

At the Heart of Human Rights Education: the Universal Declaration of Human Rights

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I will start by giving you a brief overview of the historical context of the development of the UDHR and the geopolitical context at the time the UDHR was adopted. We will then look at some of the articles of the Declaration to examine the structure of the document, and finally, we will consider the value of the UDHR and why it is so important for human rights activists and educators.

Historical Context

In 1939, there was an awful war (WWII) and all the different parties who were fighting against the Nazi regime were already thinking about where we would go after the war. By 1941, US President Roosevelt was already thinking about what the world society should be like after the war. He spoke to the Congress about four major freedoms: freedom of speech, freedom of worship, freedom from want, freedom from fear. These four freedoms are quoted as an initial discussion of what major human rights standards should be protected after the war.

In 1945, the war was over and there was a UN conference. It was decided that the UN Charter was to contain a Bill of Rights. It was a conference of 58 states, but there was already lobbying by civil society and non-governmental organizations. So even from the beginning of the UN, NGOs were active in the process. In particular, some Jewish associations lobbied to ensure that the Charter contained a Bill of Rights. This didn't happen, but in 1946, the Commission on Human Rights was established to work on the Bill of Rights. This would be constituted by a Declaration and a Convention. The Division of Human Rights was also established to support the Commission on Human Rights. John Humphrey was working at the time at the Division of Human Rights. The Division set up a committee to work on a possible text for the UDHR. They studied proposed drafts /articles which were submitted by academics and states. They studied 55 constitutions and received comments from states. This occurred between January 1947 and June 1948.

In 1948, the General Assembly received the “draft International Declaration of Human Rights”. The Assembly held 81 meetings and made 168 amendments and the draft was finally adopted on December 10, 1948, in Paris. It was adopted with 8 abstentions, mainly from socialist countries, and Saudi Arabia and South Africa. To give you a feeling of the time the Declaration was adopted, I would like to read to you what was said by the President of the GA.

“The Universal Declaration was a step forward in a great evolutionary process. It was the first occasion on which the organized community of nations had made a declaration of fundamental human rights and freedoms. The document was backed by the authority of the body of opinion of the UN as a whole and millions of people, men women and children, who turned to it for help, guidance and inspiration.”

We mentioned that there were some abstentions. In order to get a sense of the different contributions of different parts of the world in the drafting of the declaration, we can look at the foundations of human rights within the geopolitical context.

Geopolitical Context

The UN was composed of 58 states. There were 14 Western countries. The philosophical tradition of these states was of “natural law”, embodied in national legislation. The fundamental principles of this natural law included the inherent dignity of human beings as well as equality and inalienability of rights and this is what they emphasized to be included in the Declaration. There were also 20 Central and Latin American countries. They also adopted the western model but they had a preference for stronger wording in the declaration. There were also 6 socialist countries (USSR and from Eastern Europe). Their philosophical approach was that of Marxism. The idea was that human rights were not necessary in a socialist society. Human rights were to give freedom to the oppressed. Therefore, only capitalist and colonial societies needed the protection of human rights.

Finally, there were 14 Asian countries. The main contribution of this group was through certain strong figures such as Gandhi, who suggested that the concept of obligation be added to the Declaration. There were also Charles Malik from Lebanon, and Mr. Chang from China. These figures brought a very astute and engaged contribution to the process of drafting the Declaration. There was also a contribution from Muslim countries, particularly regarding cultural traditions and the treatment of women. Saudi Arabia and Pakistan were notable from this group. Pakistan voted for the Declaration in the end while Saudi Arabia, on the other hand, abstained.

I think it’s important to show what the main contrasts were between the western countries, which emphasized civil and political rights as well as the importance of the individuality of the person, and on the other hand the socialist countries, which focused on economic and social rights and the importance of the State over the individual. So you can see that these different perspectives contributed to the drafting and preparation of the UDHR.

Tools to Teach the UDHR

I would like to present to you a tool that is very interesting in the teaching of human rights. It is a diagram of a temple, developed by René Cassin, one of the drafters of the UDHR. He described the UDHR as a temple with four pillars and a pediment, or roof. Under the first pillar, Cassin placed articles 1-11 of the UDHR, which he called personal or civil rights. These included equality, non-discrimination, life, prohibition of slavery and torture, recognition before the law, protection by the law, right to a remedy, prohibition of arbitrary arrest, detention and exile, the right to a fair and public hearing, the right to a fair trial, and the right to be presumed innocent.

The second pillar represents articles 12-17, which he termed social rights or rights that belong to the individual in relation to the social group in which he lives. These rights include privacy, freedom of movement, right to asylum, right to nationality, marriage and family and property.

The third pillar represents political rights under articles 18 to 21. These rights include thought, conscience and religion, opinion and expression, peaceful assembly and taking part in the government, including free and fair elections.

The final pillar represents economic rights, which are exercised in the social and economic area. These rights include social security, work, equal pay for equal work, trade unions, rest and leisure, an adequate standard of living, education and participation in the cultural life of the community.

