly. Not entered into force as at 31 May 1998.

International Convention on the Suppression and Punishment of the Crime of Apartheid (1973). United Nations, *Treaty Series*, Vol. 1015, p. 243. Entered into force on 18 July 1976.

ILO Convention (No. 156) concerning Equal Opportunities and Equal Treatment for Men and Women Workers: Workers with Family Responsibilities (1981). International Labour Conventions and Recommendations 1919–1981. Entered into force on 11 August 1983.

International Convention against Apartheid in Sports (1985). A/RES/40/64 G. Entered into force on 3 April 1988.

ILO Revised Convention (No. 169) concerning Indigenous and Tribal People in Independent Countries (1989). ILO, *Official Bulletin*, Vol. LXXII (1989), Ser. A, No. 2. Entered into force on 5 September 1991.

Genocide, war crimes, crimes against humanity

Convention on the Prevention and Punishment of the Crime of Genocide (1948). United Nations, *Treaty Series*, Vol. 78, p. 277. Entered into force on 12 January 1951.

Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity (1968). United Nations, *Treaty Series*, Vol. 754, p. 73. Entered into force on 11 November 1970.

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984). A/RES/39/46. Entered into force on 26 June 1987.

Declarations Recognizing the Competence of the Committee against Torture under Articles 21 and 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (to receive and consider communications by one State Party against another or presented from or on behalf of individuals). Entered into force on 26 June 1987.

Amendments to Articles 17(7) and 18(5) of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (concerning the financing of the

Committee against Torture). Adopted on 8 September 1992 at the Conference of the States Parties to the Convention and endorsed by Resolution 47/111 of 16 December 1992 of the General Assembly. Not entered into force as at 31 May 1998.

Slavery, traffic in persons, forced labour

ILO Convention (No. 29) concerning Forced Labour (1930). League of Nations, *Treaty Series*, Vol. 39, p. 55. Entered into force on 1 May 1932.

Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1949). United Nations, *Treaty Series*, Vol. 96, p. 271. Entered into force on 25 July 1951.

Protocol amending the Slavery Convention signed at Geneva on 25 September 1926 (1953). United Nations, *Treaty Series*, Vol. 182, p. 51. Entered into force on 7 December 1953.

Slavery Convention signed at Geneva on 25 September 1926 and amended by the Protocol done at the Headquarters of the United Nations New York on 7 December 1953. United Nations, *Treaty Series*, Vol. 212, p. 17. Entered into force on 7 July 1955.¹

Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery (1956). United Nations, *Treaty Series*, Vol. 266, p. 3. Entered into force on 30 April 1957.

ILO Convention (No. 105) concerning the Abolition of Forced Labour (1957). United Nations, *Treaty Series*, Vol. 320, p. 291. Entered into force on 17 January 1959.

Freedom of information

Convention on the International Right of Correction (1952). United Nations, *Treaty Series*, Vol. 435, p. 191. Entered into force on 24 August 1962.

Instruments relating to the protection of particular groups

Aliens, refugees, stateless persons

Convention relating to the Status of Refugees (1951). United Nations, *Treaty Series*, Vol. 189, p. 137. Entered into force on 22 April 1954.

Convention relating to the Status of Stateless Persons (1954). United Nations, *Treaty Series*, Vol. 360, p. 117. Entered into force on 6 June 1960.

Convention on the Reduction of Statelessness (1961). United Nations, *Treaty Series*, Vol. 989, p. 175. Entered into force on 13 December 1975.

1. The States Parties to the 1953 Protocol amending the Slavery Convention (No. 17) must be considered as Parties to this Convention (No. 18).

Protocol relating to the Status of Refugees (1967). United Nations, *Treaty Series*, Vol. 606, p. 267. Entered into force on 4 October 1967.

Workers

ILO Convention (No. 11) concerning the Rights of Association and Combination of Agricultural Workers (1921). United Nations, *Treaty Series*, Vol. 38, p. 153–9 (No. 594). Entered into force on 11 May 1923.

ILO Convention (No. 87) concerning the Freedom of Association and Protection of the Right to Organize (1948). United Nations, *Treaty Series*, Vol. 68, p. 17. Entered into force on 4 April 1950.

ILO Convention (No. 98) concerning the Application of the Principles of the Right to Organize and Bargain Collectively (1949). United Nations, *Treaty Series*, Vol. 96, p. 257. Entered into force on 18 July 1951.

ILO Convention (No. 122) concerning Employment Policy (1964). United Nations, *Treaty Series*, Vol. 569, p. 65. Entered into force on 15 July 1966.

ILO Convention (No. 135) concerning Protection and Facilities to be afforded to Workers' Representatives in the Undertaking (1971). ILO, *Official Bulletin*, Vol. LIV (1971), No. 3. Entered into force on 30 June 1973.

