1957

The United Nations Commission on Human Rights and the Relationship of the United States to It: 1945-1953

Mary Samuel Van Dyke
Loyola University Chicago

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THE UNITED NATIONS COMMISSION ON HUMAN RIGHTS
AND THE RELATIONSHIP OF THE UNITED
STATES TO IT: 1945-1953

by
Sister Mary Samuel Van Dyke, O.P.

A Dissertation Submitted to the Faculty of the Graduate
School of Loyola University in Partial Fulfillment
of the Requirements for the Degree of
Doctor of Philosophy

June
1957
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INTRODUCTION

In the estimation of Jacques Maritain the world has divided itself on the question of human rights into two antago­nistic groups, one of which accepts and one rejects natural law as the basis of rights. For the first group the requirements of man's being endow him with certain fundamental and inalienable rights, antecedent in nature and superior to society. For the second group man's rights are relative to the historical develop­ment of society, a product of society itself as it advances with the forward march of history.1


The Human Rights Commission has discussed the question of an historical survey of man's rights. When in November, 1947, the Commission proposed to carry out the Resolution of the Eco­nomic and Social Council of June 21, 1946, by making and publishing a study on the evolution of human rights, it was observed:

"The evolution of human rights in positive law is obviously closely connected with the evolution of conceptions concerning such rights. Nevertheless, it seems impossible for the Secretariat to trace back the trend of the doctrines and conceptions relating to human rights. Such a study would not only call for unusual erudition, embracing the world history of all civiliza­tions, but would also expose the Secretariat to criticism by representatives of States who might feel that some doctrines regarded as supremely important in their countries had been denied
To the second group belongs Benedetto Croce, who considered a natural law theory untenable. In his definition rights are not eternal claims, but simply historical facts.²

² Human Rights, UNESCO, 81-83.

Similarly, George W. Pepper of the American Law Institute:

"The American Law Institute is concerned . . . with the exploratory phase in which you try to find out whether there are universal cravings, universal human needs which can be
In opposition to this view of human rights are the views held by proponents of natural law as the basis of human rights. Here the distinction should be drawn between those who regard natural law as that which is deduced from how men actually live and that which is by nature implanted in the conscience of man, telling him how he ought to live, and coming to be known more and more perfectly as man's moral conscience develops.

The second of these is the older, sometimes called the "classical" concept of natural law; the former is termed the "modern" concept. According to the earliest exponent of the "modern" concept, Hobbes, the most powerful force that determines men is passion. Natural law will not be effective if its principles are crystallized into rights, for rights, we think, are legally protected interests." George W. Pepper, Documents of the Committee Representing Principal Cultures of the World, Appointed by the American Law Institute to draft a "Statement of Essential Human Rights," 1942, 1943. Documents preserved by Dr. Karl Loewenstein, Amherst College, Amherst, Massachusetts. (The Documents are numbered separately and pagination is, therefore, omitted from references.) Hereafter cited: Loewenstein Papers.

So also John Lewis, editor of the Modern Quarterly, London:

"It is now generally held that the conception of absolute, inherent, and imprescriptible rights based on man's origins and nature and antecedent to society, is not only a myth, but involves a misleading conception of the meaning of human rights." Human Rights. UNESCO, 43-58.

And Leo Strauss in the 1949 University of Chicago Walgreen lectures:

"Present day American social science, as far as it is not Roman Catholic social science, is dedicated to the proposition that all men are endowed by the evolutionary process or by a mysterious fate with many kind of urges and aspirations, but certainly with no natural right." Leo Strauss, Natural Right and History, Chicago, 1953, 2.
not agreeable to passion. Natural law must, therefore, be deduced from the most powerful passion. For Hobbes this was the desire for self-preservation. The conclusion for human rights is that man has the full and perfect right to all that is necessary for self-preservation and all duties are derived from this right.

In the "classical" concept natural law is ordained to man's end which is the virtuous life. The consequence for human rights is that if man has this natural destiny which it is his duty to attain, he has the right to all things necessary to attain it. In the "modern" concept man's rights are emphasized; his duties are incidental and imperfect. Consequently, in the "classical" concept the end of man is central; in the "modern" concept man himself is the center. The classification of rights made by Wilfred Parsons, S.J., in Timeless Rights for Modern Times throws some light upon this:

There are certain rights, of course, which are inherent and inalienable, being man's by natural law. But there are other rights which are hypothetical and derived; they are not original rights of man, but they arise because of certain historical, economic, or social conditions. They have some or other inherent right behind them. And there are still other rights which are direct grants of the state, given because they are useful for the common good. These last, of course, the state can take away when and if the

necessity or usefulness of them has disappeared.

Examples or original natural rights are: the right to life (man is a person); right to freedom of worship (man is a child of God); right of association (man is a social animal). Examples of derived or hypothetical rights: right of private property; rights of nationality; right to social security. Example of state-given rights: rights to certain specific "civil liberties".  

If this classification is accepted, and the writer proposes to accept it as a comprehensive definition of human rights, it will be seen to be inclusive of natural rights as well as of those rights which may be called political, social, economic, civil, and cultural rights. To be more specific about the latter, they are rights which are rooted in the natural law but are not given full expression because of political, social, and economic conditions of an age.

This class of rights which has often been subject to the interpretation of the state has often not found any common definition. This tendency will be demonstrated in discussions of the Human Rights Commission where representatives try to define them according to the particular philosophy accepted by their individual state. Perhaps the best illustration is found in the lack of unanimity shown in the world wide poll taken by UNESCO of the viewpoints of philosophers and writers on the question of human rights. These will be presented below in Chapter III.

A consideration of the broad outlines of an historical survey of human rights shows that there were periods of advance, of retrogression, and of substantial change both in the theory of respect for human rights and in the practical application of the principles. Ancient civilizations, although not much concerned about theories of rights give indications that some respect was shown human rights in practice. The revelation given to the Jewish people and the philosophy of the Greeks from the time of Socrates recognized human rights. Roman law established principles of justice based upon reason which have been utilized to a greater or lesser extent in all subsequent law making. The Catholic Church heir at once to Jewish theology, Greek philosophy, and Roman jurisprudence added to this heritage the Gospel interpretation of man's dignity and destiny. From the time of Socrates to the end of the Middle Ages the "classical" interpretation of rights prevailed; the "modern" interpretation followed upon the change in theological thinking initiated by William of Occam, the rise of arbitrary monarchy, and the disunity resulting from the Protestant revolt. Out of this "modern" concept came the French and American Declaration of Rights. From about the mid-nineteenth century and continuing to the present time there was added a school of thought in which all human rights were seen as completely relative to their historical setting.5

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5 For a somewhat more extended discussion of natural rights based upon natural law see Appendix A.
It was this "modern" concept of rights that was expressed in the Declarations of Rights of the late eighteenth century. However widely the French Declaration was accepted at the time, it no longer satisfies twentieth century man.

The new formulation of the rights of man in the twentieth century, as found in numerous bills of rights in recent constitutions and in the many documents growing out of the last war and the movement for international co-operation, are different from the old especially in the large emphasis placed upon the economic and social phases. The basic rights are the same; but the stresses peculiar to the new age have brought a change from political to economic, from liberty to equality, from freedom to security.6

By the early twentieth century there were statements of rights in most of the constitutions of national states. Each state proposed to safeguard the rights for its own nationals. But states failed—in some cases they simply failed to protect the rights of their own nationals; in others they discriminated among the races within their boundaries and abused the rights of unwanted peoples. By 1929 there was some consideration of the possibility of remedying the situation by an international guarantee. In that year the Institute of International Law, meeting at Briarcliff, New York, formulated what is generally believed to be the first draft of a bill guaranteeing rights internationally. It contained six essential rights in as many articles: the right to life, liberty, property; the right to religious practice; the right to use any language; freedom from discrimination on grounds

of race, sex, language, or religion; the right to nationality.7

But the times were not ripe for popular demand for human rights. Other problems, especially the problem of a world-wide economic depression demanded attention. Not until the inhuman and widely publicized atrocities committed by the Nazi totalitarian state threatened to engulf the western world was there anything like general popular interest in human rights.8 Then Edvard Beneš could interest an Aberdeen University audience in the proposition: "After the present war a charter of Human Rights throughout the whole world should be constitutionally established and put into practice."9 Then a statement like that made by the Committee


8 For further discussion of the reaction to Nazi cruelty and its influence in the creation of an organization to protect human rights see also:


9 Edvard Beneš, Lecture at Aberdeen University, 1941, quoted in Louise W. Holborn, War and Peace Aims of the United States from Casablanca to Tokyo Bay, Boston, 1948, 1, 420.
representing the principal cultures of the world carried conviction:

Any world organization or any society that hopes to survive in this age of the buzz bomb, of the B-29 Super-fortress, of industrial chemistry, of electronics, of practically unlimited destructive power, will have to recognize the individual human being as its supreme value. This is not idealism or Utopianism. Hitler's extermination of peoples has demonstrated to all who can read that a world society with so much power as ours must be organized to serve the dignity and welfare of the individual human being or it will destroy itself.10

By 1945 the nations seemed psychologically prepared to begin working interdependently toward the goal of international guarantees for human rights.

