

# The Universal Declaration of Human Rights at 70: A time to look back, and a time to look forward

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*Abstract:* Anxiety about the future of democracy and human rights is widespread. To provide a framework within which to assess that anxiety, this article explores the history of the Universal Declaration of Human Rights, which was adopted seventy years ago by the General Assembly. The article outlines the traditional, rather whiggish, account of that history, which asserts that the project of proclaiming and protecting human rights in international law has seen steady improvement and expansion since 1948. The article argues that this account is at least partly misleading and that the history of the international human rights project since 1948 has been more complex, contingent and uneven. The article concludes by suggesting that recognising that the history of the international human rights project has been beset by difficulties and uncertainties may make it easier both to assess—and respond to—contemporary challenges.

*Keywords:* Universal Declaration of Human Rights, history, human rights, International Covenant on Civil and Political Rights, global South, human rights treaties, United Nations.

## INTRODUCTION

Many people are worried about the future of democracy and human rights. The anxiety seems to be quite recent, and deepening by the day. Only eighteen years ago, Kofi Annan, then Secretary General of the United Nations, wrote that we are living in 'The Age of Human Rights' and that the promotion and defence of human rights lay at the centre of the work of the United Nations. Certainly in the decade following the tearing down of the Berlin Wall, the number of democracies which at least in word respected human rights grew dramatically. My own country, South Africa, was one of those that adopted a new Constitution following the transition to democracy in the

mid-1990s that entrenched a generous Bill of Rights at its heart. In the 1990s, it did seem as if the world had reached a new consensus. Democracy and human rights good; authoritarianism and oppression bad. Yet here we are barely a score of years later wondering whether the project of human rights and democracy can survive in the uncertain world we now inhabit.

The list of authors, and books, concerned about the future of democracy and human rights grows longer as each month passes. Samuel Moyn has just published *Not Enough: Human Rights in an Unequal World*; Cass Sunstein has edited a book *Can it Happen Here? Authoritarianism in America*; Edward Luce, the *Economist* journalist, has written *The Retreat of Western Liberalism*; Steven Levitsky and Daniel Ziblatt, two Harvard professors, have written an interesting account of *How Democracies Die* that draws lessons from a wide range of democratic failures (and successes) around the world; Timothy Snyder has written *The Road to Unfreedom: Russia, Europe, America* as well as a thoughtful little book *On Tyranny* which contains twenty lessons drawn from the 20th century's experience of authoritarianism, adapted for the circumstances of today; David Runciman, the Cambridge political scientist, has just published *How Democracy Ends*. And I could go on. At least one prescient author, of course, was ahead of the curve.

Has this outpouring of words been sparked by more than the dismay and disappointment that many intellectuals feel following the result of the Brexit referendum in June 2016, and the election of Donald Trump as President of the United States in November that year? Unquestionably much of the concern on the other side of the Atlantic has arisen in the circumstances of a President who seems either not to value democracy and human rights, or in fact, not to know much about them at all. Which might be even more worrying.

As is so often the case, we may get a little perspective in assessing the current anxious mood by looking back at history. And so I am going to look back at the history of the Universal Declaration of Human Rights (the UDHR): how it came about, who were the major actors that contributed to the drafting and adoption of the UDHR, and how the UDHR has become rooted in the practice of international law and the United Nations in the seven decades since. And then I am going to suggest that this history provides lessons for us in thinking about the time we are in and the years ahead.

In turning to the history of the Universal Declaration of Human Rights, I shall start with what perhaps might be called the traditional historical account and then I shall turn to some of the more recent historical scholarship that paints a much more complex, and perhaps more insightful, picture.

## THE TRADITIONAL HISTORICAL ACCOUNT OF THE ADOPTION OF THE UDHR

The traditional narrative goes like this. Before the Second World War was over, Franklin D. Roosevelt and Winston Churchill, amongst others, began to think about what a post-world-war era might look like. Franklin D. Roosevelt had already addressed the question in his famous address to Congress in January 1941. He warned of the dangers in terms that seem of remarkable contemporary salience:

Every realist knows that the democratic way of life is at this moment being directly assailed in every part of the world—assailed either by arms, or by secret spreading of poisonous propaganda by those who seek to destroy unity and promote discord in nations that are still at peace.<sup>1</sup>

And then he concluded:

In the future days, which we seek to make secure, we look forward to a world founded upon four essential human freedoms.

The first is freedom of speech and expression—everywhere in the world.

The second is freedom of every person to worship God in his own way—everywhere in the world.

The third is freedom from want—which, translated into world terms, means economic understandings which will secure to every nation a healthy peacetime life for its inhabitants—everywhere in the world.

The fourth is freedom from fear—which, translated into world terms, means a world-wide reduction of armaments to such a point and in such a thorough fashion that no nation will be in a position to commit an act of physical aggression against any neighbor—anywhere in the world.

That is no vision of a distant millennium. It is a definite basis for a kind of world attainable in our own time and generation.

That kind of world is the very antithesis of the so-called new order of tyranny which the dictators seek to create with the crash of a bomb.