ILO Convention (No. 141) concerning Organisations of Rural Workers and their Role in Economic and Social Development (1975). ILO, *Official Bulletin*, Vol. LVIII (1975), Ser. A, No. 1. Entered into force on 24 November 1977.

ILO Convention (No. 151) concerning Protection of the Right to Organize and Procedures for Determining Conditions of Employment in the Public Service (1978). ILO, *Official Bulletin*, Vol. LXI (1978), Ser. A, No. 2. Entered into force on 25 February 1981.

International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (1990). A/RES/45/158. Not entered into force as at 31 May 1998.

Women

Convention on the Political Rights of Women (1953). United Nations, *Treaty Series*, Vol. 193, p. 135. Entered into force on 7 July 1954.

Convention on the Nationality of Married Women (1957). United Nations, *Treaty Series*, Vol. 309, p. 65. Entered into force on 11 August 1958.

Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages (1962). United Nations, *Treaty Series*, Vol. 521, p. 231. Entered into force on 9 December 1964.

Convention on the Elimination of All Forms of Discrimination against Women (1979). United Nations, *Treaty Series*, Vol. 1249, p. 13. Entered into force on 3 September 1981.

Children

Convention on the Rights of the Child (1989). A/RES/44/25. Entered into force on 2 September 1990.

Combatants, prisoners and civilians

Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (1949). United Nations, *Treaty Series*, Vol. 75, p. 31. Entered into force on 21 October 1950.

Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (1949). United Nations, *Treaty Series*, Vol. 75, p. 85. Entered into force on 21 October 1950.

Geneva Convention relative to the Treatment of Prisoners of War (1949). United Nations, *Treaty Series*, Vol. 75, p. 135. Entered into force on 21 October 1950.

Geneva Convention relative to the Protection of Civilian Persons in Time of War (1949). United Nations, *Treaty Series*, Vol. 75, p. 287. Entered into force on 21 October 1950.

Additional Protocol to the Geneva Conventions of 12 August 1949 relating to the Protection of Victims of International Armed Conflicts (Protocol I) (1977). Entered into force on 7 December 1978.

Declaration Foreseen by Article 90 of Protocol I (concerning the provisional acceptance of the competence of the International Fact-Finding Commission). Entered into force on 25 June 1991.

Additional Protocol to the Geneva Conventions of 12 August 1949 relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) (1977). Entered into force on 7 December 1978.

REGIONAL INSTRUMENTS: COUNCIL OF EUROPE**General instruments**

European Convention on Human Rights (1950) – formally entitled *Convention for the Protection of Human Rights and Fundamental Freedoms*. Council of Europe, *European Treaty Series*, No. 5. Entered into force on 3 September 1953. Amended by:

- Protocol No. 3 (*European Treaty Series*, No. 45, entered into force on 21 September 1970);
- Protocol No. 5 (*European Treaty Series*, No. 55, entered into force on 20 December 1971);
- Protocol No. 8 (*European Treaty Series*, No. 118, entered into force on 1 January 1990).

- Declaration regarding Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms (Rights of Individual Petition) (1950)*. Council of Europe, *European Treaty Series*, No. 5(i). Entered into force on 5 July 1955.
- Declaration regarding Article 46 of the Convention for the Protection of Human Rights and Fundamental Freedoms (Jurisdiction of the Court) (1950)*. Council of Europe, *European Treaty Series*, No. 5(ii). Entered into force on 3 September 1958.
- Additional Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms (1952)*. Council of Europe, *European Treaty Series*, No. 9. Entered into force on 18 May 1954.
- European Social Charter (1961)*. Council of Europe, *European Treaty Series*, No. 35. Entered into force on 26 February 1965.
- Protocol No. 2 to the Convention for the Protection of Human Rights and Fundamental Freedoms Conferring upon the European Court of Human Rights Competence to Give Advisory Opinions (1963)*. Council of Europe, *European Treaty Series*, No. 44. Entered into force on 21 September 1970.
- Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms Securing Certain Rights and Freedoms Other than Those Already Included in the Convention and in the First Protocol Thereto (1963)*. Council of Europe, *European Treaty Series*, No. 46. Entered into force on 2 May 1968.
- European Agreement relating to Persons Participating in Proceedings of the European Commission and Court of Human Rights (1969)*. Council of Europe, *European Treaty Series*, No. 67. Entered into force on 17 April 1971.
- Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (1981)*. Council of Europe, *European Treaty Series*, No. 108. Entered into force on 1 October 1985.
- Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the Abolition of the Death Penalty (1983)*. Council of Europe, *European Treaty Series*, No. 114. Entered into force on 1 March 1985.
- Protocol No. 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms (recognition of new rights) (1984)*. Council of Europe, *European Treaty Series*, No. 117. Entered into force on 1 November 1988.
- Additional Protocol to the European Social Charter (1988)*. Council of Europe, *European Treaty Series*, No. 128. Entered into force on 4 September 1992.
- Protocol No. 9 to the Convention for the Protection of Human Rights and Fundamental Freedoms improving the Procedure under the Convention (1990)*. Council of Europe, *European Treaty Series*, No. 140. Entered into force on 1 October 1994.