CHAPTER II

ORIGIN AND ORGANIZATION OF THE HUMAN RIGHTS COMMISSION

To say that the West European powers became involved in World War II in an effort to safeguard and promote human rights is to read history backwards. Quite frankly their object was to defeat Hitler and Mussolini and to create a kind of con-dominion in Europe in which France and England would share control.¹ That aim included, of course, the restoration of those liberties which Nazism and Fascism had destroyed, liberties and freedoms in the classical tradition. But, was political liberty all that the nations were fighting for? Or were men, faced with the seemingly limitless power of modern economic controls, military weapons, and police methods fearful of their ability to survive at all? In other words, were men so much in need of security that they found it necessary to have spelled out those rights which made survival possible as well as those which comprised their

¹ *La Garantie Internationale des Droits de l'Homme*, Geneva, 1947, 94. The present day interest in human rights, especially social rights, as discussed in this book shows that France and England were co-operative, but it indicates that it was the United States which led the way and gave form to the aspirations of the world in safeguarding human rights.
traditional political rights? By 1940 there were indications that this was common opinion. It was the genius of Franklin D. Roosevelt to gauge exactly the growth of that opinion and with perfect timing to make the first announcement of twentieth century man's addition to the traditional category of human rights. On January 6, 1941, in his famous Four Freedoms message to Congress he said:

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

The message was received enthusiastically. Henry Wallace in an address commented that among the four freedoms that of freedom from want proved that the revolution one hundred

2 "Freedom from Want," Editorial, *Fortune*, October, 1942, 127, estimates: "The modern American's strong desire for security, though certainly nothing new in human nature, is in part a tired sigh from his private spiritual vacuum and in part a defensive reflex against the public terrors of the machine. Modern life has become not only too drab and too sterile; it's also much too uncertain."

3 *A Decade of Foreign Policy, Basic Documents, 1941-1949.* Senate Committee on Foreign Affairs, Washington, 1950, 1.
fifty years ago had not yet been completed and would not be until this freedom had been secured. 4 An editorial in the New York Times emphasized the international character of the four freedoms: "The Four Freedoms apply everywhere, and unless they apply everywhere they are not safe—not even here." 5

One of the far-reaching effects of President Roosevelt's announcement was that it prepared the world for the Atlantic Charter. 6 That agreement between President Roosevelt and Prime Minister Churchill can be analysed as a carefully balanced statement of ideals midway between the established and accepted propositions made familiar in Wilson's fourteen points and the new ideals of security and social well-being. In the older tradition are the insistence upon no territorial aggrandizement for the victors, (Article 1); upon the right of peoples concerned to determine the disposition of any territorial changes, (Article 2); upon the right of people to choose their own governments and the wish that self-government be restored to those who have been forcibly deprived of it, (Article 3); upon the rights of trade and access to raw materials, (Article 4); and upon freedom of the

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6 La Garantie Internationale, 96.
seas, (Article 7); and upon disarmament, (Article 8). The new propositions demand co-operation in the economic field with the object of securing improved labor standards, economic advancement, and social security; (Article 5); and the establishment of such a peace as will give to all nations freedom from want and from fear, (Article 6). 7

The legal status of the Atlantic Charter is debatable. It was not a treaty. It did not carry sanction. President Roosevelt referred to it as a "declaration of principles." 8 Secretary of State Cordell Hull said, "It is a statement of basic principles and fundamental ideas and policies that are universal in their practical application." 9 Prime Minister Churchill told the House of Commons that the Charter was a statement of broad views and principles. 10 In the British Yearbook of International Law, J. Merwyn Jones, commenting on its legal status said that the document was not couched in legal language. But he continued, "A declaration of this kind may, however, by being communicated

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7 Text of Charter: Department of State Bulletin, V, August 16, 1941, 125, 126.

8 "Message of President to Congress regarding Conference at Sea with British Prime Minister," Department of State Bulletin, VI, August 23, 1941, 147.

9 Department of State Bulletin, V, August 16, 1941, 126.

to other Powers, create a legal agreement.\textsuperscript{11} This stipulation was fulfilled by the United Nations Declaration, signed January 1, 1942, by twenty-six nations and by fourteen other nations at a later date, in which the principles of the Atlantic Charter were underwritten. In this instrument the signatory nations agreed to "a common program of purpose and principles embodied in the Joint Declaration of the President of the United States and the Prime Minister of the United Kingdom of Great Britain and Northern Ireland, dated August 14, 1941, known as the Atlantic Charter.\textsuperscript{12}

This was the beginning of the coalition that was to win the war and guarantee the peace. And in the opinion of men, generally, the major purpose of this coalition and of the international organization it presaged was the protection of all human rights.\textsuperscript{13} Organizations and individuals began to express their opinions by formulating statements of their conception of human rights. In January, 1943, the National Resources Planning Board presented a Bill of Rights in its Report. Of more than passing interest both \hfill 
\textsuperscript{11} \textit{British Yearbook of International Law}, 1944, London, 1944, 121. 
\textsuperscript{12} Text of Declaration: \textit{Department of State Bulletin}, VI, January 3, 1942, 3. 
\textsuperscript{13} "The strong emphasis upon human rights and freedoms while the war was in progress gave rise to widespread insistence that any organization of nations to be erected following the war should accept the protection of human rights as a major purpose." O. P. Nolde, "Freedom's Charter," \textit{Foreign Policy Association Headline Series}, no. 76, New York, August, 1949, 13.
because of its complete dedication to social welfare and because of the opposition it aroused in Congress, it may be worth quoting in full:

A NEW BILL OF RIGHTS

1. The right to work, usefully, and creatively through the productive years.
2. The right to fair play, adequate to command the necessities and amenities of life in exchange for work, ideas, thrift, and other socially valuable service.
3. The right to adequate food, clothing, shelter and medical care.
4. The right to security, with freedom from fear of old age, want, dependency, sickness, unemployment, and accident.
5. The right to live in a system of free enterprise, free from compulsory labor, irresponsible private, arbitrary public authority, and unregulated monopolies.
6. The right to come and go, to speak or be silent, free from spying of secret political police.
7. The right of equality before the law, with equal access to justice in fact.
8. The right to education for work, for citizenship, and for personal growth and happiness.
9. The right to rest, recreation and adventure, the opportunity to enjoy life and take part in an advancing civilization.14

In transmitting to Congress the report containing this Bill of Rights President Roosevelt urged that it be accepted because it expressed that which all Americans agreed upon, namely, the assurance that work, fair pay, and social security would be imperatively needed in post-war United Nations. In his estimation the correlative to security of the nation, effected by war, was security against fear of economic distress in old age, in poverty,

in sickness, in involuntary unemployment, and in accidental
injuries.15

But Congress was unprepared for the strong flavor of
socialism that it recognized in the Bill. It countered that the
National Resources Planning Board stemmed from the Employment
Stabilization Act of 1931 and there was nothing in this act which
gave the Federal Agency any authority to plan a new economic and
social order.16 Moreover, Congress objected to the dominance of
President Roosevelt himself in the work of the Board which he had
called in 1942 "the planning arm of my Executive Office."17 To
Representative Peterson of Georgia it appeared that any new bill
of rights should come up from the people as an expression of their
will rather than down from the Chief Executive as an expression
of his will.18 Representative Noah Mason of Illinois concerned
himself with an analysis of the personnel who were responsible for
the making of the report, called variously the "cradle-to-grave"
or "womb-to-tomb" or, from the chairman of the Board, the "Delano"
report. Mason regarded Dr. Eveline Burns, the Director of

16 Ibid., Part I, 717.
17 Ibid.
18 Ibid., Part II, 2197.
Research for the National Research Planning Board as the real author of the report. Of her he said:

She is an English Socialist who came to America a few years ago with her husband, Dr. Arthur Burns, now Chief Adviser to the War Production Board. . . . This same Dr. Eveline Burns in 1932 collaborated with others in the preparation of a book entitled Socialist Planning and a Socialist Program. In her contribution to this book she urged outright government control of both labor and property.19

Representative Rankin of Mississippi20 and Landis of Indiana also attacked the Bill of Rights for its socialist implications, but it was defended by Senator Wagner of New York. In the estimation of Senator Wagner there was nothing really new in the proposal. Already for at least five years, he realized the United States had accepted government directed social security. There had never been any serious objection. To him the concern aroused by the report of the National Resources Planning Board was indicative merely of confused thinking on the part of Congress.21

19 Congressional Record, 89, Part III, 4380.

20 Ibid., Part IX, A146: "If this program proposed by our so-called National Resources Planning Board were put into effect, it would wreck the Republic, wipe out the Constitution, destroy our form of Government, set up a totalitarian regime, eliminate private enterprise, regiment our people indefinitely, and pile upon their backs a burden of expenditure that no nation can bear."

Ibid., Part X, A1613: "Let us serve notice to the world that we do not have to surrender our freedom for a mess of pottage labeled 'social security'. We certainly do not want to go totalitarian under any circumstance or under any assumed label."

21 Congressional Record, 89, Part X, A1922.
But strong re-action of the majority of Congress to the whole of the report of the National Resources Planning Board's report of 1943 caused the House of Representatives to withhold the necessary appropriations for 1943 and consequently the Board passed out of existence.

A Joint Catholic, Jewish, and Protestant Declaration on World Peace, issued in October, 1943, contained three provisions concerning rights. Article 2 asserted that the dignity of the individual as the image of God must be respected; article 3: the right of oppressed, weak or colonial peoples must be protected; article 4: the rights of minorities must be secured; article 6: international economic co-operation must provide an adequate standard of living for citizens of all states.22

The American Law Institute appointed a committee representing the principal cultures of the world to draft a Bill of Rights, which it did in eighteen articles.23 The American Bar Association similarly projected a Bill of Rights, but it was never published.24 Other bills of rights were drawn up by the following...


23 "Statement of Essential Human Rights" drafted by a Committee representing principal cultures of the world, appointed by the American Law Institute, New York, 1945, 4.