Roosevelt and Churchill met in Newfoundland in August 1941 before the USA entered the war. During their meeting they published a brief document that contained a set of principles that came to be known as the Atlantic Charter.<sup>2</sup>

The eight brief principles in the Charter affirmed amongst other things ‘the right of all peoples to choose the form of government under which they will live’,<sup>3</sup> declared

<sup>1</sup> President Franklin D. Roosevelt address to Congress 6 January 1941. Full text available here: <https://www.roosevelt.nl/fdr-four-freedoms-speech-1941> (last accessed on 8 June 2018).

<sup>2</sup> The full text of the Charter can be found here: <http://avalon.law.yale.edu/wwii/atlantic.asp> (last accessed on 8 June 2018).

<sup>3</sup> Third Principle.

the 'hope to see established a peace which will afford to all nations the means of dwelling in safety within their own boundaries, and which will afford assurance that all the men in all lands may live out their lives in freedom from fear and want'<sup>4</sup> (thus echoing two of the four freedoms that FDR had listed earlier in the year before Congress), and the belief:

that all of the nations of the world, for realistic as well as spiritual reasons must come to the abandonment of the use of force. Since no future peace can be maintained if land, sea or air armaments continue to be employed by nations which threaten, or may threaten, aggression outside of their frontiers, they believe, pending the establishment of a wider and permanent system of general security, that the disarmament of such nations is essential.<sup>5</sup>

The Atlantic Charter has been widely understood as paving the way to the post-war settlement based on the establishment of the United Nations the outlawing in Article 2(4) of the United Nations Charter of the use of force, the establishment of the Bretton Woods institutions to seek to regulate the global economy, and, of course the UDHR.<sup>6</sup> Elizabeth Borgwardt has described the significance of the Charter as follows:

But the modern human rights regime inaugurated by the Atlantic Charter vision marked a new synthesis of four essential qualities: First, highlighting traditional political rights as core values; second, incorporating a broader conception of so-called 'Four Freedoms' rights, which included vague references to economic justice; third, suggesting that the subjects of this vision included individuals as well as the more traditional unit of sovereign nation-states; and finally, emphasizing that these principles applied domestically as well as internationally.<sup>7</sup>

The adoption of the Atlantic Charter was reaffirmed a few months later by twenty six of the allied nations opposing Germany and Japan in the Second World War on 1 January 1942, after the USA had joined the war following the attack on Pearl Harbor. That brief declaration recorded the purpose of their engagement in the war in the following terms:

Being convinced that complete victory over their enemies is essential to defend life, liberty, independence and religious freedom, and to preserve human rights and justice in their own lands as well as in other lands, and that they are now engaged in a common struggle against savage and brutal forces seeking to subjugate the world ... each Government pledges itself to employ its full resources, military or economic, against

<sup>4</sup>Sixth Principle.

<sup>5</sup>Eighth Principle.

<sup>6</sup>Borgwardt (2006: 504).

<sup>7</sup>Borgwardt (2006: 506).

those members of the Tripartite Pact, and its adherents with which such government is at war.<sup>8</sup>

The next step in the traditional historical account was the drafting of the Charter of the United Nations discussed at Dumbarton Oaks in Georgetown, Washington DC in the late summer of 1944. The draft that emerged from Dumbarton Oaks only mentioned ‘human rights’ in relation to the responsibility of the United Nations to ‘facilitate solutions of international economic, social and other humanitarian problems’ and not as one of the main purposes of the organisation, both Russia and Britain having been opposed to the American suggestion that it be a main purpose.<sup>9</sup>

But in San Francisco just over six months later when representatives of forty-six nations met to discuss the drafting of the Charter, there was strong support to include the promotion of human rights as one of the key purposes of the United Nations.<sup>10</sup> Accordingly, the promotion of human rights was written into the Preamble and Article 1 of the Charter as well as at five other places in the draft. The Preamble reads ‘We the peoples of the United Nations determined ... to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small ...’. The Charter goes on in Article 1 to declare that one of the four key purposes of the United Nations is ‘... To achieve international co-operation ... in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion.’ And, crucially, Article 68 provided that the Economic and Social Council should set up a commission for the promotion of human rights.

Just under a year later, the newly established Economic and Social Council of the UN appointed a ‘nuclear committee’ to advise it on the structure and functions of the permanent Commission on Human Rights envisaged in the Charter. Eleanor Roosevelt was one of the members of the small committee, and was elected its chair. The committee met at Hunter College in New York City in spring 1946 and recommended that the first task of the Commission on Human Rights should be to draft a charter of human rights.<sup>11</sup> A few months later the UN Commission of Human Rights was set up

<sup>8</sup> United Nations Declaration 1 January 1942 issued by United States, the United Kingdom, the Union of Soviet Socialist Republics, China, Australia, Belgium, Canada, Costa Rica, Cuba, Czechoslovakia, Dominican Republic, El Salvador, Greece, Guatemala, Haiti, Honduras, India, Luxembourg, The Netherlands, New Zealand, Nicaragua, Norway, Panama, Poland, South Africa and Yugoslavia. Full text available here: [http://treaties.fco.gov.uk/docs/fullnames/pdf/1942/TS0005%20\(1942\)%20CMD-6388%201942%201%20JAN,%20WASHINGTON%3B%20DECLARATION%20BY%20UN.pdf](http://treaties.fco.gov.uk/docs/fullnames/pdf/1942/TS0005%20(1942)%20CMD-6388%201942%201%20JAN,%20WASHINGTON%3B%20DECLARATION%20BY%20UN.pdf) (last accessed on 8 June 2018).

