

## Drafting History

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The drafting of the [Universal Declaration of Human Rights](#) was carried out primarily by the [United Nations Human Rights Commission](#). The [United Nations Charter](#) states in Article 1(3) that one of the purposes of the [United Nations](#) is to

achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion.

Further, Article 55 states that

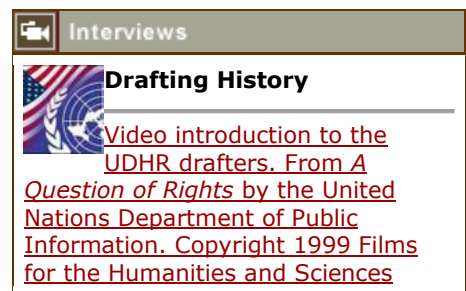
With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote: ... (c) universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion.

In Article 56, all member states of the UN "pledge themselves to take joint and separate action in cooperation with the Organization for the achievement of the purposes set forth in Article 55."

While the UN Charter made promotion of respect for [human rights](#) one of its key objectives, it did not define what the term "human rights" encompassed. Rather, in Article 68 it required the Economic and Social Council (ECOSOC) to "set up commissions in economic and social fields and for the promotion of human rights." Article 68 in fact makes the Human Rights Commission the only commission of the entire United Nations system that is mandated by the Charter. The Universal Declaration of Human Rights is thus born out of the Charter references to human rights in the Preamble and in Articles 1, 55 and 56 and represents the attempt to define and explain what the Charter meant by the term "human rights."

The Charter does not at any point mandate that an international bill of rights be written. While it mandated that a Commission on Human Rights be established, it left the matter of an international bill of rights for future work and negotiation. At the closing of the San Francisco Conference, the American president, Harry Truman, made this point explicit. Upon becoming president Truman had wholeheartedly taken over [Franklin Roosevelt's](#) United Nations project. He praised the delegation for their single-minded focus on producing a charter for the new organization and promised that "[u]nder this document we have good reasons to expect the framing of an international bill of rights, acceptable to all the nations involved." That bill of rights, Truman predicted, "will be as much a part of international life as our own Bill of Rights is part of our Constitution." When the Human Rights Commission was established it was charged first of all to come up with a recommendation and report "regarding... an international bill of rights" (E/248). The Commission on Human Rights, having been established and given the task to write an international bill of rights, worked on that project for two full years, from January 1947 to December 1948.

Finally, Article 62 of the United Nations Charter states that ECOSOC may "make recommendations for the purpose of promoting respect for, and observance of, human rights and fundamental freedoms for all." ECOSOC relied upon this power when it recommended on December 10, 1948 that the Third General Assembly of the United Nations adopt and proclaim the Universal Declaration of Human Rights.



The drafting process broadly fell broadly into seven stages, as follows. The documents produced during those stages are listed in each phase.

### **I First Session of the Human Rights Commission: January - February 1947**

United Nations Secretariat: draft outline of the international Bill of Human Rights – (E/CN.4/AC.1/3, Annex and Add.1)

### **II First Session of the Drafting Committee: June 1947**

Drafting Committee, first session – E/CN.4/21, Annex F

Sub-Commission on Prevention of Discrimination and Protection of Minorities (first session) – E/CN.4/52 (certain articles)

### **III Second Session of the Human Rights Commission: December 1947**

Commission on Human Rights (second session), Working Group on the Declaration (in session) – E/CN.4/57

Commission on Human Rights (second session) – E/600

Government comments – E/CN.4/85

### **IV Second Session of the Drafting Committee: May 1948**

Drafting Committee (second session) – E/CN.4/95, Annex A (some articles)

### **V The Third Session of the Human Rights Commission: May-June 1948**

Commission on Human Rights (third session) – E/800

ECOSOC (seventh session) – A/625

### **VI The Third Committee of the General Assembly: September-December 1948**

General Assembly, Third Committee – A/777

Sub-Committee 4 of Third Committee – A/C.3/400 and 400/Rev.1

### **VII Plenary Session of the Third General Assembly: December 10, 1948**

General Assembly (third session), 183rd plenary meeting, last changes and voting on final text – GAOR, Third Session

The following is a discussion of what occurred during each phase of the drafting process.

There are several accounts of the drafting process, stressing the role of different individuals, powers and cultures. In the United States there are few challenges to the view that the Roosevelts shaped and molded the [human rights](#) story, and indeed, many consider the human rights project to be no more and no less than an American project.(1) Alternative views persist, however, and there are various challenges even to this most basic story.