This rash of proposals was indicative of the widespread interest in the problem of drafting a code of human rights. It was recognized by this time that nothing less than an international organization could guarantee them. Hence the next step in the official promotion of rights was, in the United States, the passing of a House and a Senate Resolution favoring the creation of an international organization. The House statement was dated September 21, 1943, and known as the Fullbright Resolution; that of the Senate was under date of November 5, 1943, and was called the Connally Resolution.25

25 The Fullbright Resolution stated in part: "Resolved by the House of Representatives, (the Senate concurring), That the Congress hereby expresses itself as favoring the creation of appropriate international machinery with power adequate to establish and to maintain a just and lasting peace, among the nations of the world and as favoring participation by the United States therein through its constitutional processes."

The Connally Resolution: "That the Senate recognizes the necessity of there being established at the earliest practicable date a general international organization, based on the principle of sovereign equality of all peace-loving states, and open to membership by all States, large and small, for the maintenance of international peace and security."

Since the question of sovereignty will subsequently be of interest in the work of the Commission, the insistence upon sovereignty in the Senate document quoted here may be compared with the limitation of sovereignty as written into the 1946 Constitution of France; "Under reservation of reciprocity, France..."
On the international front the important step after the United Nations Declaration was the Declaration of Moscow on November 1, 1943, in which the four big nations, now including China and Russia besides the United States and Great Britain declared:

That they recognize the necessity of establishing at the earliest practicable date a general international organization, based on the principle of the sovereign equality of all peace-loving states, and open to membership by all such states, large and small for the maintenance of international peace and security.28

At the Teheran Conference of 1943 a specific plan for the organization was outlined, including plans for a General Assembly and for an executive committee of the four principal nations.29 But the definitive planning for the United Nations got under way when the representatives of the four major powers consents to limitations of sovereignty as necessary to the organization and to the assurance of peace." Constitution de la Republique Francais, ed., Jean Lassaizne, October 27, 1946, 21.

Was the United States not as realistic in its approach to the United Nations as France was? Or did it have more to lose? Or did France sufficiently safeguard its position in a world of sovereign powers by the reservation of reciprocity?

Another interesting comparison is the statement on sovereignty as formulated by the group of Americans and Canadians who met during 1942, 1943, 1944 to discuss the International Law of the future. Under heading of Postulate III they declare: "The conduct of each State in its relations with other States and with the Community of States is subject to international law, and the sovereignty of a State is subject to the limitations of international law." International Conciliation Documents, 1944, Carnegie Endowment for Peace, New York, 267.

28 Decade of American Foreign Policy, 12.

29 Ibid., 23.
met at Dumbarton Oaks in Washington to draw up the blueprint for the future world organization. During the first phase of the Dumbarton Oaks conversations from August 21 to September 28, there were representatives from the United States, the United Kingdom, and the Union of Soviet Socialist Republics. The Soviet representation was replaced on September 29 by a representative from China who continued with the United States and United Kingdom representatives the work of outlining a Charter for the United Nations.

It is evident from a study of the proposals that the preoccupation of the representatives assembled at Dumbarton Oaks was the problem of security, meaning suppression of physical, that is, military, aggression. That was not surprising, for after the experience of two world wars in twenty-five years, the nations were anxious about the peace of the future; but that, in their concern for security they de-emphasized other objectives, became the subject of criticism. Especially, the scant attention given to human rights of individuals was disillusioning to those who had put faith in the Atlantic Charter and the Declaration of the United Nations. However, due to the activity of the United States State Department, human rights were given at least the modicum of recognition. The division of the State Department

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31 Document E/CN.4/480, 9: "The Dumbarton Oaks Proposals contained but a vague, absolutely inadequate allusion to human rights in spite of promises that had been made to peoples."
which is now called the Division of International Organization Affairs made studies during the whole period from 1942 to 1944 to determine how the international organization could promote respect for and observance of basic human rights, with the result that the American Delegation went into the Dumbarton Oaks Conversations with a proposal that the General Assembly initiate studies in the field of human rights. However, even this provision was covered by a reference to its relation to international security; it was necessary to initiate such studies "for peaceful and friendly relations among nations."

What, then, happened between Dumbarton Oaks in October, 1944, and the San Francisco Conference in April, 1945, to recreate the interest of representatives of all the nations in the problem of human rights? The answer to that question is a remarkable chapter in American history. It is the story of the influence of public opinion through non-governmental organizations on official governmental representatives. It is the story, too, of the breadth of vision by which the American Department of State invited forty-two of these national organizations to send consultants to San Francisco to deliberate with the official delegates.


34 E/CN.4/480, 9.
from the United States. The considerations that influenced the State Department to come to this decision cannot here be fully explored, but the work of the consultants from the various organizations deserves more than the cursory notice taken of it in official reports and in studies on the Conference that have thus far been published. Moreover, the accuracy of summary reports may be questioned on the matter of the support given by the organizations to the Human Rights Commission. Since the meetings between the delegates and the consultants were informal, it is from reports of the consultants to their own organizations that the most nearly accurate information could be obtained.


36 Lions International consider the activity of their organization in petitioning for consultant status the spearhead of the movement to include the non-governmental organizations. Letter from Melvin Jones, Secretary General of Lions International, March 29, 1956: "Clifford D. Pierce of Memphis, Tennessee, who later became our International President, represented Lions International in the "off the record" discussions of the Dumbarton Oaks Proposals at Washington in 1944, prior to the San Francisco Conference. As a result, when President Roosevelt announced they were going to have a Conference of Nations in San Francisco, Lions asked to participate in the Conference through the delegates of the United States. Those in charge of the Conference felt that if Lions International participated, various women's organizations and other organizations also should participate."

37 An interview on February 28, 1956, with Mr. James Simsarian, State Department representative at San Francisco, made clear that no records were kept of the discussions between the delegates and the consultants. It was necessary, therefore, to contact the organizations individually for a statement of their contribution to the setting up of the Human Rights Commission. In some cases official reports had been submitted to the organizations by the consultants; in others, statements were made by consultants who were relying almost exclusively upon memory.
Secretary of State Stettinius' report indicates that all of the forty-two organizations represented at San Francisco urged the inclusion of a Human Rights Commission in the Charter. Several groups have disclaimed any participation. For instance, the consultants sent by the American Legion were prevented by regulations from endorsing or supporting provisions relative to the Human Rights Commission.

The contributions of the American Council on Education and the National Education Association were limited to efforts in support of the creation of the United Nations.


39 Letter from Henry H. Dudley, National Adjutant of the American Legion, March 30, 1956: "Under the regulations which govern our Organization, we cannot endorse any program unless we first have positive affirmative action from one of our governing bodies—either the National Executive Committee, or the National Convention. While we were represented by Consultants at San Francisco at the time of the Security Conference and had action which would entitle us to support the creation of the United Nations, we did not have like action which would specifically entitle us to either endorse or support provisions relative to the Human Rights Commission. As a consequence, our Consultants did not express any opinion for the Organization in this regard."

40 Letter from Helen C. Hurley, Staff Associate, American Council on Education, March 26, 1956: "The matter of the Commission on Human Rights was discussed, and while the Council officers and its consultants had a natural interest in the subject, it was felt that the Council should spend its energies in the activities to assist in the inclusion of UNESCO in the United Nations Charter. So far as I know, representatives of the American Council on Education took no part in the work with other groups to insure the inclusion of the Human Rights Commission in the Charter."

Education and Scientific Organization, and their representatives did not take part in the work to include a Human Rights Commission in the Charter. The National Foreign Trade Council,42 the National Council of Farmer Cooperatives,43 and the United States Council of the International Chamber of Commerce,44 besides the Chamber of Commerce of the United States,44a were in somewhat the same position. Their main interests were international economic relations and their representatives were not actively interested in a Human Rights Commission.

42 Letter from P. T. Hitchens, Director of Research, National Foreign Trade Council, Inc., April 2, 1956: "I may say that, while the President of the Council at that time, the late F. P. Thomas, did participate in the conference at San Francisco at which the United Nations was organized, his interest was primarily in the field of international economic relations and consequently, he was not concerned with organizational matters regarding human rights."

43 Letter from Kit H. Haynes, National Council of Farmer Cooperatives, April 18, 1956: "This group devoted its efforts to the economic aspects of the affairs of the conference, and did not participate in proceedings which led to establishment of various United Nations agencies."

44 Letter from Michael W. Moynihan, April 6, 1956: "A careful search of our files indicates that the ICC representatives at the San Francisco Conference took no part whatsoever in this subject. Our consultant at San Francisco did help in the proposal providing for consultation between business associations and the Economic and Social Council."

Other organizations were more or less actively engaged. The representatives of the National Exchange Club "sat in" with the American delegation on the Human Rights Commission, but made no specific contribution.\(^4^5\) Rotary International limited its contribution to working for an assured peace.\(^4^6\) The American Farm Bureau contributed specifically only where farm questions were involved, but considered acting as liaison a major part of its work.\(^4^7\) The representatives of Lions International were in a position to bring to the attention of the delegates the current opinion of all the Lions Clubs of the United States since they were asked to hold meetings during the Conference and to send to the consultants at San Francisco the results of their deliberations and their resolutions, which the consultants studied and passed on to the delegates of the Conference.\(^4^8\)

\(^{45}\) Letter from Harold M. Harter, National Secretary of the National Exchange Club, March 29, 1956.

\(^{46}\) Allen D. Albert, "A Consultant at the Conference," Report to Rotary International, August, 1945, 13: "Rotary was one of the truly international bodies represented; and its spokesman consistently did not commit Rotary to any phase of the Charter beyond the safeguarding of peace."

\(^{47}\) Statement of Mr. John J. Lacey, assistant to consultant at San Francisco, March 27, 1956, personal interview.