<sup>9</sup> See Glendon (2002: 6).

<sup>10</sup> Glendon (2002: 15–18).

<sup>11</sup> Glendon (2002: 31).

with eighteen members: five representing the five permanent members of the Security Council (China, France, Russia, the UK and the USA) and the other thirteen rotating every three years.<sup>12</sup> Eleanor Roosevelt was appointed to represent the USA and was again elected chairperson.

Over the next two years the Commission met to draft what became the Universal Declaration of Human Rights. A wide range of people were involved in working closely on the text: John Humphreys of Canada, René Cassin of France, Charles Malik of Lebanon, Peng-chun Chang from China, Hansa Mehta from India, William Roy Hodgson of Australia, Carlos Romulo of The Philippines, Hernán Santa Cruz of Chile, and of course Eleanor Roosevelt.

The project was a difficult one, and made more difficult by the unfolding political events. In the period that the Commission was working on the draft, Britain withdrew from Palestine, India became independent and Mahatma Gandhi was assassinated, the Cold War intensified (for example, there was a coup in Czechoslovakia in February 1948 and in May 1948 the Soviet Union cut all rail links between east and west Berlin, and commenced the so-called 'Berlin Blockade'), Kim Il-Sung claimed jurisdiction over all Korea and sealed the border between North and South Korea, and South Africa elected a political party, the National Party, committed to the policy of apartheid.

Despite the challenging political times, and despite some heated disagreement, the Universal Declaration was adopted by the UN Commission on Human Rights at its meeting in Lake Success in June 1948, debated and finally approved by the Third Committee of the General Assembly on 7 December, and then adopted by the General Assembly, with forty eight voting in favour and eight abstaining (including the USSR and other Eastern European states, as well as Saudi Arabia and South Africa) on 10 December 1948: Human Rights Day.

### **KEY PROVISIONS OF THE UDHR**

The Universal Declaration is a short document containing only thirty clauses. There are three important points to note about the text of the UDHR. First, its Preamble proclaims that the Universal Declaration of Human Rights is 'a common standard of achievement for all peoples and all nations ...'. The Universal Declaration is thus not a document that imposes legally binding obligations upon member states of the United Nations. Instead, it establishes a common standard of achievement for all peoples and nations. Yet the Preamble also acknowledges '... it is essential, if man is

<sup>12</sup> Glendon (2002: 32).

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.’ So the drafters recognised the need for human rights to impose binding obligations. And indeed, the UN Commission of Human Rights always planned that the adoption of the Universal Declaration would be the first step of its work, which would be followed by the drafting of a binding international covenant.

Secondly, the Declaration affirms not only the classic civil and political liberties (in Articles 3–21), but also economic, social and cultural rights, including a right to social security (Article 22), a right to education (Article 26) and a right to a standard of living adequate for the health and well-being of the individual and the family (Article 25).

Thirdly, not surprisingly perhaps because the Declaration does not establish binding obligations, there is no direct identification of those who might bear duties in relation to the rights declared. Nevertheless, the Declaration suggests that it is not only governments that bear the duty to promote respect for human rights. Most importantly, the Preamble proclaims 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.

## **THE HUMAN RIGHTS TREATIES THAT FOLLOWED THE UDHR**

Notoriously, once the UDHR had been adopted, progress on adopting a covenant or international agreement to impose upon governments binding obligations to protect the rights contained in the UDHR took a long time. The ICCPR (International Covenant on Civil and Political Rights) and ICESCR (International Covenant on Economic, Social and Cultural Rights) were only drafted in the 1960s and only came into force in the 1970s. Yet since the 1970s the number of ratifications has risen sharply. Today, the ICCPR has 117 states parties with only twenty countries not having ratified at all<sup>13</sup> and the ICESCR has 116 states parties. Notably the USA has signed but not ratified the ICESCR. The two covenants, the international bill of rights, as they have come to be known, now form the foundation of international human rights law.

<sup>13</sup> According to the Office of the UN High Commissioner for Human Rights. See <http://indicators.ohchr.org> (last accessed on 9 June 2018).

It is a foundation that has been built on by a range of other human rights treaties including the International Convention on the Elimination of all Forms of Racial Discrimination (drafted in the 1960s) and which now has 179 states parties; the Convention on the Elimination of all Forms of Discrimination against Women (with 189 states parties and the USA is only a signatory); the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (with 164 states parties); the Convention on the Rights of the Child (with 196 states parties, again the USA is only a signatory); and most recently the Convention on the Rights of Persons with Disabilities (with 177 states parties, again the USA is only a signatory). Underpinning the system of human rights conventions are a range of treaty bodies including the UN Human Rights Committee and the UN Economic Social and Cultural Committee.

Moreover, in addition to the international human rights law conventions, there are several regional conventions: the European Convention on Human Rights, the American Convention on Human Rights and the African Charter of Human and Peoples' Rights, all three of which have tribunals that enforce their provisions. And, in addition, the traditional account would point to the increasing number of national constitutions that entrench bills of rights, whose drafting is often deeply influenced by the text of both the Universal Declaration and the international covenants.

This traditional historical account of international human rights law that I have been describing therefore relates the history as a progression from a non-binding declaration of human rights in the aftermath of World War II, to the development of binding international norms in the two great human rights covenants of the 1960s, as well as a range of specific human rights conventions thereafter, to suggest that the human rights project is one which has seen steady progression towards greater recognition and protection of human rights across the globe.