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OAS Convention on Political Asylum (1933). *International Conferences of American States, 1st Supplement, 1933–40*, p. 116. Entered into force on 28 March 1935.

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Inter-American Convention on the Granting of Political Rights to Women (1948). International Conferences of American States, 2nd Supplement, 1942–54, p. 229. Entered into force on 17 March 1949.

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Standard Minimum Rules for the Treatment of Prisoners, 30 August 1955.

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Declaration of the Principles of International Cultural Co-operation, 4 November 1966.

Declaration on Territorial Asylum, 14 December 1967.

Declaration on Social Progress and Development, 11 December 1969.

Declaration on the Rights of Mentally Retarded Persons, 20 December 1971.

Recommendation concerning Education for International Understanding, Co-operation and Peace and Education relating to Human Rights and Fundamental Freedoms, 19 November 1974.

Declaration on the Protection of Women and Children in Emergency and Armed Conflict, 16 December 1974.

Declaration on the Use of Scientific and Technological Progress in the Interest of Peace and for the Benefit of Mankind, 10 November 1975.

Declaration on the Rights of Disabled Persons, 9 December 1975.

Declaration on Race and Racial Prejudice, 27 November 1978.

Declaration on Fundamental Principles concerning the Contribution of the Mass Media to Strengthening Peace and International Understanding, to the Promotion of Human Rights and to Countering Racism, Apartheid and Incitement to War, 28 November 1978.

Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, 25 November 1981.

- Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 18 December 1982.
- Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty*, 25 May 1984.
- Declaration on the Right of Peoples to Peace*, 12 November 1984.
- United Nations Standard Minimum Rules for the Administration of Juvenile Justice ('The Beijing Rules')*, 29 November 1985.
- Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, 29 November 1985.
- Declaration on the Human Rights of Individuals Who are not Nationals of the Country in which They Live*, 13 December 1985.
- Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally*, 3 December 1986.
- Declaration on the Right to Development*, 4 December 1986.
- Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*, 9 December 1988.
- Basic Principles for the Treatment of Prisoners*, 14 December 1990.
- United Nations Rules for the Protection of Juveniles Deprived of their Liberty*, 14 December 1990.
- United Nations Standard Minimum Rules for Non-custodial Measures ('The Tokyo Rule')*, 14 December 1990.
- United Nations Guidelines for the Prevention of Juvenile Delinquency ('The Riyadh Guidelines')*, 14 December 1990.
- Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care*, 17 December 1991.
- Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities*, 18 December 1992.
- Declaration on the Protection of All Persons from Enforced Disappearance*, 18 December 1992.
- Standard Rules on the Equalization of Opportunities for Persons with Disabilities*, 20 December 1993.
- Declaration on the Elimination of Violence against Women*, 20 December 1993.
- Naples Political Declaration and Global Action Plan against Organized Transnational Crime*, 23 December 1994.

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BASIC REFERENCE MATERIAL

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1993

United Nations Reference Guide in the Field of Human Rights is a practical research tool issued to guide users through the reports, documents and procedures published by the United Nations. 124 pp.

1994

Human Rights – A Compilation of International Instruments is a collection published every five years by the United Nations. In all official United Nations languages (Arabic, Chinese, English, French, Russian and Spanish). The publication contains only those texts produced by the organizations of the United Nations system.

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1995

The United Nations and Human Rights, 1945–1995. New York: United Nations. 536 pp.

1996

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International Human Rights Standards for Law Enforcement: A Pocket Book on Human Rights for the Police. New York/Geneva: United Nations. 50 pp.

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- Vol. VI: *The United Nations and the Advancement of Women – 1945–1995.*
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- Fact Sheet No. 2 (Rev. 1): *The International Bill of Human Rights, 1996.*

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- *Legislation against Racial Discrimination*, 1997 – Third Decade to Combat Racism and Racial Discrimination (1993–2003).

Human Rights Study Series reproduces studies and reports prepared by special rapporteurs on topical issues of human rights which have been mandated by various human rights bodies, such as the Commission on Human Rights and the Sub-Commission on Prevention of Discrimination and Protection of Minorities. The last issues were the following:

- Study Series No. 7: *The Right to Adequate Housing*, 1996.
- Study Series No. 8: *Sexual Exploitation of Children*, 1996.