\(^{48}\) Letter from Melvin Jones, Secretary of Lions International, March 29, 1956.
The General Federation of Women's Clubs promoted the idea of a Human Rights Commission as an integral part of the Charter.\textsuperscript{49} The consultant representing Kiwanis International considered the efforts of Kiwanis contributory but in no way more decisive than that of other organizations, stating that it was rather the co-operative work of all the organizations than the outstanding work of any one that was decisive in creating the Human Rights Commission.\textsuperscript{50}

The National Association of Manufacturers was one of the organizations actively engaged in promoting provisions for Human Rights even previous to the San Francisco Meeting. Almost two years before the Dumbarton Oaks meetings, it began work on the outline of a world peacetime organization.\textsuperscript{51} On April 27, 1945, its board of directors approved a statement entitled "World Organization" which its consultants presented to the delegates at San Francisco. This statement urged the modification of the Dumbarton Oaks

\textsuperscript{49} Letter from Mrs. Constance A. Sporborg, April 20, 1956, Representative of General Federation of Women's Clubs.

\textsuperscript{50} Letter from Dr. J. Hugh Jackson, Graduate School of Business of Stanford University, Representative of Kiwanis International at San Francisco, April 11, 1956: "I fear that some of the organizations claim more credit for their part than they are actually entitled to claim. It seemed to me during the weeks which we participated that no one organization stood out above the others, but that each had some part in the deliberations and accomplishments of the consulting group."

oaks proposals in sixteen areas. Its first provision was: "There should be included a set of positive standards declaring the basic rights of all individuals." 52

The National Council of the Churches of Christ in America, also having begun its work long before 1945, was prepared with statements and resolutions when the Conference opened. In 1942 a "Statement of Guiding Principles" was prepared in which paragraph nine insists upon the rights of man as fundamental to human development. 53 At a meeting in Cleveland, Ohio, January 15 to 19, 1945, a specific recommendation for a Commission on Human Rights to be established by the San Francisco Conference received the approval of the organization and formed the basis of the work of the consultants at San Francisco. 54 As far back as 1941 the Catholic Association for International Peace had begun its preparation for San Francisco. That year it drew up and published its recommendations for an international bill of rights in a pamphlet, "America's Peace Aims." In 1943 it circulated "A Peace Agenda for the United Nations" in which it said, "We recommend that the United Nations form a special committee on human rights


and means for their protection."55 At San Francisco the consultants for the organization actively supported the provision for a Commission on Human Rights.56 Just as actively interested, and in close co-operation with the Catholic Association for International Peace, the National Catholic Welfare Conference contributed its recommendations and its influence to the work of the Conference. Shortly before the Conference, on April 15, 1945, the Administrative Board of NCWC said:

In all history and particularly in modern history, dangers to world peace have come from the unjust treatment of minorities, the denial of civil and religious liberties, and other infringements on the inborn rights of men. To remove these dangers the nations should adopt an International Bill of Rights, in which men and groups everywhere would be guaranteed the full enjoyment of their human rights.57

The National Peace Conference established a means of contact between its San Francisco consultants and the home organization in the form of "Notes from San Francisco." The reports included much general comment on the Conference, but noted especially the contribution of the consultants. One of these stated: "It is quite true that the Consultants made a substantial contribution through their emphasis on Human Rights. . . ."58

56 Interview, February 29, 1955, Miss Eleanor Waters, CAIP Committee Secretary.
58 Jane Evans, "Notes from San Francisco," Note III, May 6, 1945, 2.
The work of the American Association for the United Nations was significant in all the stages of the Conference. Its consultant was Clark M. Eichelberger, formerly director of the American Association for the League of Nations and later of the Commission to Study the Organization of Peace. He was especially concerned that a Human Rights Commission be set up because, as he said, the Charter could give only a limited expression to the ideals which the world looked to the United Nations to establish.

The experience of the Jews in Nazi Germany made them especially conscious of the need of protection for human rights, and among the consultants at San Francisco none were more active than American Jewish organizations. The two large organizations in the United States, the American Jewish Congress and the American Jewish Committee had each a delegation of consultants who were above all concerned with the inclusion of human rights provisions in the Charter. The Jewish Congress had prepared a lengthy and detailed memorandum which it submitted to the American delegation. Concerning a Human Rights Commission the memorandum proposed:

"That the Organization create a special commission on human rights and fundamental freedoms, similar to the commissions mentioned

in Chapter IX, Section D (1). 60

The consultants from the American Jewish Committee headed by Judge Joseph Proskauer, former Justice of the Supreme Court of New York and its Appellate Division, were pledged to the work of promoting the cause of human rights. A recommendation of their organization called for an international bill of human rights, backed by effective international machinery. 61 On April 28, 1945, when the press comment was that both the Soviet and British delegation, each for its own reasons of state, disliked the idea of a bill of rights, and that the American delegation was split on the proposal, the Jewish Committee countered with a declaration to the press insisting upon the necessity of providing international enforcement of justice and equality of treatment to all men. 62 Other religious groups immediately voiced their approval and issued declarations of their own. However, on May 2, the consultants were informed by Dean Virginia Gildersleeve, a member of the official American Delegation, that it was unlikely that anything beyond the Dumbarton Oaks provisions would be


included in the Charter. The consultants, aware that no more amendments to the Dumbarton Oaks proposals would be accepted after May 2, rallied to the support of a round-robin petition prepared by Mr. Clark Eichelberger of the American Association for the United Nations, Dr. James Shotwell of the Carnegie Endowment for International Peace, Miss Jane Evans of the National Peace Conference, Dr. O. Frederick Nolde of the National Council of Churches of Christ in America, and Judge Joseph Proskauer of the American Jewish Committee. The petition urged four amendments to safeguard human rights, the fourth of which was the establishment of the Commission on Human Rights. The argument of the petition was that the dignity and inviolability of the individual must be the cornerstone of civilization, and that the conscience of the world demands the end of persecution of any kind. Of the forty-two consultants, twenty-one signed.

The draft was presented to Secretary of State, Stettinius, at five o'clock by Dr. Frederick Nolde. In a scene graphically drawn by Joseph Proskauer, the cause of human rights was

63 Judge Proskauer states: "Nobody refused to sign; we were merely unable to reach more than that number in the time allotted to us." Proskauer, Segment of My Times, 224.

From evidence in letters from some organizations, particularly that of the American Legion, there is reason to doubt that all the organizations were authorized to sign. However, it is reasonable also, to assume that many more than the twenty-two signatures could have been secured had there been more time.
urged upon the American delegation. Dr. Nolde's speech of presentation was followed by an extemporaneous argument by Judge Proskauer. After reviewing the substantive matter of the petition he concluded by addressing the Secretary directly:

If you make a fight for these human rights proposals and win, there will be glory for all. If you make a fight for it and lose, we will back you up to the limit. If you fail to make a fight for it, you will have lost the support of American opinion—and justly lost it. In that event, you will never get the Charter ratified. 64

After this speech the consultants as a group were asked to voice any disagreement with the statement as presented. Philip Murray of the Congress of Industrial Organizations arose to say:

I didn't sign that paper. The only reason I didn't sign it was that they didn't get it to me. I am here to tell you that I believe I am speaking not only for the CIO but for all labor when I say that we are 100 percent behind the argument that has just been made. 65

Mr. Stettinius was impressed and promised to put the matter to the American delegation immediately. The delegation sponsored the proposals contained in the consultants' paper and the Human Rights Commission was written into the Charter. In his official report on this section of the Charter Stettinius said:

A direct outgrowth of discussions between the United States Delegation and the consultants was the proposal of the United States Delegation in which it was joined by other Sponsoring Powers, that the Charter, (Article 68)

64 Proskauer, Segment of My Times, 225.
65 Ibid.
be amended to provide for a commission on human rights of which more will be said later.\footnote{66}

The Commission on Human Rights, authorized by Article 68 of the United Nations Charter,\footnote{67} was established and given its terms of reference by a resolution of the Economic and Social Council, taken on February 16, 1946. As outlined by this resolution the work of the Commission was principally to submit proposals, recommendations, and reports to the Economic and Social Council regarding (a) an International Bill of Rights; (b) international declarations or conventions on civil liberties, the status of women, freedom of information, and similar matters; (c) protection of minorities; (d) the prevention of discrimination on grounds of sex, language, and religion.\footnote{68} The members of the Nuclear Commission as appointed by the Economic and Social Council were: Dr. Paal Berg of Norway, Professor Rene Cassin of France,

\footnote{66} Stettinius, \textit{Report to the President}, 114. Among the forty-two organizations from whom a statement was requested in order to establish the extent of the contribution made to the San Francisco Conference, nine failed to respond. Of the others six were uncertain of the work of the organization since no records were kept. However, the accounts of the majority, as indicated by specific references, established the significance of the non-governmental organizations in the creation of the Human Rights Commission and its inclusion in the Charter.

\footnote{67} UNCIO, XV, 195, Article 68: "The Economic and Social Council shall set up commissions in economic and social fields and for the promotion of human rights, and such other commissions as may be required for the performance of its functions."

\footnote{68} E/CN.4/46, 15.
Mr. Fernand Dehousse of Belgium, Mr. Victor Paul Haya de la Torre of Peru, Mr. K. C. Neogi of India, Mrs. Franklin D. Roosevelt of the United States, Dr. John C. H. Wu of China, and the persons whom the Council for the Union of Soviet Socialist Republic and Yugoslavia should name for their countries. The Nuclear Commission met at Hunter College from April 29 to May 20, 1946. It met under difficulties. Quarters for the meeting were in the reading room where delegates sat around three tables joined in a U-shape and visitors sat on wooden benches which had been moved in. There was no amplifying system. At one point the interpreter broke down at the beginning of a long French translation. Mrs. Roosevelt completed the translation and continued to act as interpreter until another could be secured. Three members, Messrs. Berg, Dehousse, and Haya de la Torre were unable to attend, and the Russian delegate, until May 13, was disqualified by his successor. Nevertheless, the commission accomplished its work.