This historical account is distinctly 'whiggish' in character. The rise of international human rights can be seen as a steady upward trajectory with only the odd setback. It was initiated by the committed contribution of remarkable people, such as Eleanor Roosevelt, John Humphrey, René Cassin, Peng-chun Chang and others. The account is not false, but it is incomplete, for there are many other narratives that make up the history of the Universal Declaration of Human Rights.

Moreover, we should note that this rather whiggish account of history leaves us feeling bereft when the situation seems to be changing in a manner that suggests that the 'long arc of history' (to coin Martin Luther King's phrase) is no longer bending towards justice and the promotion and protection of human rights and democracy, but bending in a different direction towards narrow nationalism and authoritarianism.

The traditional account thus tends to overlook the contingency of the drafting of the Universal Declaration of Human Rights, and the international human rights project that built upon it. As Samuel Moyn has written:

In recasting world history as raw material for the progressive ascent of international human rights, [historians] have rarely conceded that earlier history left open diverse paths into the future, rather than paving a single road towards current ways of thinking and acting. .... [T]hey have used history to confirm [the inevitable rise of human rights] rather than register the choices that were made and the accidents that happen[ed].<sup>14</sup>

## **NEW HISTORICAL INSIGHTS ON THE HISTORY OF INTERNATIONAL HUMAN RIGHTS LAW**

It seems to me that understanding some of the contingencies of the history of international human rights law will equip us better for the vicissitudes of the present than the rather traditional whiggish account of that history. And in recent years, a range of new scholars has been examining the history of the international human rights project in greater detail than has happened before. These scholars have approached the field from different disciplines: history, international relations, cultural history and the history of ideas. And their work presents some refreshing insights, and asserts the complexity and contingency of the history of the UDHR and the international human rights project since 1948.

## **WHY DO STATES RATIFY INTERNATIONAL HUMAN RIGHTS TREATIES?**

Many authors have focussed on the role of states in the development of international human rights. One of the key questions that has been asked is what might have been the motivation for states to have agreed the adoption of the Universal Declaration of Human Rights, and to have ratified the international human rights covenants thereafter. In an interesting relatively early article, Mark Mazower remarked that we would look ‘in vain for scholarship’ shedding light on the question as to how, in the space of a few years, between the adoption of the Atlantic Charter in 1941 and the UDHR in 1948, human rights came to occupy such a prominent part in international diplomacy that the new world order would be built upon a commitment to their advancement.<sup>15</sup>

The question is a crucial historical question for the international human rights project, particularly once international human rights law afforded international tribunals and agencies the authority to adjudicate human rights complaints. Such a system constitutes:

<sup>14</sup> Moyn (2012: 5).

<sup>15</sup> Mazower (2004: 380).

a fundamental challenge not just to the Westphalian ideal of state sovereignty that underlies realist international relations theory and classical international law but also—though less-frequently noted—to liberal ideals of direct democratic legitimacy and self-determination. The post-war emergence of these arrangements has rightly been characterized as the most ‘radical development in the whole history of international law’.<sup>16</sup>

There is a real question then as to how it came to be that the international human rights project emerged at all. And when we look more closely at how the UDHR and the international human rights law project came about, the story is distinctly less whiggish, and more complex than the traditional historical discourse suggests.

For example, Mazower argues that to understand the turn to human rights in the post-war era, there were reasons in addition to the anxiety about the risks for peace arising from fascist government and the desire to build an international system which would avoid that instability. He reminds us that some of the reasons for the new human rights talk lay in the failure of the interwar system.

In particular, he reminds us that after the First World War, recognition of the new states of eastern Europe was made conditional upon their guaranteeing group minority rights within their borders, and that monitoring compliance with these conditions was a task set for the newly established League of Nations.<sup>17</sup> The system did not work, and Mazower argues that dissatisfaction with the system was one of the reasons that led to the acceptance of the post-World War II human rights project in addition to the reasons more commonly asserted for its rise.

There are two aspects of the post-war protection of human rights that he suggests derived from dissatisfaction with the ‘protected minorities’ system of the League of Nations. The first is that the new human rights model did not impose binding obligations upon states, nor provide any system of enforcement. In this respect, then, the Universal Declaration was a less onerous intervention than the system for the protection of minorities had been under the League of Nations. Secondly, he notes that Article 2(7) of the UN Charter contains a clear affirmation of state sovereignty and limits the right of the United Nations to interfere in matters that ‘essentially fall within the domestic jurisdiction of any state’.<sup>18</sup> Mazower’s argument is ultimately that the UDHR contained a set of empty promises that both international law scholars and politicians of the time did not fear because they expected them to have no impact on the world of *realpolitik*.

<sup>16</sup>See Moravcsik (2000: 218).

<sup>17</sup>See Mazower (2004: 382). See also O Pendas (2012: 101).

<sup>18</sup>See Article 2(7) which provides: ‘Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.’

This analysis is considerably less sanguine about the system of protection of human rights in the UDHR than the traditional historical account. It reminds us when we think about the history of the UDHR to think about the factors that drive state action in the sphere of international relations.