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- No. 1: *The High Commissioner for Human Rights*, 1996.

SESSIONAL REPORTS OF THE UNITED NATIONS HUMAN RIGHTS BODIES

Commission on Human Rights.

Sub-Commission on Prevention of Discrimination and Protection of Minorities.

Committee on the Elimination of Racial Discrimination.

Human Rights Committee.

Committee on Economic, Social and Cultural Rights.

Committee on the Elimination of Discrimination Against Women.

Group of Three established under the International Convention for the Suppression and Punishment of the Crime of Apartheid.
Committee Against Torture.
Commission Against Apartheid in Sports.
Committee on the Rights of the Child.

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1994

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1996

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- It should be noted that WHO produces a great many other publications in its Technical Report Series, Reprint Series and Bibliographic Series. These are produced by the Public Policy and Health Programme, Health and Human Development Division (HDP/HDD), which can provide a full list upon request.

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UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION (UNESCO)

BASIC REFERENCE MATERIAL

1998

UNESCO and Human Rights is a compilation of UNESCO's standard-setting instruments specifically related to human rights as well as the final documents of selected meetings related to human rights organized or co-organized by UNESCO: declarations, recommendations, statements, etc. It also comprises four annexes related to major UNESCO meetings on human rights, UNESCO publications on issues related to human rights, democracy and peace, a list of UNESCO Chairs on Human Rights, Democracy and Peace, and a list of the 186 UNESCO Member States as of 1 November 1998.

The UNESCO standard-setting instruments quoted in full in this publication are:

UNESCO's Standard-Setting Instruments contains all the normative texts of the Organization. Published regularly in English and French, it is produced in a loose-leaf format for easy updating between editions.

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International Charter of Physical Education and Sport, 1978.
Declaration on Race and Racial Prejudice, 1978.
Declaration on Fundamental Principles concerning the Contribution of the Mass Media to Strengthening Peace and International Understanding to the Promotion of Human Rights and to Countering Racialism, *Apartheid* and Incitement to War, 1978.
Declaration of Principles on Tolerance, 1995.
Declaration on the Responsibilities of the Present Generations towards Future Generations, 1997.
Universal Declaration on the Human Genome and Human Rights, 1997.

Recommendations

- Recommendation against Discrimination in Education, 1960.
Recommendation concerning the Status of Teachers, 1966.
Recommendation concerning Education for International Understanding, Co-operation and Peace and Education relating to Human Rights and Fundamental Freedoms, 1974.
Revised Recommendation concerning Technical and Vocational Education, 1974.
Recommendation on the Status of Scientific Researchers, 1974.
Recommendation on the Legal Protection of Translators and Translations and the Practical Means to Improve the Status of Translators, 1976.
Recommendation on the Development of Adult Education, 1976.
Recommendation on Participation by the People at Large in Cultural Life and their Contribution to it, 1976.
Recommendation concerning the Status of the Artist, 1980.

REPORTS CONCERNING THE IMPLEMENTATION OF INTERNATIONAL INSTRUMENTS

The right to education

Convention and Recommendation Against Discrimination in Education (1960)

The Convention is concerned not only with the elimination of discrimination but also with the adoption of measures to promote equality of educational opportunity and treatment (see note 1, page 165). Consequently it provides for the formulation, development and application by States of a national policy tending to promote,

by methods appropriate to the circumstances and to national usage, equality of opportunity and treatment in the matter of education.

The Recommendation, containing substantially the same terms as the Convention, was adopted at the same time to assist those Member States which might for some reason find difficulty in becoming parties to the Convention.

Until today, six consultations of Member States on the implementation of the Convention and Recommendation Against Discrimination in Education have taken place. The reports are published in the following General Conference documents:

- Reports of Member States on the Implementation of the Convention and Recommendation Against Discrimination in Education. Report of the Special Committee. Accepted by thirty-one States. 14 C/29 ADD. 19 October 1966.
- Reports of Member States on the Implementation of the Convention and Recommendation Against Discrimination in Education. Report of the Special Committee of the Executive Board on Discrimination. Sixty-one States replied. 15 C/11. 5 August 1968.
- Reports of Member States on the Implementation of the Convention and Recommendation Against Discrimination in Education. Second Report of the Committee on Conventions and Recommendations in Education. Forty-one States replied. 17 C/5. 15 September 1972.
- Third Report of the Committee on Conventions and Recommendations. Fifty-four States replied. 20 C/40.
- Report of the Committee on the Action taken at the Third Consultation of Member States. Eleven States replied. 21 C/27. 31 July 1980.
- Fourth Consultation of Member States on the Implementation of the Convention and Recommendation against Discrimination in Education. Report of the Committee on Conventions and Recommendations. Eighty-four States replied. 23 C/72, August 1985.