69 The delegate from Yugoslavia at first was Dr. Jerko Radmilovic, but he was replaced by Mr. Dusan Erkis. R. C. L. Hsia replaced Dr. John C. H. Wu. The Soviet delegate, Mr. Nikolai Kriukov, was replaced on May 13 by Mr. Alexander Borisov. On his arrival Mr. Borisov stated that the former representative had been only an observer. Both Kriukov and the Commission had been under the impression that Kriukov was a bona fide delegate and he had taken part in all the discussions and voting to May 13. As a result, Mr. Borisov took exception to certain agreements that had been reached. Moreover, owing to his late arrival, Mr. Borisov repeatedly refused to vote on measures saying he had not been able sufficiently to study the records. Journal of the Economic and Social Council, May 4, 1946, 160, 161.

and placed before the Economic and Social Council on May 21, 1946, the report that laid the foundation for a permanent Commission on Human Rights. The report reviewed and accepted the terms of reference of the commission, planned the program of work, defined the composition of the permanent commission, acknowledged suggestions from interested non-governmental organizations, and made a report on the subcommission on the Status of Women. In its program of work the prominent items were immediate plans for a declaration of rights, for inclusion of human rights clauses in international treaties in the interim before an international bill of rights could be drawn up, and eventually a covenant that would effectively implement the declaration.71

The Economic and Social Council after considering the report of the Nuclear Commission decided by a resolution on June 21, 1946, to establish the functions of the Commission as outlined in the report. To the composition of the Commission it added an amendment: "With a view to securing a balanced representation in the various fields covered by the Commission, the Secretary-General shall consult with the Governments so selected before the representatives are finally nominated by the Governments and confirmed by the Council."72

71 Journal of Economic and Social Council, 162-169.

This decision was a compromise between the representatives of nations, the United States among them, who preferred experts chosen without government connections; and those of other nations, among them Russia, who argued that representatives with government backing could accomplish more than a group of experts without like status. At the same session the Economic and Social Council elected the full Commission on Human Rights which went to its first session at Lake Success on January 27, 1947.

The Commission was immediately confronted with the problem of handling communications addressed to it. Mr. Ebeid of Egypt asked quite pertinently what means the Commission possessed to remedy the facts which might be reported to it. Were they merely to be filed? The Chairman considered the point important, but conceded that the Commission had no power other than that of submitting recommendations to the Economic and Social Council and to forward any complaint which the Commission considered justified.

73 Ibid., 36, 38, 39, 41.

74 Document E/CN.4/SR.1, 1. The membership was: Mr. J. C. Moore, Australia; Mr. Roland Lebeau, Belgium; Mr. T. Kaminisky, Byelo, Russia; Dr. P. C. Chang, China; Mr. Osman Ebeid, Egypt; Mrs. Hansa Meta, India; Dr. Chassame Chani, Iran; Dr. Charles Malik, Lebanon; General Carlos P. Romulo, Philippine Republic; Mr. Charles Dukes, United Kingdom; Mrs. Eleanor Roosevelt, United States of America; Mr. V. G. Tepliakov, Union of Soviet Socialist Republics; Mr. Jose A. Mora, Uruguay. Mrs. Roosevelt was unanimously elected Chairman of the Commission.

In the discussion which followed, Colonel Hodgson of Australia stated his concept of the competence of the Commission, a concept that was to become substantially the statement of position for the Commission. He considered that the Commission's first duty was to draft the International Declaration on Human Rights. Its second duty was to set up machinery to put it into force. In his opinion the examination of complaints did not enter the Commission's functions or powers. On this last point, the Commission eventually worked out a plan whereby recommendations and censures purely moral in character would not exceed the competence of the Commission, although it strove to retain the impression that the field of the Commission was one of principles, not of practical action.

The sub-committee on Freedom of Information and of the Press recommended by the Nuclear Commission was established on January 29, 1947, but discussion as to its composition and terms of reference was postponed. A second sub-committee, that on Prevention of Discrimination and Protection of Minorities was established and it was decided that a drafting sub-committee should draw up its terms of reference and composition. Having completed these preliminary actions, the Commission turned its attention to its first main objective: A Declaration of Human Rights.

76 Ibid., 4.
CHAPTER III

BACKGROUND OF THE DECLARATION OF RIGHTS

Two achievements preliminary to the work of the Commission on the drafting of a declaration of human rights were significant in their relation to the Commission's efforts. One of them, the Statement of Essential Rights, drawn up in 1943 by a committee appointed by the American Law Institute, became the basis for the discussion of the Commission. The other, a symposium edited by UNESCO in 1947 was an attempt to sound the philosophical depths of the problems involved in drawing up a declaration of human rights. Chronologically, the work of the American Law Institute preceded that of the philosophers, but the proximity of the Statement on Essential Human Rights to the work of the Commission suggests that it should be dealt with as the immediate preface to the drafting of the Declaration. The consideration of the philosophical problems posed by an attempt to draw up a declaration of human rights may then be taken up first.

In March, 1947, a questionnaire was circulated by UNESCO among about one hundred fifty philosophers and writers of Member

States of the United Nations. In the introduction the question-
naire stated that the Reformation with its appeal to the absolute
authority of the individual conscience, and the rise of early
capitalism with its emphasis on liberating individual enterprise
from the shackles of State and Church authority, were mainly re-
sponsible for the 18th century formulations of human rights.2
But conditions in the 20th century presented different problems.
In the 18th century, despite the differences of belief and opin-
on, there was still a common understanding of rights as the rights
of the individual. The 20th century world found itself divided
into two groups: one started from the premise that human rights
meant traditional, inherent, individual rights; the other began
with the premise that the degree of identification of the inter-
ests of the individual with the interests of the community marked
the degree of freedom of the individual and, consequently, that
human rights as guarantors of human freedom were, by definition,
the rights of the collectivity.3 It was in the attempt to reconc-
cile these two groups that the writers and thinkers were invited
to submit answers to the questionnaire.4 However, it was

2 The questionnaire is reprinted as Appendix I in
257.


4 In explanation of the choice of writers whose answers
were included in the symposium published by UNESCO the introductory
note stated: "In selecting the texts of the replies which are
specifically provided that the replies would not in any way commit
the Commission. Only a summary of their conclusions can be at-
ttempted here, and for purposes of this account problems other than
the central point of conflict will not be discussed.

Of the thirty-one replies recorded, fifteen did not make
any significant statement on the opposition between individual and
collective rights. Among the remaining sixteen there was consi-
derable divergence of views.

Benedetto Croce, assuming that the theory of natural
rights had by the twentieth century become untenable, proposed
that only a reinvigorated current of liberalism could conquer the
totalitarian current, but doubted whether even that could triumph

included in this volume, an attempt has been made to offer a re-
representative sample of the whole range of opinions expressed. In
addition, it was thought desirable to give publicity to the opin-
ions of certain thinkers which differed from the final conclusions
of UNESCO. Human Rights, 8.


6 The fifteen whose replies were irrelevant to the
question under consideration were: Salvador de Madariaga, Mahatma
Gandhi, Chung-Shu Lo, Humayan Kabir, S. V. Pentambekar, Aldous
Huxley, R. W. Gerard, J. M. Burgers, N. A. Noyes, Rene Maheu,
I. L. Kandel, A. P. Elkin, Leonard Barnes, Margaret Fry, and Levi
Carneiro.

7 The sixteen whose discussion of the question under
review are considered here are: E. H. Carr, Arnold J. Lien, Luc
Somerhausen, Richard McKee, John Lewis, Harold Laski, Benedetto
Croce, Jean Haesaerts, P. Teilhard de Chardin, Sergius Hessen,
Quincy Wright, John Somerville, Kurt Riezler, Boris Tchechko,
F. S. C. Northrop, and Jacques Maritain.
at this time. In his estimation, no political agreement existed and, therefore, to attempt a declaration of rights was futile; it would cause only amusement at the ingenuousness of its formulators. Harold Laski was even more apprehensive, not only of the possibility of reconciling the opposing trends toward individual and collectivist rights, but of the consequences of any attempt on the part of the United Nations to promulgate a declaration of rights. Taking the example of Prohibition in the United States as a mistake in promulgating a law which did not elicit general consent, he argued that a declaration of rights which did not represent generally accepted ideas would have no good effects, but would rather deepen the mood of cynicism and disillusion, characteristic of our age.

Pierre Teilhard de Chardin may be grouped with the next five writers who expressed themselves more or less broadly

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8 Italian philosopher, essayist and historian. Member of Prussian Academy of Letters and of the British Academy. Formerly Minister without portfolio. Human Rights, 281, 282.


10 At time of this writing, Harold Laski was Professor of Political Science at the University of London and a member of the Executive Committee of the Labour Party.


12 Teilhard de Chardin, S.J. made important discoveries in geology and paleontology in the Far East. He served as Member-corporrespondent of the Institut de France.
as convinced that collectivism, or as Chardin said, "totalisation" of mankind was inevitable and should be considered in any declaration of rights. However, Teilhard de Chardin limited his idea of totalisation very precisely in giving his reason for a declaration of rights at this time. He said:

... the object of a new definition of rights of man must be no longer, as hitherto, to secure the greatest possible independence for the human unit in society, but to lay down the conditions under which the inevitable totalisation of humanity is to take place, in such a way as not to destroy, but to enhance in each of us, I will not say independence, but--what is quite different--the incommunicable uniqueness of the being within us.