Yet, of course, as the international human rights project developed, as we have seen, it did come to impose binding obligations upon states, although we might debate how effective the enforcement of those obligations has proved. Why would states agree to binding human rights obligations that will be enforced by independent and external agencies?

As Andrew Moravcsik has pointed out, there are generally two explanations from international relations theorists as to why governments would support the establishment of an international independent authority with the power to constrain domestic sovereignty in the field of human rights in an invasive and counter-majoritarian fashion. The first is a realist view that argues that ‘democratic governments and transnationally active members of democratic civil societies’ coerce governments to accept human rights norms and the second is an ideational view that says that the commitment arises from the power of persuasion in relation to the normative power of the project.<sup>19</sup> Both of these factors probably have a role to play in the emergence of international human rights law, but Moravcsik suggests a third possibility, that ‘the strongest support for binding human rights regimes should come not from established democracies but from recently established and potentially unstable democracies.’<sup>20</sup>

Moravcsik argues that it is only where democracy is newly established but remains under threat from non-democratic groups, such as the military, fascist or communist political groups or religious fundamentalist groups, that ‘the inconvenience of supra-national adjudication’ might seem worth its costs.<sup>21</sup> Dictatorships will, not surprisingly, always be opposed to such international human rights norms and more established and stable democracies will have less reason to support them. Thus, he suggests, that in the negotiation of any supra-national human rights treaty ‘we should expect to see a similar pattern of support from new democracies, suspicion from established democracies, and hostility from dictatorships.’<sup>22</sup>

Moravcsik’s own empirical historical work is based on the European Convention of Human Rights. I have not found any empirical work applying his argument to international human rights law, but it seems to me that there may well be support for his thesis in an examination of the attitudes of newly independent states in the 1960s.

<sup>19</sup> Moravcsik (2000: 219).

<sup>20</sup> Moravcsik (2000: 228–9).

<sup>21</sup> Moravcsik (2000: 228–9).

<sup>22</sup> Moravcsik (2000: 244).

## **APPROACHES TO THE HISTORY OF INTERNATIONAL HUMAN RIGHTS LAW FROM THE PERSPECTIVE OF THE GLOBAL SOUTH**

Moravcsik's argument suggests that we should think about the history of international human rights not only from the perspective of the established democracies of the global North, but also from the perspective of the global South, and in particular, those countries that were colonies at the end of the Second World War. And indeed this is a crucial perspective different from the one that the traditional historical account provides.

There is disagreement amongst historians about how to interpret the manner in which the global South has engaged with the Universal Declaration. Some scholars, such as Moyn, consider the project of self-determination and anti-colonialism not to have been a 'human rights project' at all.<sup>23</sup> Yet in my view this position is probably overstated. It is clear that self-determination was of crucial importance for the global South, but there is also evidence to suggest that newly independent states of the global South did not approach the question of universal human rights on the one hand and the right to self determination on the other as a binary choice.

At what could be described as the first major conference of countries of the global South held in Bandung Indonesia in April 1955, smaller nations stood firmly against the attempt by Zhou En Lai of China to undermine the status of the Universal Declaration on the ground that the People's Republic of China had not been involved in its drafting.<sup>24</sup> Zhou En Lai was forced to retreat from this position. Events at Bandung thus evidenced clear support amongst the smaller nations of the global South for the human rights project that the Universal Declaration symbolised.

In addition, in his recent study of the adoption of the international covenants in the 1960s, Steven Jensen notes the important role played by newly independent small states, particularly Jamaica, Liberia, Ghana and the Philippines.<sup>25</sup> Jamaica proposed the idea of an International Human Rights Year in 1968 in the first speech delivered on its behalf in 1962.<sup>26</sup> Jamaica's representative to the UN, Egerton Richardson, was then appointed to the Human Rights Commission in 1964 and appointed its chairperson. Richardson quickly developed a programme of work which would lead to the adoption of three major human rights agreements during the next four years, the CERD (Committee on the Elimination of Racial Discrimination), the ICCPR and the ICESCR. The programme included a fourth, which was never adopted, a

<sup>23</sup> See Moyn (2012: ch 3).

<sup>24</sup> See the full account in Burke (2010: 23–4).

<sup>25</sup> Jensen (2016).

<sup>26</sup> Jensen (2016: 77–8).

Convention on the Elimination of all forms of Discrimination on the Grounds of Religion.

Jensen describes how Richardson implemented the programme during the 1960s, despite the opposition from the Soviet Bloc, and a lack of enthusiasm from the major powers of the West, with the active support of several key states from the global South. Jensen thus asserts that the role of Jamaica and its allies from the global South in the 1960s was ‘pivotal’ in ‘brokering the breakthrough of international human rights law’.<sup>27</sup> Jensen’s account of the drafting of the international covenants in the 1960s thus appears to support Moravcsik’s thesis: there was support from new democracies, suspicion from established democracies and hostility from dictatorships.

Jensen does acknowledge that the ‘vanguard’ role of the new democracies of the global South did not last long, as by the early 1970s, strong claims of cultural relativism had emerged from the global South to refute the universality of human rights, claims I shall consider in a moment. Yet, he also argues that, in overlooking the key role that small states of the global South played in the 1960s, we omit a key part of the narrative of human rights history.