A report of the Committee on Conventions and Recommendations regarding the Fourth Consultation of Member States on the implementation of the above Convention was submitted to the General Conference at its twenty-sixth session in 1991 (26C/31 – 7 October 1991). The report comprises (a) the Committee's analytic summary based on the reports presented by seventy-one Member States, out of which forty-six are parties to the Convention and (b) the Committee's conclusions and recommendations including a request to the Secretariat to propose modalities and a timetable for the sixth consultation (see note 2, page 165).

Recommendation Concerning the Status of Teachers (1966)

The Recommendation Concerning the Status of Teachers was adopted on 5 October 1966 by the Special Intergovernmental Conference on the Status of Teachers, convened by UNESCO, in Paris, in co-operation with the ILO (see note 3, page 165).

Revised Recommendation Concerning Technical and Vocational Education (1974)

The Recommendation Concerning Technical and Vocational Education, adopted by the General Conference in 1974, considers technical and vocational education as a part of the overall educational process which should be made available to all persons without discrimination. This instrument makes special provision for equal technical and vocational education opportunities for women (para. 27), for out-of-school and unemployed youth, and children of migrant workers, as well as those not entering education or training programmes after completion of compulsory schooling (para. 28) and for the physically and mentally disadvantaged (para. 29). Questionnaires were sent to Member States in 1985 and 1990 to allow them to report on the implementation of the revised Recommendation. An analytical summary of the replies received from fifty-five Member States to the second questionnaire was prepared and submitted to the UNESCO General Conference at its twenty-seventh session in 1993 (see note 4, page 166).

Recommendation Concerning Education for International Understanding, Co-operation and Peace and Education Relating to Human Rights and Fundamental Freedoms (1974)

Reports of meetings, brochures and other publications concerning the implementation of this Recommendation since 1992 comprise:

- *List of Participating Institutions in the Associated Schools Project*, 1992. 133 pp.
- *Come Visit Our Country*. A series of booklets on Morocco (57 pp.), India (59 pp.), Senegal (70 pp.) and Sweden (63 pp.) prepared within the framework of the World Decade for Cultural Development and the UNESCO Associated Schools Project. 1991–94. In English and French.
- *The Associated Schools Project: A Review of Its Expansion and Development, 1953–1993*. 17 pp. In English and French.
- *Draft ASP Strategy and Plan of Action for 1994–2000*. 1993. 14 pp. In English and French.
- *Future Development of the Associated Schools Project (ASP)*. ASP Contributions to Education for the Twenty-first Century, 1993. 30 pp. In English and French.
- Final Report of the Fourth Session of the Consultative Committee on Steps to

Promote the Full and Comprehensive Implementation of the 1974 Recommendation. ED-92/CONF. 502, 1993. 20 pp. In English and French.

- Full and Comprehensive implementation of the Recommendation concerning Education for International Understanding, Co-operation and Peace and Education relating to Human Rights and Fundamental Freedoms (1974), and the preparation of the elaborated version of the Integrated Action Plan for the Development of International Education. General Conference document 27C/90. 1993. 15 pp. In Arabic, Chinese, English, French, Russian and Spanish.

The following audiovisual materials are available:

- *The Baltic Connection*. Video film on the ASP Baltic Sea Project, 1993. 17 minutes. In English.
- CNN Report on the Associated Schools Project. 1994. 2 minutes. In English.

Recommendation on the Development of Adult Education (1976)

Literacy work and adult education programmes have, since the creation of UNESCO over fifty years ago, been intentionally and carefully planned and undertaken with the aim of extending and improving access of all to initial and continuing education. Literacy work is carried out according to a global strategy, adopted in the framework of the Organization's Third Medium Term Plan (1990–95). On the one hand, action for the extension and renovation of primary education is designed to bring better educational grounding to more children in schools. On the other hand, outside the school, activities are undertaken to intensify the struggle for literacy among adults and young people who have had insufficient or no schooling.

International Literacy Year (1990), which was declared by the United Nations General Assembly and for which UNESCO was designated lead agency, has increased international awareness of the problem of illiteracy and prompted action all over the world. Recent documents include:

- Application of 24 C/Resolution 2.7 concerning the implementation of the Recommendation on the Development of Adult Education. 27C/88 (20 August 1993).
- The Hamburg Declaration on Adult Learning, 1997.
- Agenda for the Future, 1997.

Convention on Technical and Vocational Education (1989)

The Convention was adopted by the General Conference at its twenty-fifth session on 10 November 1989 and came into force on 29 August 1991. To date, eight countries have ratified the Convention.