The problem is to cease organising the world for the benefit, and in terms of the individual, and to direct all our efforts toward the complete development, ("personalisation") of the individual, by wisely integrating him within the unified group, which must one day become the organic and psychic culminating point of humanity.13

Arnold Lien's14 view was that individual rights should not now be overlooked, but that as individuals grew in knowledge, understanding, and wisdom, their horizons would become broader, and their self-interest would rise to ever higher levels until it would ultimately coincide with the common interest of all.15 Luc Somerhausen16 found his greatest difficulty in the question of a

14 Head of the Department of Social Science at Washington University, St. Louis, Human Rights, 285.
16 Director of the Secretariat of the Senate, Brussels. Human Rights, 288.
norm on which could be based a proclamation of rights which implied a direct curtailment of property rights. This he considered a necessary step toward a synthesis between individualism and collectivism, which he also believed inevitable. To John Somerville another problem was apparent. He could distinguish no difference between Soviet and western democratic conceptions in principle, but only in problem-area and in implementation. But between Fascist and Nazi totalitarian regimes and Communism he recognized a real distinction. The Fascist and Nazi ideologies, according to Somerville, presented an obvious barrier to cooperation with the rest of the world, which was lacking in Communism. To Somerville the problem to be solved in order to make effective a universal declaration of rights was not any real difference between individualism and collectivism, but only the mistaken notion in the minds of the western world that such a real difference existed in the case of the Soviet Union. F. S. C. Northrop required for an adequate bill of rights that it would

18 Professor of Philosophy at Hunter College. Human Rights, 288.
20 Sterling Professor of Philosophy and Law in the Law School and the Graduate School, Yale University. Human Rights, 287.
guarantee the type of world in which there could be many ideologies. Yet he recognized that it could not embrace contradictory ideologies. The solution he suggested was that the bill of rights should also guarantee a procedure by means of which the nations could pass beyond the mutually contradictory ideologies of the present day. This was to be accomplished by the establishment of scientific and philosophic inquiry into the basic premises of the various ideologies. 21

The next three writers whose replies discussed the problem of individual versus collective rights made detailed explanations of the position of Russia. In Boris Tchecho's explanation his first point was that in the light of dialectical materialism as applied to history the rights of man lose their immutable character and become malleable material, for the handling of which a profound understanding of the real facts of politics, meaning those which are founded on the economic conditions of the period, is necessary. His second point was that in the U.S.S.R. political liberty is regarded chiefly as the right to break free from the capitalist State. The consequence of this definition is that in the Socialist State the individual has no desire for liberation. Tchecho's conclusion was that the present ideas of social


22 Professor of Law. Special Consultant of UNESCO, Human Rights, 288.
life would have to adapt themselves to the prospect of changes in
the material field which the future promises and that the rights
of man would have to be put on a practical foundation such as was
lacking in past centuries.23 For John Lewis also, rights were
neither permanent nor absolute.24 In his discussion of the develop-
ment of rights since the 18th century declarations, he contrasted
the liberties which allowed industry to exploit the laboring class
with the social reforms which curtailed the declared liberties
but actually bestowed new freedoms—freedom from long hours, free-
dom from hunger, the freedom afforded by some measure of security—
all at the expense of the bourgeois freedoms from government. His
contention was that the world has come so far along on the road
of social reform that the individual rights of political democracy
are obsolete and only the collective rights of a social democracy
are relevant.25 Sergius Hessen26 presented a logical interpreta-
tion both of the Communist ideal and the state Socialist reality
that characterize Russia, and submitted his view that the

23 Boris Tochechko, "Rights of Men in the U.S.S.R.
Based on Official Documents," Human Rights, 158-176.

24 Editor of Modern Quarterly, London. Lecturer in
Philosophy to the Extra-Mural Departments of the Universities of


26 Professor of History of Education at the University
of Lodz, Poland. Human Rights, 283.
increasing tendency of Russian leaders since 1933 to appropriate
Western European traditions argues to increasing respect for the
European tradition of human rights, and therefore, to the possibil-
ity of an agreement on a single declaration of right.\textsuperscript{27}

The statements of E. H. Carr,\textsuperscript{28} Kurt Riezler,\textsuperscript{29} Quincy
Wright,\textsuperscript{30} and Jean Haesaerts,\textsuperscript{31} may be summarized together as

\begin{quote}
27 Sergius Hessen, "The Rights of Man in Liberalism, Socialism, and

It is tempting, but hardly within the scope of these
summaries, to follow Sergius Hessen through his deliberate build-
up of the Communist ideal from Saint Simon's declaration that "the
power of men over men will be superseded by the power of united
mankind over nature," to the Marxist doctrine of the elimination
of political economy by the substitution of pure technical science
with the consequent withering away of State, Law, and Religion, to
the prophecy of Engels that not only men, but science, art, and
morality will be freed from all exploitation, to the end that man
will come to realize himself completely as a free personality;--
all of which were hostile to the idea of individual liberty be-
cause when they were realized, individual liberty would be not an
extension of freedom, but a limitation of it. From this build-up
Hessen proceeded to the reality of the period of transition which,
because of circumstances, and especially the circumstance of war,
necessitated conversion to State Socialism in order to accomplish
the immediate task and which, in Hessen's view, by turning the
State from the ideal makes possible a measure of co-operation with
non-Communist states in the matter of human rights.

28 British Diplomatic Service, 1916-1936. Professor
of International Politics in the University College of Sales.
\textit{Human Rights}, 281.

29 Professor of Philosophy at the Graduate Faculty of

30 Professor of International Law and Chairman of Com-
mittee on International Relations, University of Chicago. \textit{Human
Rights}, 288.

31 Professor of Sociology and Political Science at
University of Ghent, Belgium. \textit{Human Rights}, 283.
\end{quote}
tolerant of the idea that a declaration of rights must be fitted into the existing framework of society. According to E. H. Carr, it was not the question of individual or collective rights that was uppermost, but recognition of correlative rights and obligations, and they depended upon the nature of the society for which they were declared. In the thought of Kurt Riezler the presence of totalitarian as well as democratic societies suggested that only the minimum conditions of human freedom, the old civil liberties could safely be promulgated. The conclusions of Quincy Wright differed from the views of these two writers in distinguishing the defenders of individual rights from the proponents of collective rights by showing that the former emphasized such rights as freedom of conscience, freedom of speech, freedom of association, property rights, rights of movement, choice of occupation, and right of fair trial, whereas the latter proposed such social and economic rights as the right to work, the right to fair conditions of work, to social security, and to education. His conclusion was that both could be satisfied in a single declaration of rights, but that the implementation of social rights did not lend itself to judicial action, as individual rights did, but would require legislative, administrative, and judicial action to


make and enforce new laws. Jeann Haezaerts restricted even the promulgation of civil rights. He counselled that any proposed formula of rights should be restricted to principles which each State could translate into legal measures as prudence dictated.

The observations of Richard McKeon and Jacques Maritain agreed in the conclusion that the philosophic differences between the sponsors of individual rights and of collective rights do not admit of reconciliation. But the revolution of practical problems does not necessarily presuppose philosophic agreement. Therefore, a declaration of human rights may be agreed to by men of opposing philosophies. However, both McKeon and Maritain warned that a declaration without philosophic agreement could not be effectively implemented.

34 Quincy Wright, "Relationship between Different Categories of Human Rights," Human Rights, 143-152.


36 Distinguished Service Professor of Philosophy and Greek, University of Chicago. Fellow, Medieval Academy of America, American Academy of Arts and Sciences. Member of the United States Delegation to the First, Second, and Third Sessions of the General Conference of UNESCO. Human Rights, 286.

37 Head of the French Delegation to the Second Session of the General Conference of UNESCO, Mexico City.

UNESCO's own summary as prepared by its committee attempted a synthesis of the positions taken by the various philosophers. It was the opinion of the group that the symposium had demonstrated that the members of the United Nations *did* share the common convictions on which human rights depend, and that the differences were merely those which resulted from: (a) different terms used to express similar basic philosophic principles; (b) different political backgrounds; (c) different economic systems. In accordance with this view, the committee considered that the problem which the Human Rights Commission had to resolve depended upon the relation of rights to political and economic institutions.

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40 The explanation strikes one as shallow, but it is consonant with the efforts of many earnest individuals and groups who in the late 1940's still hoped to effect a reconciliation between Russian and western aims. This failure to understand the totally different ideology that governed life in the U.S.S.R. seems naive, if not deliberately wishful. This synthesis has overlooked the clear and undeniable evidence of real opposition from one of its own papers, that of Sergius Hessen.

A second comment on the symposium and on the concluding summary is that the discussion was concerned with theories and philosophies; attempts were made to fit mankind into theoretical systems; no attempt was made to begin with the individual or with man as a person; nor was consideration given to the fact that man was created by God, therefore is a creature of God rather than of the state.

41 *Human Rights*, 258, 259, 261, 262.
In conclusion, the committee offered to undertake a further study of the oppositions of philosophic doctrines which lead to diversities of interpretations of human rights, but only if it was understood that such a study would contribute toward the formulation and implementation of a declaration by the Commission on Human Rights. The absence of a further study argues that the Commission did not encourage the undertaking.