The fact that the [UDHR](#) was finalized under the shadow of the Eiffel Tower allows France to call itself the birthplace of universal human rights. The version of the story commonly told in France puts renowned legal scholar [René Cassin](#) at center stage. Cassin had great influence on the final draft text and was awarded the Nobel Peace Prize for his role in fostering the UDHR.

In recent years, scholars have begun to peruse many contemporaneous documents and retrospective accounts. In 1996, for example, British political scientist Tony Evans developed an account that privileges hegemonic interests. Grounding his study in the dominant theory of international relations, he argues that the UDHR was an American project that rose, and fell, with the tide of US interest.<sup>(2)</sup> An alternative perspective on political dynamics is offered by William Korey, whose version of the story emphasizes the role of non-governmental organizations.<sup>(3)</sup> In her article "Universalizing Human Rights: The Role of Small States on the Construction of the Universal Declaration of Human Rights," Susan Waltz highlights the role of states not belonging to the US and other Western powers.<sup>(4)</sup> The question of the inclusiveness of the drafting process is dealt with in the discussion concerning Preamble Clause 7.

The [Human Rights Commission](#), activated in January 1947, had members from 18 nations, appointed by ECOSOC: Australia, Belgium, Byelorussian Soviet Socialist Republic (BSSR), Chile, China, Egypt, France, India, Iran, Lebanon, Panama, Philippine Republic, United Kingdom, United States of America, Union of Soviet Socialist Republics, Uruguay, and Yugoslavia. Its first session met in January and February of 1947.

As soon as the delegates began to discuss the machinery for drafting an [international bill of rights](#), the issue arose as to whether to entrust the drafting of the Declaration to a committee or the Secretariat. It was decided that "the Chairman of the Commission on Human Rights, together with the Vice-Chairman and the Rapporteur, undertake, with the assistance of the Secretariat, the task of formulating a preliminary draft international bill of human rights." These executives, being [Eleanor Roosevelt](#), [Peng-chun Chang](#) and [Charles Habib Malik](#), had one meeting, which [John P. Humphrey](#), the newly appointed Director of the Secretariat's Division on Human Rights, also attended. Humphrey reported that "it was typical of Mrs. Roosevelt that she would want the drafting committee to begin work at once and he invited her two colleagues and me to meet her in her Washington Square apartment on the Sunday following the adjournment," at which meeting Humphrey was asked to prepare a draft of the Declaration. That meeting took place on February 17, which was a good day for some tea and philosophizing. Writes Humphrey:

"[Peng-chun] Chang [China] and [Charles Habib] Malik [Lebanon] were too far apart in their philosophical approaches to be able to work together on a text. There was a good deal of talk, but we were getting nowhere. Then, after still another cup of tea, Chang suggested that I put my other duties aside for six months and study Chinese philosophy, after which I might be able to prepare a text for the committee. This was his way of saying that Western influences might be too great, and he was looking at Malik as he spoke. He had already, in the Commission, urged the importance of historical perspective. There was some more discussion mainly of a philosophical character, Mrs. Roosevelt saying little and continuing to pour tea."<sup>(5)</sup>

Soon after he was asked, John Humphrey started to write various drafts of the Declaration. He had a mimeographed draft ready by March 15. This last draft is the same as the one that he distributed at the first meeting of the Drafting Committee in early June 1947. John Humphrey had borrowed freely from a collection of drafts he had before him. He later said that "the best of the texts from which [he] worked was the one prepared by the American Law Institute,"<sup>(6)</sup> which Panama had introduced in San Francisco. Other bills that influenced him were the ones submitted by the Inter-American Juridical Committee and Hersch Lauterpacht. This scavenging for the best articles from the various drafts made for an inclusive first draft and explains, among other things, why there are social, economic, and cultural rights in the Declaration. Though he frequently used the drafts he had with him, it seems equally clear that his draft was Humphrey's own creative mixture and molding of the options before him. His draft was both the first and the basic draft of the Universal Declaration, first in time and basic in that it became the basis for all further deletions and additions.

Some of the delegations that at first had supported the decision to delegate the drafting to their executive committee had second thoughts. The USSR delegate started the revolt by objecting to the bill being drafted by what he called "a small group of experts" (AC.1/2/p.2). The delegates from Canada, Chile, Czechoslovakia, and France joined him. As a result of all this dissatisfaction the Council voted on a proposal to enlarge the drafting group from three to eight members, coming from Australia, Chile, China, France, Lebanon, the USSR, the UK and the US. The enlargement of the Drafting Committee from the three executives to eight representatives made the drafting process more inclusive and enhanced the universality of the Declaration.