The main purpose of the Convention is to facilitate the Contracting States in formulating their policies and strategies for the implementation of technical and vocational

education programmes which are not only among the most important elements of their socio-economic and cultural development needs but also are essential for the fulfilment of the individual.

Recommendation on the Recognition of Studies and Qualifications in Higher Education (1993)

The elaboration of this international recommendation on the recognition of studies and qualifications in higher education was undertaken by UNESCO in the framework of its broad normative action aimed to encourage the co-operation of States in this field. This instrument aims to promote wider access to educational resources worldwide in order, ultimately, to improve the quality of higher education through enhanced mobility for students, teachers, researchers and professionals. It is also aimed at alleviating the brain-drain by reducing difficulties encountered by those who have been trained or educated abroad. The Recommendation supplements a set of regional conventions on the recognition of studies, diplomas and degrees already adopted under the aegis of UNESCO and suggests a number of new measures at national and international levels in order to strengthen the application of the above regional conventions.

The right to culture

Convention for the Protection of Cultural Property in the Event of Armed Conflict (the 'Hague Convention'), with regulations for the Execution of the Convention, as well as the Protocol to the Convention and the Conference Resolutions (1954)

Adopted by an international conference of States convened by UNESCO, the Convention is a sequel to the Fourth Convention of 1907 concerning the laws and customs of warfare on land, which instituted for the first time a rudimentary form of international protection for edifices devoted to the arts and sciences and for historical monuments. It contains provisions for the safeguarding of movable or immovable property of great importance to the cultural heritage of peoples, irrespective of its origin or ownership, and makes respect for such property obligatory. From 1991, efforts were made to review the Convention in order to improve its effectiveness.

Recommendation Concerning the Most Effective Means of Rendering Museums Accessible to Everyone (1960)

This Recommendation urges that, in order that museums may contribute to the education of the public through all stages of life, a permanent link should be established between museums, educational authorities, professional organizations, the social

services of industrial and commercial enterprises, and the like. The accessibility of museums to the public school entails not only the granting of material facilities, particularly with regard to admission charges and opening hours, but also the adoption of the necessary measures to ensure that collections are easy to appreciate. The instrument further recommends that States do everything in their power to encourage people to visit museums and exhibitions.

Recommendation on the Means of Prohibiting and Preventing the Illicit Export, Import and Transfer of Ownership of Cultural Property (1964)

Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (1970)

The purpose of the Recommendation is to ensure that countries are not deprived of their cultural heritage by illegal means, and to promote international co-operation to that end.

The Convention was adopted in 1970, thus giving to the recommended rules the character of binding obligations. For the mechanisms of implementation, see *National Legal Control of Illicit Traffic in Cultural Property*.

Recommendation Concerning the Preservation of Cultural Property Endangered by Public or Private Works (1968)

This Recommendation stresses the fact that contemporary civilization and its future evolution rests, among other elements, upon cultural traditions and that it is consequently indispensable to protect cultural property and to reconcile the demands of economic and social development with this requirement. The Recommendation defines cultural property and outlines measures designed to preserve or salvage it.

Convention Concerning the Protection of the World Cultural and Natural Heritage (1972)

The items protected by the Convention are those pertaining to the cultural or natural heritage which are of outstanding universal value from the point of view of history, art, science or aesthetics.

The Convention lays down two basic principles. First, each State Party to the Convention recognizes that the duty of ensuring conservation of elements of the world heritage situated in its territory lies primarily with it, and undertakes to act to this end, to the utmost of its own resources. Secondly, all the Contracting States recognize that it is the duty of the international community as a whole to co-operate in ensuring the conservation of a heritage which is of universal character.

For this purpose, each State Party to the Convention is required to draw up an inventory of property forming part of the cultural and natural heritage which is situated in its territory and suitable for protection under the Convention. On the basis of these inventories, the World Heritage Committee designates the items which, being regarded as forming part of the world heritage, are to benefit from the protective measures provided for by the Convention.

Recommendation Concerning the Protection, at National Level, of the Cultural and Natural Heritage (1972)

Unlike the Convention on the world heritage, the aim of which is to preserve sites of universal importance, the Recommendation is intended to induce States to safeguard all the components of their cultural and natural heritage.

Recommendation on Participation by the People at Large in Cultural Life and Their Contribution to It (1976)

This Recommendation is based on a philosophy that participation by the greatest possible number of people and associations in a wide variety of cultural activities of their own free choice is essential to the development of the basic human values and dignity of the individual. It provides that access by the people at large to cultural values can be assured through social and economic conditions enabling them not only to enjoy the benefits of culture, but also to take an active part in overall cultural life and in the process of cultural development.