Other important preparatory work was done for the Commission on Human Rights by the Committee appointed by the American Law Institute in 1942 to draw up a statement of essential human rights. This committee, composed of lawyers, political scientists, and publicists, who represented the principal cultures of the world attempted to discover "how far the people of the world would agree as to what rights were essential to make the freedom of the individual effective." 42

42 Foreword to unpublished manuscript of Committee Proceedings from the papers of Karl Loewenstein, a member of the Committee. The membership of the Committee was:

William Draper Lewis, Chairman, jurist and educator, director of the American Law Institute since 1923; dean of the Law School, University of Pennsylvania, 1896-1914.


George M. Barakat, lawyer, with the Foreign Economic Administration, Washington, D.C., resident in Syria and Lebanon for many years, president, Syrian and Lebanese American Federation of the Eastern States.

Percy E. Corbett, jurist and educator, with Institute of International Studies, Yale University, on leave from McGill University, dean of Faculty of Law, McGill University, 1928-1936.
Julio A. del Vayo, statesman and journalist; executive
director, Free World Association; one of the editors of The Nation.
Foreign Minister of the Spanish Republic 1936-1939; Spanish Amb-
bassador to Mexico, 1931.

Noel T. Dowling, professor of law, Columbia University
since 1930; consultant, Tennessee Valley Authority, 1935; special
assistant legal counsel United States Senate 1921 and 1927-1928;
editor: Cases in American Constitutional Law, 1931, 1937.

Kenneth Durant, journalist and authority of Soviet
Russia.

John R. Ellington, sociologist and publicist; special
adviser on Criminal Justice - Youth, American Law Institute since
1940; managing editor, Smithsonian Scientific Series; division
chief, American Relief Administration, Russia, 1921-1923.

Hu-Shih, diplomatist and philosopher; Chinese ambassador
to the United States 1938-1941; dean Peiping National University
since 1931; professor of philosophy, Peking National University,
1917-1926.

Manley O. Hudson, jurist and educator; judge, Permanent
Court of International Justice since 1936; Bemis Professor of
International Law, Harvard University since 1923; editor American
Journal of International Law since 1934.

C. Wilfred Jenks, lawyer; Gray's Inn, barrister-at-law;
legal adviser of the International Labor Office; editor: Constitu-

Charles E. Kenworthy, lawyer; judge, Superior Court
of Pennsylvania since 1941; faculty member, Law School, University
of Pennsylvania.

Henri Laugier, physiologist and statesman; dean, Algiers
University since 1943; professor of physiology, Sorbonne, 1937-
1940; chief of cabinet, Ministry of Education, France, 1936-1941.

Karl Loewenstein, lawyer and educator; professor of
political science and jurisprudence, Amherst College since 1936;
lecturer on constitutional and international law, University of
Munich, Germany, until 1933.

K. C. Mahindra, industrialist; member of the India

Roland S. Morris, lawyer and diplomatist; United States
Ambassador to Japan, 1917-1921; professor of international law,
University of Pennsylvania since 1924; president of American
Philosophical Society, 1932.

John E. Mulder, lawyer and educator; professor of law,
University of Pennsylvania since 1937; editor Bill of Rights
Review, 1941-1943.

Ernest Rabel, jurist and legal writer with University of
Michigan Law School since 1941; founder and director, Kaiser
Wilhelm Institute of Foreign and International Private Law in
Berlin; formerly judge, Permanent Court of International Justice.
It was not their aim to produce a Bill of Rights to be presented to the nations of the world for ratification. Rather, they planned and executed an experimental declaration designed to stimulate discussion and to serve as the starting point from which the nations could proceed to a post-war peace settlement. The arguments for and against the kind of document which this group arrived at are perhaps as pertinent to the history of the Human

Ludwik Rajchman, physician; adviser to the Chinese embassy in Washington, D.C.; represented Poland on the Inter-Allied Economic Council until June, 1940; director Health Section, League of Nations.

David Riesman, Jr., lawyer and educator; professor of law, University of Buffalo since 1937, now on leave; Assistant District Attorney, New York County, 1942-1943.

Warren A. Seavey, professor of law at Harvard University since 1927; head of Law School, Pei Yan University, China, 1906-1911.

Angelo P. Sereni, lawyer and educator; lecturer, New School for Social Research, New York City since 1939; formerly professor of law, University of Ferraro, Italy.

Paul Weill, lawyer and lecturer; captain, Military Justice, French Army; vice-president, France Forever; counsel to the Ministry of the Interior, France, 1936; in private practice in Paris, 1913-1925.

Quincy Wright, professor of International Law, University of Chicago since 1931; formerly lecturer on international law, Graduate Institute of International Studies, Geneva, Switzerland; Tsing Hua University, Peiping, China.

George M. Wunderlich, lawyer and educator; associate-in-law, Law School University of Pennsylvania; prior to 1936 in private practice in Berlin, Germany.

43 Other aims were introduced by members of the Committee. Thus Mr. Seavey said, "I have some interest in the world after this war is over. I have more interest in winning the war. I do feel that our subsidiary purpose is to use this as propaganda all over Europe and Asia when we have it prepared. I think that will have more immediate effect than anything done at the end of the war." Loewenstein Papers.
Rights Commission as the document itself, which the Commission used to good effect in drawing up its own Declaration. The discussions indicate the climate of opinion in the years immediately preceding the creation of the Commission and show the development of trends which influenced or modified the effectiveness of the work of the Commission.

It must be noted here that the Committee in drawing up its statement foresaw a future constitutional declaration of rights—one that would be either bound up with the treaties of peace or that would be incorporated by the United Nations in its constitution. This supposition provoked discussion regarding the enforcement of any declaration. Although the question of enforcement had been specifically ruled out by the terms under which the Committee operated, it could not be avoided. If the Committee proposed to draw up a statement intended as a guide for a constitutional declaration it was pointed out that only enforceable rights should be included. That brought into question the inclusion of social and economic rights. In the very first meeting Dr. Karl Loewenstein warned the Committee that it was necessary to get away from the 1776 state of mind and its emphasis on political rights. He said that the rights which this committee was to formulate were to be for the common man and that the common man

44 Statements of C. Wilfred Jenks and Warren A. Seavey in Appendices IV and V of Loewenstein Papers.
wanted more than anything else a statement guaranteeing his social existence. Significantly, Dr. Loewenstein introduced the idea that the title of a Bill of Rights for this generation should include the word "human". C. Wilfred Jenks defended Loewenstein's stand and based his defense on conditions in the present economy of existence. He pointed out that the right to work had been a slogan in the 1848 revolutions, but that it had not had real significance nor popular appeal until men had experienced a "world depression sandwiched between two world wars." He said further:

"Social security is the counterbalance to the peculiar risks of an industrialized society in which men are removed from direct support by, and reliance upon nature and the family and are subject to accidents and disasters beyond their power to control or escape."

Mr. Draper observed that inclusion of social and economic rights as part of a constitutional arrangement was no innovation since thirty-three constitutions which he cited already contained such principles.

Dissent to the inclusion of social and economic rights was voiced by only one participant, Warren A. Seavey. In his opinion, a constitutional declaration which would include social and economic rights was a document for a group of slaves. It would destroy self-reliance while it created hopes that never could be fulfilled.

45 Karl Loewenstein, Loewenstein Papers.
In spite of this opposition, social and economic rights were included in the statement and it was because they were included, specifically because the right to work was included, that the sponsors of the Committee, the American Law Institute, repudiated the Statement of Essential Human Rights. The significance of this development was that the American Law Institute regarded the statement as too socialistic, and that it recognized the practical impossibility of legally enforcing social and economic rights. The Statement of Essential Human Rights was subsequently adopted and published by Americans united for World Organization. If the articles assuring social and economic rights in the Declaration formulated by the United Nations in 1948, the striking similarity argues either to the conclusion that the Committee had a better appreciation of current public opinion than did the American Law Institute, or to the conclusion that the Statement of Essential Human Rights influenced the writers of the Universal Declaration either directly or through its influence upon public opinion.

Another line of discussion that the Committee pursued was less well appreciated later by the United Nations Commission on Human Rights. The question of prescribing a form of government as a framework within which human rights were to be safeguarded seemed important to the Committee. To Dr. Alfaro the

46 Letter from Karl Loewenstein, April 19, 1956.
terms "right" and "bill of rights" were inconsistent with any form of government not based upon the principles of democracy. He said that under a benevolent despot such benefits are a grant, a mercy, a grace, or a concession, but not rights that individuals can claim.

Judge Kenworthey did not think that the Committee should concern itself with the problem of government—it was beyond its scope, he believed. But Karl Loewenstein suggested an approach that would include it within the work of the Committee. In his exposition he showed that there were two ways of securing a democracy: one was by imposing democracy under international sanction, to which Judge Kenworthey would object; the other was the indirect way of giving such sanction to individual rights, which, if enforced, would necessarily impose democratic processes.

The Committee members were obviously concerned with the problem of including Russia in a plan which they proposed to present to the United Nations. Dr. Rajchman said plainly:

Russia does not pretend to be a Democratic country in the sense of the Anglo-Saxon world. This country represents another world and at the present time is an ally of the Democracies. I would frame the rights for the Democracies and then see what Russian reaction will be.

To this Mr. Corbett replied: "You are stating a difficulty which is not in existence. Many of these rights are found in the Russian Constitution."

Subsequent discussions show that the members of the Committee were not much impressed by Mr. Corbett's observation.
but they decided to follow Dr. Rajchman's suggestion. The attitude of Russia was regarded as an open question, but aside from some opposition to the inclusion of property rights no particular consideration was given to its views. 47 Whether this decision was realistic or not is difficult to determine. On the one hand the Committee could not afford to alienate a powerful war-time ally; on the other it knew that Russia was not democratic according to western standards and by its own definition only democracies could secure rights for their citizens. Under the circumstances evasion probably seemed as realistic as any positive action.