### **THE RIGHT TO INDIVIDUAL PETITION: AN ILLUSTRATION OF STATES’ CHANGING ATTITUDES**

Perhaps what is most notable about the new work on the history of human rights is that it shows the manner in which most states have vacillated in their support for the project of international human rights over time. Perhaps this can be best illustrated by Roland Burke’s careful study of the introduction of the right of individual petition in relation to alleged human rights abuses. He shows that attitudes both in the global North and global South towards the individual right of petition shifted between the 1950s and 1970s. In the 1950s, initiatives to introduce the right of petition were often led by representatives from the global South, such as Charles Malik of Lebanon, who had been one of the key members of the UN Commission on Human Rights when the UDHR was drafted,<sup>28</sup> Carlos Romulo of The Philippines and Hansa Mehta of India,<sup>29</sup> but were firmly opposed by the USA, the UK and the Soviet Union.<sup>30</sup> The situation changed in the 1960s when a right of individual petition was permitted in relation to the Special Committee on Decolonization (or Special Committee 24), which was

<sup>27</sup> Jensen (2016: 277).

<sup>28</sup> Burke (2010: 61–5).

<sup>29</sup> Burke (2010: 61–5).

<sup>30</sup> Burke (2010: 64).

established to monitor compliance with the 1960 Declaration on the Granting of Independence to Colonial Countries and Peoples and the Special Committee on the Policies of Apartheid of the Government of the Republic of South Africa.<sup>31</sup>

The establishment of the right of individual petition in these narrow cases was followed by the adoption of a right of individual petition in the International Convention for the Elimination of all Forms of Racial Discrimination. Many Western countries including the UK, Australia and New Zealand supported a right of petition under CERD. An Australian diplomatic cable recorded this attitude in the following manner:

Western countries are almost unanimously in favour of supporting strong implementation measures for the racial Discrimination Convention in the hope of putting both the communist countries and the Afro-Asian on the defensive.<sup>32</sup>

Interestingly, given Moravcsik's thesis regarding the role of new democracies I discussed a moment ago, Roland Burke credits George Lamptey of Ghana, in particular, with the success of the right of individual petition in CERD.<sup>33</sup>

Yet by the time the question of individual petition under the ICCPR was under consideration shortly afterwards, many countries of the global South had changed their minds. Indeed, there was sharp division amongst countries of the global South as to whether petition should be permitted in relation to the ICCPR. Some countries of the global South strongly supported individual petition under the ICCPR, including Nigeria, represented by Adam Mohammed, the Philippines, Ivory Coast, Ceylon and Ghana, together with Latin American countries and the Western Bloc. But other Afro-Asian countries supported the Soviet Bloc's opposition to the right of individual petition, which was removed from the main Convention into an Optional Protocol.

### **THE UNIVERSALITY OF HUMAN RIGHTS: ANOTHER ILLUSTRATION OF CHANGING STATES' ATTITUDES**

Another example of the manner in which views of states change over time relates to the question whether human rights can correctly be conceived as 'universal'. The first scepticism as to the 'universal' character of rights after the adoption of the UDHR came not from the liberation movements of the global South but from the imperial powers of the North. The debate arose in the early 1950s in the Third Committee of the United Nations when it was debating the text of the covenants that were to

<sup>31</sup> Burke (2010: 69–70).

<sup>32</sup> Cited in Roland Burke (2010: 71).

<sup>33</sup> Burke (2010: 72).

implement the rights contained in the UDHR.<sup>34</sup> The imperial powers proposed a clause that would render the UDHR not applicable in their colonies. For example, Belgium's representative argued in the Committee that a clause excluding the application of the UDHR in colonies was appropriate because the purpose of the covenant 'was to prescribe the rules of conduct which, as they supposed a high degree of civilization, were often incompatible with the ideas of people who had not yet reached a high degree of development.'<sup>35</sup> Representatives from countries across the global South disputed these assertions, arguing that human rights should be afforded to all, and when put to the vote the proposed clause was defeated.<sup>36</sup>

It was only in the late 1960s and 1970s that arguments based on cultural relativism emerged strongly in the UN from a wide range of representatives from the global South. Even when this happened, however, there remained representatives from the global South who persisted with support for the claim of universality. A notable example was Eldad Wapenyi from Uganda who throughout the 1979 session urged the importance of the establishment of the office of a High Commissioner for Human Rights (one of the issues around which the universality/cultural relativism argument coalesced).

Uganda had only just emerged from the rule of Idi Amin and the Human Rights Commission—Uganda was a member at the time—had in March 1977 disgracefully refused to countenance a study of atrocities in Amin's Uganda, a decision that was supported by General Assembly Resolution 332/130, sponsored—Roland Burke tells us—by a 'rainbow coalition of dictatorships across the political spectrum: the Shah's Iran, Marcos' Philippines, Videla's Argentina, and Castro's Cuba'.<sup>37</sup> As Burke wryly remarks: 'The ideological differences that divided them were superficial when compared to their shared adherence to a dictatorial model for development, and their desire to avoid scrutiny.'<sup>38</sup>

Wapenyi denounced 'the tendency of states charged with human rights violations to become members of the [Human Rights] Commission for the purpose of obstructing its work'<sup>39</sup> and noted with concern how Idi Amin had relied upon the principle of state sovereignty 'to cover up his atrocities'.

<sup>34</sup> See Burke (2010: 114ff).

<sup>35</sup> Quoted in Burke (2010: 116–17).