Over these four pillars, there is a roof. Articles 28, 29, 30 encompass the whole temple. Article 28 speaks of the right to a social and international order in which the rights set out in the Declaration can be fully realized. This was developed by Mr. Malik of Lebanon, who, as I mentioned, was a major contributor to the drafting of the UDHR. He was looking into the question of economic development and redistribution of wealth between countries. Article 29 speaks of the question of duties - again, a contribution from the Asian group, and in particular, Mr. Gandhi. The idea is that rights cannot be exercised against the purposes and principles of the United Nations, e.g. peace. Finally, article 30 says that nobody can infringe the rights contained in this Declaration. This was an article that was supported by the socialist countries.

Why is the UDHR so important? Not only for the UN, but for everyone. Many NGOs cite the UDHR as the basis for their work. First of all, it is the meeting point of different conceptions of human beings and society, as we discussed earlier. It was a compromise of different philosophical ideas about human rights. The first text was inspired by 55 constitutions. So it was nurtured by many different inputs. Another important point is that when the UDHR was adopted, many countries considered the Declaration as an interpretation of the HR provisions of the UN Charter. So the UDHR is linked to the UN Charter, to which all member states are bound. Further, UDHR principles were used

during the anti-colonial struggle. They were often inserted in the constitutions of the new countries. So the UDHR had a liberating effect. The UDHR is also a starting point for the development of a vast body of international human rights law as well as a basis and inspiration for all regional systems. It is clear that the UDHR has acquired more and more legal status. It is a declaration - so it is not legally binding upon states that adopt it. But in the case of the UDHR, some of the provisions have acquired the status of international customary law.

The UDHR was really a factor of unifying humanity. It provided common parameters for the world for the first time - used by all. And finally, it is the most translated document in the world. The Office of the High Commissioner for Human Rights is the Guinness World Record holder for this! This is a project undertaken for the UN Decade of HRE, with the financial assistance of San Marino.

I will finish by saying two things; first, the Development of Human Rights: yesterday, I showed you a transparency with the principles of the UN Charter, which already contained human rights provisions. After the Charter in 1945, the UDHR in 1948 gave way to a huge development of international human rights law. In particular, the two covenants, the ICCPR and the ICESCR. Again, the reason for the two different covenants stems from the difference in approaches. I read that it was the US that wanted a covenant on civil and political rights with a very strong mechanism for implementation, and another covenant for economic, social and cultural rights with very non-specific wording. Then we continue in terms of the development of international human rights law into development of treaties that are touching on specific problems such as torture, racial discrimination, or specific groups of people, like the Convention against Discrimination against Women and the Convention on the Rights of the Child and the Convention on Migrant Workers.

In addition to this, there is a huge body of declarations, codes of conduct, and so on. These documents were developed to go deeper into the provisions of the major treaties. For example, the code of conduct for law enforcement officials will go deeper into some of the provisions of the Covenant on Civil and Political Rights to look at them from the perspective of law enforcement agencies. Why is this important to you? Who has adopted all these different documents? Who has committed to them? STATES. You have tools. You have a lobbying opportunity towards your government who has committed to these documents. You have a possibility to go back to them and claim the rights to which they have committed.

I would like to conclude with a quote from Mr. Malik, from Lebanon, one of the major drafters of the declaration. He said:

“Whoever values men and his individual freedom above everything else cannot fail to find in the present declaration a potent ideological weapon. If held in complete goodwill, sincerity, and truth, this weapon can prove most significant in the history of the spirit.”

This quote is not used often, but it gives you a feeling of the potential of this document.

Before answering your questions, I will consider some of the questions that were written before this talk today. First, if the Declaration says that we are all equal in dignity and law, and we see that there is so much poverty and discrimination, how can we find that the Declaration is really universal and true? If you look at the preamble of the UDHR, it says that the Declaration is a common standard of achievement, a standard that must be strived towards. It is not yet a reality, but it is something we must work towards. It is a goal. It is important to look at the preamble when studying the UDHR because it gives you a context.

Why don't we apply the UDHR within the United Nations system? For example, why is there a veto power at the UN? The UN system is very complicated, and it takes a lot of time for change to occur. There must be a majority of states that agree for there to be a change. I say this because there is a whole discussion that is happening right now with respect to the revision of the veto system and the expansion of members of the Security Council. But because the UN is an organization that functions on the basis of a majority or by unanimity, it will take a long time for these changes to take place.

What does the UN do for states that don't respect human rights? You will have several weeks to discuss this question.

What capacity do NGOs have to access the United Nations? Yesterday, I gave you some ideas about what you can do to make use of the UN. For example, you can submit shadow reports on human rights abuses in your countries to the different enforcement mechanisms at the UN. You have ways in which to find out what is happening at the UN. Keep in touch with the UNHCHR and check the website regularly so that you can keep up to date with what is happening and how you can apply to participate in activities such the World Conference on Racial Discrimination at Durban. In terms of participation at the Human Rights Commission, you can obtain consultative status with the UN, or affiliate yourself with an organization that does and you can go and lobby at the annual meeting of the Commission. What occurs in the halls of the Commission is often much more important than what happens behind closed doors. I also wanted to make you aware that there is an organization in Geneva whose mandate is to help NGOs to access the international human rights system at the UN. It is called the International Service for Human Rights. I suggest that you contact them. It is a good resource for you.