On April 8, 1947 [Eleanor Roosevelt](#) appointed the expanded, eight-nation Drafting Committee. In June, it had its first meetings. The committee decided to take the Secretariat outline as a basis for discussion. Vladimir Koretsky, the delegate from the USSR, opened the sixth meeting with a proposal to set up a small working group. A Temporary Working Group consisting of the representatives of France, Lebanon and the United Kingdom was appointed. This small working group asked [Cassin](#) to come up with a logical

arrangement of the Draft Outline supplied by the Secretariat and to suggest a redraft of the various articles in the light of the discussions of the Drafting Committee. Cassin submitted two documents (which were soon combined into one) on behalf of this group. The first of the two was Cassin's rewrite of [Humphrey's](#) articles 7 through 48. In the margin of this rewrite, Cassin lists next to each of his "own" articles the Humphrey article being copied or rewritten. According to Morsink's rough calculation, three-quarters of the Cassin draft was taken from Humphrey's first draft. Cassin clearly overstated his role when in a 1958 lecture he explained that he had been "charged by his colleagues to draft, upon [his] sole responsibility, a first rough draft" of the Declaration.<sup>(7)</sup>

At the end of the tenth meeting, the Drafting committee asked Cassin "to prepare ... a revised draft of his proposal for Articles to be included in the Declaration" (SR.10/ at 13). At the twelfth meeting this second Cassin revision (W2.Rev.2,) which did not have the marginal notations to Humphrey's text, became the basis of discussion. This second revision, "submitted by the representative from France," was discussed in the rest of the meetings and it is the document from which the Drafting Committee's final recommendation to the Second Session of the Commission was shaped.

From this point on – that is, at the end of the First Session of the Drafting Committee - all the revisions, both deletions and additions, were never again associated with any one person or country. While numerous documents were introduced or mentioned, the basic document was always the one that had been passed on by the preceding drafting stage or organ.

The Second session of the [Human Rights Commission](#) took place in December 1947. Though this eighteen-member Commission was larger than its eight-member drafting subsidiary, the Commission sought to broaden its input in various ways. At all of its own sessions, as well as those of the Drafting Committee, numerous non-governmental organizations were present. Consultants of, amongst others, the following organizations attended this Second Session of the Commission: American Federation of Labor, International Union of Catholic Women's Leagues, Coordinating Board of Jewish Organizations, International Committee of the Red Cross and World Federation of United Nations Associations. Some of these organizations submitted their own drafts to the Commission.

The opinions of the groups that did not have consultative status were forwarded to the Commission by the Secretariat in the form of *précis*. Thus the Palestine Section of the War Resisters International asked that "a special provision be included relating to conscientious objectors."<sup>(8)</sup> The *Comite Permanente Espiritualistas* from Argentina requested "that capital punishment be made unlawful in those countries where it still exists, as any form of violent death is un-Christian."<sup>(9)</sup> Even the requests of individual citizens were recorded and passed on. A resident of Hartford, Connecticut, urged the Commission not to forget the plight of persons "living without a national status."<sup>(10)</sup> All indications are that most of this more or less informal, non-governmental input was appreciated and often used.

This Second Session of the Commission, which met in Geneva, produced what came to be called "the Geneva draft." For drafting purposes this session split itself into three working groups to deal respectively with the problem of the Declaration, the Convention or Conventions, and implementation. This proposal, that was adopted by 9 votes to 5, with 1 abstention over the objections from the US delegation, came from the Belgian delegation as a solution for the impasse created by the disagreement on whether to draft a Declaration or a Covenant. Precious drafting time was lost because of that disagreement. This proposal probably was the reason that an actual document was finished by the time the Third General Assembly met. In the working group on the Declaration were represented the delegates of the US, France, the BSSR, Panama, the Philippines, and the USSR. In this working group the relations between the Cold War antagonists were the best they were to be, which meant that much useful work got done.

Since only eighteen nations were represented on the Commission of Human Rights and only eight on its drafting subsidiary, a way had to be found for the other thirty-eight members of the [United Nations](#) to help shape the bill.