<sup>36</sup> Burke (2010: 118–21).

<sup>37</sup> Burke (2010: 137).

<sup>38</sup> Burke (2010: 137)

<sup>39</sup> Burke (2010: 141).

Roland Burke has carefully analysed the reliance on cultural relativism in the United Nations in particular and concluded that: 'It has been an excuse used by both colonial administrator and postcolonial dictator, invoked as both imperialist and anti-imperialist at different times.'<sup>40</sup>

The question of whether human rights can properly be described as universal is a challenging question, and one that I will not attempt to answer in this paper. What I would argue is that historical analysis of the employment of claims of cultural relativism suggests that there may often be other agendas that underlie those claims. If one of the key effects of international human rights law is to limit the legitimate authority of states to infringe human rights, when states that regularly appear to infringe human rights challenge the universal applicability of human rights, the question arises as to their motive for raising the question. The worry about motive holds true whether one looks at colonial powers relying on cultural relativism to avert rights being conferred upon their colonial subjects, or on dictatorial states that rely on it with the consequence that their actions go unscrutinised.

What the more careful historical investigations of recent years have established is that the attitude of many democratic states, whether from the global North or the global South, to the international human rights project has vacillated over the years. For example, the USA and the UK at the outset set much store by the fact that the UDHR did not impose binding obligations and the UK, along with other European states, sought to ensure that the rights would not be extended to their 'subjects' in the colonial South. The USA has never signed or ratified the ICESCR, although it finally ratified the ICCPR in 1992. States from the global South have also been unsteady in their support for the international human rights project. Authoritarian and non-democratic states—for example, those of the former Soviet Bloc—have generally lacked all enthusiasm for the project.

The lesson we can draw from these attitudes is that the response of most states to the international human rights project is not dependable and may well shift over time, depending on how democratic they are in practice, the quality and values of their political leadership, their social and economic circumstances and their role in the international order. Nevertheless, despite the changeable attitude of many states, there has been surprisingly widespread support for the international human rights covenants and the human rights treaties that followed in their wake. I would conclude by saying that, despite all the historical work that has been undertaken in the last few decades, I still do not think we yet have a clear understanding of the reasons that led to this support.

<sup>40</sup>Burke (2010: 143).

## ASSESSING THE ROLE OF CIVIL SOCIETY ORGANISATIONS IN THE INTERNATIONAL HUMAN RIGHTS PROJECT

A second wave of historical work on the emergence of international human rights focusses not on the attitude of states but on the growth of civil society organisations committed to human rights. Samuel Moyn in his influential history, *The Last Utopia*, argues that the international human rights project really began in the 1970s with the emergence of the global civil society movement for human rights, and was in part exemplified by Jimmy Carter's inaugural speech as President of the USA in January 1977, in which he argued that 'our commitment to human rights must be absolute', and the award of the Nobel Peace Prize to Amnesty International in 1977.<sup>41</sup>

Moyn is dismissive of the adoption of the UDHR in the 1940s, and the drafting and adoption of the international covenants of the 1960s as founding moments of the international human rights project, pointing out that no social movements accompanied the state-led initiatives. He explains the attraction of human rights as a mobilising idea in the 1970s on the basis that it was a departure from the polarising ideologies of the Cold War period, a more minimalist set of demands that sought to transcend the deep divisions that had scarred global politics in the period between 1948 and 1970.<sup>42</sup>

Moyn is probably too quickly dismissive of the power of the ideas promoted in the Atlantic Charter and the UDHR itself. The ideas espoused in the Atlantic Charter were powerful ideas that resonated in many parts of the world. For example, in his autobiography Nelson Mandela commented on the Atlantic Charter as follows:

Change was in the air in the 1940s. The Atlantic Charter of 1941, signed by Roosevelt and Churchill, reaffirmed our faith in the dignity of each human being and propagated a host of democratic principles. Some in the West saw the charter as empty promises, but not those of us in Africa. Inspired by the Atlantic Charter and the fight of the Allies against tyranny and oppression, the ANC created its own Charter, called African Claims, which called for full citizenship for all Africans, the right to buy land and the repeal of all discriminatory legislation. We hoped that the government and ordinary South Africans would see that the principles they were fighting for in Europe were the same ones we were advocating at home.<sup>43</sup>

The African Claims charter to which Nelson Mandela referred was followed of course by the Freedom Charter that was adopted by the Congress Alliance, sponsored by four organisations, the African National Congress, the South African Indian Congress, the South African Congress of Democrats and the South African Coloured

<sup>41</sup> See note 13.

<sup>42</sup> Moyn (2012).

<sup>43</sup> Mandela (1994; Hachette Digital: 95–6).

People's Organisation, at the Congress of the People in Kliptown near what is today Soweto in 1955.<sup>44</sup> The Freedom Charter famously begins:

We the people of South Africa declare for all our country and the world to know that South Africa belongs to all who live in it, black and white, and that no government can justly claim authority unless it is based on the will of all the people; that our people have been robbed of their birth right to land, liberty and peace by a form of government founded on injustice and inequality; that our country will never be prosperous or free until all our people live in brotherhood, enjoying equal rights and opportunities; that only a democratic states, based on the will of all the people, can secure to all their birth right without distinction of colour race, sex or belief.<sup>45</sup>

The Freedom Charter clearly drew on the principles that underpinned both the Universal Declaration of Human Rights and the Atlantic Charter and is an example of the way in which the ideas represented in the UDHR took root across the world. The Congress Movement of the 1950s in South African was a powerful political movement which saw thousands being arrested and detained, and led eventually to the great repression of the 1960s. As Nelson Mandela noted, the movement for the recognition of freedoms and rights resonated powerfully in South Africa in this decade.