Recommendation on the Status of the Artist (1980)

The following activities have been carried out in the implementation of this Recommendation since 1992:

- European symposium on the Status of the Artist, 1992, Hanasaari, Finland (Final Report edited by Auli Irjala, publication of the Finnish National Commission for UNESCO, No. 64, Helsinki, 1992).
- Panafrican survey on the Status of the Artist in Africa.
- Regional survey on the Status of the Artist in Latin America, the Caribbean and Arab region.
- World Congress on the Implementation of the Recommendation concerning the Status of the Artist, Paris, 1997, prepared in co-operation with governmental associations, the ILO and the Council of Europe. A Report on the progress realized during the last fifteen years was published by the French National Commission for UNESCO the same year.

Recommendation on the Safeguarding of Traditional Culture and Folklore (1989)

This Recommendation first defines traditional culture and folklore and then outlines measures to be taken in order to identify, conserve, preserve, disseminate and protect them. It also stresses the need to intensify international co-operation in this area and offers practical suggestions. It recommends that Member States apply the provisions of the Recommendation by means of legislative or other measures, in conformity with the constitutional practice of each State.

The right to enjoy the benefits of scientific progress**Recommendation on the Status of Scientific Researchers (1974)**

UNESCO's publication *Science and Scientific Researchers in Modern Society*, published first in 1984 and updated in 1986, contains a text on scientific researchers and human rights as its Appendix C.

Racial discrimination**Declaration on Race and Racial Prejudice (1978)**

The UNESCO Declaration on Race and Racial Prejudice was adopted in 1978 together with the resolution for the implementation of this Declaration whereby Member States are urged to report through the Director-General to the General Conference on the steps they have taken to give effect to the principles of the Declaration. International non-governmental organizations are also called upon to co-operate and assist in the implementation of the principles set out in this Declaration.

The fifth report, based on the replies of twenty Member States and forty-seven non-governmental organizations, was submitted to the General Conference at its twenty-eighth session (28C/23 of 3 October 1995).

PROCEDURES OF EXAMINATION OF COMMUNICATIONS

Communications related to violations of human rights falling within UNESCO's competence in the fields of education, science, culture or communication can be examined under the procedure approved by the Executive Board of UNESCO on 26 April 1978 in 104 EX/Decision 3.3.

The rights falling within UNESCO's spheres of competence are essentially the following:

- The right to education (Article 26 of the Universal Declaration of Human Rights).
- The right to share in scientific advancement (Article 27).
- The right to information, including freedom of opinion and expression (Article 19).

These rights may imply the exercise of others, the most noteworthy of which are set out below:

- The right to freedom of thought, conscience and religion (Article 18).
- The right to seek, receive and impart information and ideas through any media regardless of frontiers (Article 19).
- The right to freedom of assembly and association (Article 20) for the purposes of activities connected with education, science, culture and information.
- The right to the protection of the moral and material interests resulting from any scientific, literary or artistic production (Article 27).

By the same decision, the Committee on Conventions and Recommendations in Education was henceforth designated the Committee on Conventions and Recommendations with a mandate to consider communications received by the Organization concerning cases and questions of violations of human rights within UNESCO's fields of competence.

Before the adoption of the procedure 104 EX/3.3, a comparative study entitled 'Study of the Procedures Which Should be Followed in the Examination of Cases and Questions Which Might Be Submitted to UNESCO Concerning the Exercise of Human Rights in the Spheres of Its Competence, in Order to Make Its Action More Effective' (document 102 EX/19 of 7 April 1977) was undertaken and submitted to the Executive Board.

In 22C/Resolutions 13.2 and 18.2, the General Conference, at its twenty-second session, invited the Executive Board and the Director-General to evaluate and, if necessary, review the above-mentioned procedures in the light of the results achieved and the experience gained and in the light of the experience of other United Nations organs dealing with human rights and fundamental freedoms, and to submit to the General Conference at its twenty-third session a report and appropriate recommendations, as necessary.

The document 'Evaluation of the Procedures Adopted by the Executive Board for the Examination of Communications Concerning Violations of Human Rights Falling within UNESCO's Fields of Competence' (120 EX/17 – 10 September 1984) was prepared in connection with the implementation of these two resolutions and submitted to the General Conference at its twenty-third session (document 23 C/17).

At the 146th, 147th and 149th sessions of the Executive Board (1995–96), the Committee on Conventions and Recommendations examined questions relating to its methods of work (documents 147 EX/49, 147 EX/53, 149 EX/44). The Executive Board then adopted Decision 149 EX/5.2.

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Education for International Understanding: Examples and Suggestions for Classroom Use. 166 pp. In English, French and Spanish.