A first opportunity arose when [Humphrey](#) or his staff correlated each article of the Humphrey draft with provisions in the constitutions of the member states. In addition, at any time during the proceedings, a country was free to submit its own draft or bill. The following countries did so, and in more than one case found their suggestions hotly debated and incorporated in the final bill: China, the United Kingdom, France, Chile, Ecuador, Cuba, Panama, India and the United States. The other thirty-eight countries also had a chance to make their will known when they were asked to comment on the Geneva draft that had been drafted at the Second Session of the Commission. The following fourteen governments responded: Egypt, Norway, South Africa, Pakistan, Canada, the Netherlands, Australia, the United States, New Zealand, India, Sweden, Brazil, France, and Mexico (E/CN.4/82). The Commission did consider these

responses. For example, the first sentence of Article 12 is based on a version proposed by the Chinese delegate and was accepted over the version of the Drafting Committee.

The Second Session of the eight-member Drafting Committee met in May 1948. Most of this stage of the process was spent discussing a covenant because at this time many delegates were still holding out for the adoption of both a declaration and a covenant as part of a proposed international Bill of Rights. This choice between just a declaration or both declaration and a covenant created enormous tension in the Commission and its drafting subsidiary and took a great deal of precious drafting time.

The Third Session of the Human Rights Commission began after the end of the May meetings of the drafting subsidiary and ran to the middle of June 1948. The discussions at this stage were very intense because the Commission signaled that it was in the mood to cut down what many delegations considered the overly cumbersome draft that had come out of the Second (Geneva) Session of the Commission. The greatest challenge came from a series of joint proposals from the United Kingdom and India that cut down almost all the articles to their bare minimum. It was only at this rather late moment that the Commission decided it could only deliver a declaration to be acted upon by the Third General Assembly. Both the covenant and various proposed measures for implementation were postponed.

The meetings of the Third (Social and Humanitarian) Committee of the General Assembly were held from September to December 1948. Besides the [Humphrey](#) survey of constitutions and the input received when the draft was submitted to the governments for feedback, these Third Committee meetings presented a third opportunity for nations that had no representation on the eighteen-member [Human Rights Commission](#) to have their say. Even though the Declaration had cleared the Second and Third Sessions of the Commission with impressive votes, this Committee scrutinized the entire document.

After the Commission and its drafting subsidiary had already devoted five lengthy sessions over a period of almost two years to the drafting of this document, the delegates of the Third Committee held eighty-five more meetings, not counting the twenty meetings of the various subcommittees. [Malik](#), the delegate from Lebanon who had been the chair of the Third Committee, reported to the General Assembly on the wide support the document had received in his committee. "Of the 1,233 individual votes cast," he said, "88.08 per cent had been affirmative and 3.73 negative." Eighteen of the articles had been adopted "without any opposition" (GA, at 860). This Third Committee adopted the Declaration with a vote of twenty nine to zero, with seven abstentions (GA, at 860).

The last stage was the debate in the Plenary Session of the Third General Assembly, which led to the adoption of the [Declaration](#) the same day, on December 10, 1948. This was the fourth time the rest of the UN membership could seek to amend what the eighteen-member [Commission](#) had done. Both the General Assembly and the Third Committee met in Paris that year.

While numerous amendments were proposed, only one substantive change was made. About half of the time was spent on explanations of the abstentions. The other half was taken up with self-congratulatory speeches about what the delegates felt they had achieved. Naturally they were proud of the inclusiveness of the drafting process. The delegates were tempted to move from that inclusive process to the claim that the product therefore had worldwide applicability.

The Third General Assembly adopted the Declaration just before midnight on December 10, 1948 with a vote of 48 to zero and eight abstentions. The abstentions came from the USSR, the Ukrainian Soviet Socialist Republic (UKSSR), the BSSR, Yugoslavia, Poland, Saudi Arabia and South Africa. It is important to note that none of these countries voted against the Declaration and that even these abstaining delegations had participated and cooperated in the various drafting procedures.

#### *The Six Communist Abstentions*

The Communist abstentions coalesced around the view that the Declaration did not go far enough. They had repeatedly made the point that to protect human rights adequately, the Declaration needed explicitly to condemn fascism and Nazism. Since it did not do that, they would abstain from the vote. The deep animosity that exists between Marxist egalitarianism and Nazi racism led the USSR delegation to propose amendments to what became Articles 19 and 20 stating that fascists and Nazis did not have human rights to freedom of expression and association. When those amendments were rejected, the Communists, rather than abstaining, which was their custom, voted against these articles.