It is not surprising that some liberation movements in the global South were inspired by both the Atlantic Charter and the Universal Declaration of Human Rights, for they asserted the equal dignity of each human being, something which was not accorded to many inhabitants of colonised states. Of course, a right of self-determination was seen to be central to the project of gaining independence from colonial rule, but so was the establishment of a society in which all human beings were to be treated equally.

Nevertheless, Moyn's argument that the global movement for human rights gained global significance as a result of the emergence of social movements in the 1970s is undeniable. The social movements included, of course, major global NGOs such as Amnesty International and Human Rights Watch (originally Helsinki Watch), as well as the global anti-apartheid movement, dissidents within the Soviet Bloc, Charter 77 in Czechoslovakia, as well as the Mothers Movements in Argentina, amongst many others.

<sup>44</sup> Mandela (Hachette Digital: 170–4).

<sup>45</sup> Preamble to the Freedom Charter. Full text available here: [http://www.historicalpapers.wits.ac.za/inventories/inv\\_pdfo/AD1137/AD1137-Ea6-1-001-jpeg.pdf](http://www.historicalpapers.wits.ac.za/inventories/inv_pdfo/AD1137/AD1137-Ea6-1-001-jpeg.pdf) (last accessed on 11 June 2018).

## CONCLUSION

What can we learn from the different accounts of the history of human rights that I have discussed? I think what I have called the traditional version that describes the history as a steady upward trajectory in the recognition and protection of human rights as a shared global project starting with the UDHR is flawed, in at least two respects: first it suggests an unbroken history whereby human rights are steadily realised and expanded. Closer attention to historical details shows that the history of the development of global human rights project has been contingent, uneven and nearly always and everywhere contested.

Secondly, in at least some of its forms, the traditional account suggests that the international human rights project has primarily been a project of states, and in particular, states of the global North. Again close attention to the processes for the human rights conventions shows that countries of the global South have made pivotal interventions at key moments, and that some countries of the global North have remained at times agnostic and even opposed to the development of human rights. Perhaps we should not be surprised by this: the Polish human rights scholar Wiktor Osiatyński famously observed that the powerful are rarely constant in their support of rights. ‘Powerful barons in the year 1215, the advancing bourgeoisie of the eighteenth century, and the new political elites in 1948 and 1989 all adopted the idea of rights at a time when it could foster their interests. Once they had assured access to power for themselves, they often abandoned the idea of rights’, he said.<sup>46</sup>

Recognising the complex, contingent and uneven history of human rights and the unreliability of power’s commitment to right should give us helpful guidance in thinking about the possibilities for the project in the years ahead. Clearly it would be better for the world if governments remained committed to the project of human rights, but if they do not, it does not mean that the project itself is without hope.

For as Kathryn Sikkink suggests in her recent book *Evidence for Hope: Making Human Rights work in the 21st Century*,<sup>47</sup> relying on her mentor Albert Hirschman, ‘processes of change are gradual, disorderly and a result of a unique constellation of disparate events, including the activism of individuals whom [Hirschman] called “reformongers” and whom others have called “norm entrepreneurs”. In the history of human rights, norm entrepreneurs both within the state and outside of it have moved ahead human rights agendas.’<sup>48</sup> The histories that I have referred to endorse this view: Eleanor Roosevelt, Charles Malik, Egerton Richardson were all norm entrepreneurs

<sup>46</sup> Osiatyński (2009).

<sup>47</sup> Sikkink (2017).

<sup>48</sup> Sikkink (2017: 19).

who cultivated the international human rights project. Today there are thousands if not hundreds of thousands of people around the globe following in their footsteps.

So the key lesson that I think this careful analysis of the history of the UDHR teaches us is that victory was not, and never will be certain, but nor is failure. Progress will be uneven and setbacks have occurred and will continue to do so. Some will be alarming and threaten the entire project, but often setbacks will be overcome. The loss of leadership and support for the global human rights movement from one or more governments, even powerful ones, like the USA, does not necessarily spell disaster, even if it does constitute a setback.

In addition to setbacks, the human rights project faces many challenges: Perhaps the greatest challenge for the human rights movement is to determine its relationship with the sphere of politics. This is a question beyond the scope of my remarks in this paper, but it is a challenging question both for scholars and for activists and it requires careful thought, and perhaps different answers at different times and in different settings. The human rights project also continually faces new challenges such as: how to deal with terrorism after 9/11; how to deal with inequality that has reached alarming levels in the last two decades; how to deal with the rise of illiberalism and a project of narrow-minded nationalism in this decade.

There never has been and hopefully never will be an 'end of history' for the human rights movement. It is one long struggle to ensure that human beings are not abused by the powerful. So there are many challenges that lie ahead for the project of international human rights, but if we recognise the depth of the challenges that lie behind, and acknowledge the courage and commitment of those who rose to meet those past challenges, the possibility of progress and consolidation in the years ahead will never entirely be lost.

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