Now, your questions.

Participant

I found Ms. Ippoliti's speech very informative. Thank you very much. I have one small detail to add. Nine years ago, I had the great privilege to visit a great Canadian, John Humphrey. He explained to me that the idea of economic and social rights was not simply a concept of socialist origins. That is false news. It is not only the socialist or third world that is concerned with economic and social rights. In the western world, we have a tradition of social democracy. This is a strong tradition. The communists and the

fascists both killed social democrats during their reign. In Canada, we have a Christian Social Democracy, which is also very strong. John Humphrey wrote the first draft of the UDHR, and it was he who made sure that economic, social and cultural rights were included.

My question is in relation to the success of the UDHR, about 60 or 70 years after it was adopted. The spirit behind the adoption was to create a new world society. After that, we saw that issues that were addressed were even more violated, related to conflicts in Africa, the cold war period and so on. After the breakdown of the war, we started talking about a new world order. Don't you think it's high time that we start in the new world order, that we gave the UDHR binding status upon states?

Participant

I know from my practice as a lawyer that the UDHR is the most wonderful document that the UN has ever produced. My question has to do with sovereignty. The Nigerian Supreme Court has recently decided that the UDHR is a domestic law by virtue of the fact that it has been adopted and municipalized, therefore it was subject to the provisions of the Constitution of the country. I also remember that Lord Atkin, in the *Labour Conventions* case in Canada, rationalized why countries should domesticate the UDHR before it becomes enforceable for the fact that the signing of treaties by the executive and making of domestic law is by Parliament. I would like to know the feeling of the UN with respect to this.

Participant

I would also like to thank you for the presentation. What I am about to say are strong personal opinions. I think the word universal is a bit of a fallacy. From your explanation, it is only a few countries that participated in the making of the UDHR. Other countries were represented by individuals. Individuals are not as strong as states. Now with respect to Africa, Africa was not even a part of the process or the making of the UDHR. So that is why I tend to see a fallacy in calling it universal, unless Africa is not part of the universe. If we talk about inclusion and not exclusion, I think it's important to recognize that fact. Finally, with respect to your coverage about the geopolitical context, I feel that it was half-cooked, not complete. Because at the time other people were sitting down to discuss about human rights others were being colonized. Those that were being colonized were colonized for 25 years after the UDHR! I don't see the exercise of any rights and 25 years is a big number. 25 years after the UDHR, people were still oppressed.

I think capitalist countries have a challenge. I feel strongly that capitalist countries are hypocrites. Here they are saying that people have a right to economic development, and they are using the World Bank and IMF to suppress economic development. Here they are saying that people have a right to be equal, and here (people) are living in riches while (others) are dying of poverty. Are we real and genuine or are we hypocrites? Are we committed to human rights or is it just words?

My question is on the issue of declaration as opposed to treaties. You mentioned that declarations are not binding. Is the UDHR going to remain a declaration forever? Secondly, the Convention on the Rights of the Child is a treaty; it is supposed to be binding upon states that have ratified it. But my country has ratified it and there is still child labour, etc., going on. What is the UN going to do about it?

Elena Ippoliti

You have raised issues such as globalization, the new world order and cultural diversity. You will have special sessions that will address many of the questions that were just raised, so I will just go through the major points I can make from the questions that were made.

Concerning the success of the UDHR: when we had the 50th anniversary of the UDHR, there were some people who were speaking about the “celebration” of the 50th anniversary. When we heard this, our office took a position that “celebrating” was not an appropriate term. There is really nothing to celebrate; there is still so much work to do. We preferred the term “commemorating” the anniversary.

The question of the UDHR being binding: what happened after the UDHR was that various binding instruments were developed and adopted by states. So the UDHR was really the “mother” of these other binding instruments that were developed over many years.

The problem of national enforcement of the UDHR: we speak of national enforcement when treaties are ratified; the content of the treaty becomes national law or even above the national law. This really depends on the legislation of each country. Sometimes the international law is even more important than national law. In some countries, it has the same standing. And in others, the national law still prevails. So we have a lot of work to do on this topic to make sure that the international law is enforceable at the national level.

With respect to colonization, I fully agree with you. This is why I pointed out that one of the most important points of the UDHR is that it started the process of decolonisation and the principle of human rights was used for a kind of liberation movement. It’s important to note that all the new constitutions included the principles of the UDHR. Sometimes even the wording of the UDHR is the same. So I look at it as a tool for liberation.

About commitments of the UN: I think the UN is based on these principles. The way the UN works is the way the governments make it work. The UN can’t do whatever it wants; it must do what the governments want. But again, you have a role in trying to change patterns that are not good. You can lobby your governments to be more vocal at the international level. I know that is not satisfying as a solution. But it is true that the commitment to human rights varies according to the different actors.

Thank you very much for your attention and I wish you all the best for the rest of your program.