But the speech of the head of the Soviet delegation, Andrei Vyshinsky, the prosecutor of the infamous Stalin purge trials, made another more substantive ideological criticism, which came close to questioning the whole project. He retracted most of his acceptance of human rights in a speech on the relationship

between the individual and the state, at times taking a legal positivist approach to the matter of human rights. Human rights in this approach cannot be conceived outside the State, because the very concept of right and law was connected with that of the State. From a purely ideological point of view, the Communist countries probably should have voted against the UDHR, if they wanted to be consistent. However, insisting on a legal positivist interpretation of human rights would have deprived them of the ability to condemn nazism, because one needs a leverage point outside the nazist ideology. Only a conception of human rights as rights transcending existing national law could reject nazist legislation. A legal positivist view accepts all legislation - even immoral legislation - as long as it is drafted according to existing formal procedures. Human rights, on the other hand, are rights which people have, independent from and even against their own states. Thus the Communist bloc abstained.

#### *The Saudi Arabian Abstention*

The Saudi Arabian delegation abstained in the final vote mostly for two reasons: because of the wording of Article 16 on equal marriage rights and because of objections to the clause in Article 18 which states that everyone has the right ?to change his religion or belief.? In an essay he wrote later, Cassin pointed out that the inclusion of Article 18 had not prevented other countries with Muslim populations, like Syria, Iran, Turkey and Pakistan, from voting for the Declaration.(10)

#### *The South African Abstention*

The Union of South Africa abstained from approving the document, which it knew the United States would use to condemn South African practices of apartheid and racial discrimination. Already in 1946, the First General Assembly had interceded in a dispute between India and South Africa about the treatment of Indians in the Union. Two-thirds of the Assembly had expressed the wish ?that the treatment of Indians in the Union shall be in conformity with ? the relevant [human rights] provisions of the Charter.?(12)

At first glance the South African position on the Declaration seems straightforward. While the Communists thought the Declaration did not state enough, the South African government thought that it said far too much. Speaking in the General Assembly, just before the vote, Harry Andrews repeated the South African theme that the draft declaration submitted to the General Assembly went far beyond the rights and freedoms contemplated in the Charter. ?It was clear from the provisions of the Charter,? he said, ?that social, cultural, and economic rights had never been intended to be included in the draft declaration.?

Upon closer scrutiny, however, the South African position can be seen to have been advanced not because of its philosophical merits, but for the protection of the system of apartheid, which clearly violated any number of articles in the Declaration. A basic human right, the right of a person to participate in the government of his or her country, which is included in even the most conservative packages of human rights, was according to Louw, the South African representative on the Third Committee, not universal. ?It was conditioned not only by nationality and country, but also by qualifications of franchise,? which in his country - and this he did not add - included race. According to the South African Constitution of that day, only a ?person of European descent? could be a member of the House of Assembly or the Senate. (Morsink, 29)

As noted by Morsink, it is one thing to construct a conservative approach to human rights and to want to keep the list of entitlements as short as possible; but that high legal ground cannot be bought with racist coin. Accordingly, this abstention by the Union of South Africa lacked integrity and does not detract from the universality of the Declaration. Moreover, even if South Africa had been clear about its racist premises, the abstention would nevertheless not detract from the universality of the UDHR, because a racist position has unanimously been rejected as immoral. (Asbjørn, 3; Morsink, 4-12)

1. See Evans, Tony, *US Hegemony and the Project of Human Rights* (1996).
2. See note 1.
3. Korey, William, *NGO's and the Universal Declaration of Human Rights: "A Curious Grapevine"* (1998).
4. Waltz, Susan, "Universalizing Human Rights: The Role of Small States in the Construction of the Universal Declaration of Human Rights", 23 *Human Rights Quarterly* 44-72 (2001).

5. Humphrey, John P., *Human Rights and the United Nations: A Great Adventure* (Dobbs Ferry, NY: Transnational, 1984) at 29.

6. Ibid 32.

7. Cassin, René, *La Déclaration universelle des droits de l'homme de 1948*, Paris, Institut de France, Académie des Sciences Morales et Politiques, 1958. This essay was reprinted in Cassin, René, *La Pensée et l'action* (Paris, Lalou, 1972). This citation is from that reprint at 108.

8. E/CN.4/AC.4/1/6/Add.1/p.1.

9. Ibid 2.

10. Ibid 7.

11. Cassin, 'Historique de la Déclaration', in *La Pensée et l' Action*, at 116-7, cited by MORSINK at 26.

12. As quoted by Hersch Lauterpacht in his February Report of the 1948 Brussels Conference of the International Law Association entitled "Human Rights, the Charter of the United Nations and the International Bill of the Rights of Man." (E/CN.4/89/p.7) cited by MORSINK at 26.