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NOTES

1. The Convention is inspired by two basic and separate principles proclaimed in the Constitution of the Organization; but the undertaking of States differs in scope, depending on whether the question is one of discrimination or of equal opportunity. In pursuance of Article 3, the States assent to a number of specific obligations of immediate application with a view to eliminating and preventing all discrimination within the meaning of the Convention; abrogation or modification of legal texts, prohibition of differences of treatment, of preferences or restrictions in certain fields.

In December 1962, the General Conference adopted a Protocol to the Convention, providing for the setting up of a Conciliation and Good Offices Commission, with the responsibility of seeking settlement of any dispute arising between States Parties to the Convention. This Protocol, in respect of which, by 26 July 1968, fifteen States had deposited an instrument of ratification or acceptance, entered into force on 24 October 1968.

Under Article VII of the Constitution of the Organization, every Member State is required to report periodically (as determined by the appropriate Rules of Procedure) on the action it has taken to implement the recommendations and conventions. Further, Article 7 of the Convention itself requires States Parties to it to give the General Conference information on the legislative and administrative provisions which they have adopted and other action which they have taken for the application of the Convention. There is an equivalent clause in the Recommendation.

2. In Resolution 1.9, the General Conference at its twenty-seventh session decided to focus the sixth consultation on basic education of four population groups – girls and women, persons belonging to minorities, refugees and indigenous people – using a timetable suggested in document 27C/38, in preparation for the submittal of the report of the sixth consultation to the General Conference at its thirtieth session.

3. The Joint ILO/UNESCO Committee of Experts on the Application of the Recommendation concerning the Status of Teachers (CEART) was set up in 1968 by decision of UNESCO's Executive Board (77 EX/Decision 4.2.5. and 78 EX/Decision 4.2.1.) and by the Governing Body of the ILO, at its 167th, 170th and 172nd sessions, to examine the periodic reports submitted by governments of Member States on the application of the Recommendation and to report thereon to the competent organs of the two organizations with a view to such separate but parallel action as these organs deemed appropriate. In the case of UNESCO, the report is submitted to the General Conference through the Executive Board and its Committee on Conventions and Recommendations. In the case of ILO, the report is submitted through the Governing Body to the Committee on the Application of Conventions and Recommendations of the International Labour Conference. The Joint Committee is made up of twelve independent experts, half of whom are chosen by ILO and half by UNESCO.

Following its first session in 1968, the Joint Committee held ordinary sessions in 1970 (CEART/II/1970/4), in 1976 (CEART/III/1976/10), in 1982 (CEART/IV/1982/-12), and in 1988 (CEART/V/1988/5). As a result of its third ordinary session in 1976, both ILO's Governing Body (208th session, November 1978) and UNESCO's Executive Board (100th session, October 1976) authorized a special session of the Joint Committee in 1979 (CEART/SP/79/7), a practice which was continued in 1985 (CEART/SP/85/7). At its third special session in 1991, the CEART proposed a restatement of its mandate and methods of work (CEART/SP/1991/12, Annex 1), which was adopted by the governing bodies (UNESCO 138 EX/Decision 7.1.1. and ILO's Governing Body, 252nd session, February/March 1992).

The work of the Joint Committee is carried out within a six-year cycle consisting of one ordinary session followed by a special session at three-year intervals. The new methods of work include an interactive approach, involving governments, teachers, associations, private employers of teachers, as well as other interested bodies in regional and national activities, aimed at promoting partnerships for a better

awareness and application of the Recommendation within socio-economic and cultural contexts. In its report on its sixth ordinary session at the ILO, Geneva, in July 1994, the Joint Committee included its assessment of the effectiveness of the revised working methods and new procedures to monitor the application of the Recommendation. It also provided suggestions, as requested by the twenty-seventh session of the UNESCO General Conference (27C/Resolution 1.16) regarding 'ways and means of updating and promoting further implementation of the 1966 Recommendation'.

4. The revised Recommendation has been extensively used as a background document for regional seminars and workshops organized by UNESCO in the field of technical and vocational education. A number of case-studies concerning the development of technical and vocational education in Member States have been prepared based on this instrument.

In conformity with 22 C/Resolution 25 adopted by the General Conference in 1983, a draft questionnaire was prepared to be used by Member States to report on their implementation of the revised Recommendation. The questionnaire was sent to Member States in 1985 and analytical summaries of the reports were prepared and submitted to the General Conference in 1987.

The second questionnaire sent to the Member States in 1990 contained more specific questions relating to vocational guidance and counselling, participation of girls and women in technical and vocational education and special measures for enhancing rural development as well as promotion of co-operation between technical and vocational education institutions and industrial and other enterprises.