The Committee was more certainly realistic in its discussions and decisions in other areas. One of these was the recognition of correlative duties for every right it stated. Early in the discussions Mr. Ellington suggested that for the purpose of guiding the members in their decision of which rights should be included, the corresponding duties should be considered. From this the Committee proceeded to the conclusion that the duties should not only be considered, but be stated, either in a covering clause at the end of the Statement, or as a part of every article. Moreover, it was suggested that the duties be unambiguously allocated to the State. With some hesitation on the part of the

47 Loewenstein Papers, Percy Corbett: "I should like to register a clear protest against the inclusion of the right of private property in any Bill of Rights to be universal. It will arouse opposition from any community practising the principles of Communism."
members, some of whom felt that the inclusion of duty clauses would strengthen the Statement whereas other thought they were unnecessary, the Committee finally decided upon including a clause affirming the duty of the State with each article that was susceptible of such a clause.\textsuperscript{48}

Another area in which the Committee showed a realistic approach was that of limitation of rights, especially with regard to freedom of speech and of the press. As will be seen subsequently, American opinion, generally favored the argument proposed by Mr. Lewis:

\ldots the experience of every government that has been destroyed by revolution from within is that the secret cause of the destruction has been very largely the suppression of criticism.

The representatives of foreign cultures, especially Dr. Loewenstein and Dr. Rajchman, were of another opinion. They preferred such limitations as were necessary, they said, to protect the democratic state and also such as would be acceptable in countries other than the United States. The Committee agreed in the end to a single limitation clause, which was to be the last article of the Statement: "In the exercise of his rights everyone

\textsuperscript{48} Loewenstein Papers: "Fr. Dowling and Mr. Wright stated that as a result of four days of drafting of Articles in detail they had come to the conclusion that the statement of duties in connection with each Article added concreteness and force sufficient to make the method preferable."

Marginal note of Dr. Loewenstein: "Yes, decidedly."
is limited by the rights of others and by the just requirements of the democratic state."

The Committee also took a realistic approach to the problem of the right to education. After citing the various clauses in existing constitutions which recognized the right to education, the Committee considered the possible consequences of making the rights too inclusive or too exclusive. Calling attention to the experience of Germany under the Weimar Constitution they noted that too easy access to higher education could lead to unemployment in the learned professions, as it had in Germany. Too exclusive an article, one that would prescribe exactly what kind of education was a fundamental right, could be a violation of the natural rights of parents to supervise the education of their children. As a compromise the Committee took the stand that everyone has the right to primary education, but allowed that it was the privilege of parents to decide the conditions under which such education should be given. As to higher education the Committee agreed that the State had the duty to provide facilities for further education—facilities that were "adequate and effectively available to all its residents."

As the examples indicate, the Committee was concerned with a formulation of rights which to them should seem capable of realization. However, it was not expected that the document they had executed would gain the immediate assent of peoples throughout the world. It did no, in fact, gain the assent of the entire
Committee. Judge Manley Hudson made the reservation that he was in doubt about the phrasing in some places; Warren A Seavey went on record as not in agreement with Articles 11 to 15, relating to social rights. The eighteen articles of the Statement on Essential Human Rights as published allowed considerable room for discussion:

Article 1. FREEDOM OF RELIGION
Freedom of belief and of worship is the right of every one. The state has the duty to protect this freedom.

The comment of the Committee on this right expressed the idea that it should not include all practices which claimed to be of a religious nature—such, for example, as would run counter to hygienic regulations. What it should include was thus left open for consideration.

Among the duties to which the state would be obligated, the Committee suggested that they might include the negative duty to abstain from making laws which would impair the right and the positive duty to make laws and provide procedures to prevent anyone in the state from impairing the right. The state would also be involved in measures to protect religious establishments.

Article 2. FREEDOM OF OPINION
Freedom to form and hold opinions and to receive opinions and information is the right of every one. The state has a duty to protect this freedom.

Although this right has recently been incorporated into the newly formed constitutions of seven countries, there has been some restriction placed upon its interpretation in older
constitutions. Thus in the United States the outlawing of the Communist Party placed restrictions on opinions favoring the Party if such opinions are circulated.

Article 3. FREEDOM OF SPEECH
Freedom of expression is the right of every one. The state has a duty to refrain from arbitrary limitation of this freedom and to prevent denial of reasonable access to channels of communication.

Whether any definition of freedom of expression would be universally accepted is debatable. The Committee defined it to include "freedom of the individual to speak, write, use the graphic arts, the theatre, or any other art form to present his ideas." In this sense freedom of expression included freedom of the press in the American meaning of the term. Obviously, and this will be seen in discussion on the Sub-Commission on Freedom of Information and the Press, countries outside the United States would not subscribe to this definition.

Article 4. FREEDOM OF ASSEMBLY
Freedom to assemble peaceably with others is the right of every one. The state has a duty to protect this freedom.

According to the comment of the Committee this right allowed for assemblies for political, economic, religious, social, cultural, and other purposes, and included parades and processions. It allowed to the state the right to make requirements as to the time and place of meetings in the interests of public safety and convenience. How to interpret such a right of the state would probably evoke much difference of opinion.
Article 5. FREEDOM TO FORM ASSOCIATIONS
Freedom to form with others associations of a political, economic, religious, social, cultural, or any other character for purposes not inconsistent with these articles is the right of every one. The state has a duty to protect this freedom.

The exercise of this right would seem to need restrictions not provided for in this article. However, if the limiting Article 18 were enforced, the right to form associations would be placed within the limits of respecting the rights of others and the just requirements of the democratic state. It would be necessary then to determine satisfactorily the rights of others, and to gain universal acceptance for a democratic form of government.

Article 6. FREEDOM FROM WRONGFUL INTERFERENCE
Freedom from unreasonable interference with his person, home, reputation, privacy, activities, and property is the right of every one. The state has a duty to protect this freedom.

It would be difficult to determine the elements which constitute unreasonable interference. In discussing the article the Committee referred to the provisions for this freedom in constitutions of forty-nine countries.

Article 7. FAIR TRIAL
Every one has the right to have his criminal and civil liabilities and his rights determined without undue delay by fair public trial by a competent tribunal before which he has had opportunity for a full hearing. The state has a duty to maintain adequate tribunals and procedures to make this right effective.

In explanation of this article the Committee defined a public trial as one which permits some members of the public to be present and also provides for proper reporting of the
proceedings by those who have witnessed them. For a tribunal to be a competent tribunal it is necessary that it be empowered by the law of the state to entertain an action.

The requirement for a fair trial is the absence of any pressure which would not allow justice to be done. For example, it would rule out a tribunal which was unduly biased or corrupted, even if otherwise competent.

For the trial to have a full hearing it is necessary that the person appearing before the tribunal have opportunity to present his side of the case. In a criminal proceeding it also implies that the accused must be informed in advance of the charges against him; that he be permitted the assistance of Counsel, and that he be given a reasonable time to prepare for the hearing.

**Article 8. FREEDOM FROM ARBITRARY DETENTION**

Every one who is detained has the right to immediate judicial determination of the legality of his detention. The state has a duty to provide adequate procedures to make this right effective.

The emphasis upon an immediate and judicial determination in this article presents matter for discussion. According to the Committee, immediate meant not only that access to a competent tribunal is not to be delayed, but also that the tribunal is to decide the question promptly. The term "judicial" was used in the sense of the judicial tradition of responsibility, independence, and impartiality.
Article 9. RETROACTIVE LAWS

No one shall be convicted of crime except for violation of a law in effect at the time of the commission of the act charged as an offense, nor be subjected to a penalty greater than that applicable at the time of the commission of the offense.

The wording of the last phrase of this article implies that if there were no penalty applicable at the time of the offense, no penalty should be imposed. It was on statements such as these that war criminals based their defense.\(^{49}\) To reach a definitive interpretation of this article it would be necessary to reconcile some differences of opinion.

Article 10. PROPERTY RIGHTS
Every one has the right to own property under general law. The state shall not deprive any one of his property except for a public purpose and with just compensation.

The clause in this article which would probably create discussion is the one requiring just compensation. States which have not, in practise, provided the compensation would logically argue against this stipulation.

Article 11. EDUCATION
Every one has the right to education. The state has a duty to require that every child within its jurisdiction receive education of the primary standard; to maintain or insure that there are maintained facilities for such education which are adequate and free; and to promote the development of facilities for further education which are adequate and effectively available to all its residents.

The Committee found that it required a lengthy comment to clarify its own interpretation of the right to education. It left the age limits for primary education to be determined by local conditions in different countries. It did not require attendance at any school, but it suggested that in most cases school attendance would be necessary for the child in order to acquire primary education.

In prescribing that facilities for further education be provided, the Committee allowed the widest latitude possible in the means by which this responsibility should be discharged. Within the range of meaning allowed by the Committee it seems possible that this right could be agreed upon.

**Article 12. WORK**

Every one has the right to work. The state has a duty to take such measures as may be necessary to insure that all its residents have an opportunity for useful work.

**Article 13. CONDITIONS OF WORK**

Every one has the right to reasonable conditions of work. The state has a duty to take such measures as may be necessary to insure reasonable wages, hours, and other conditions of work.

It was upon the articles relating to social rights that the unity of the Committee floundered, and it was specifically upon the Rights of Work that the American Law Institute based its decision to withdraw its support from the Committee. There was no interpretation of these articles that could be accepted even by the limited representation in the Committee and by the American
Law Institute. It was inevitable that they should become targets for serious differences.

**Article 14. FOOD AND HOUSING**

Every one has the right to adequate food and housing. The state has a duty to take such measures as may be necessary to insure that all its residents have an opportunity to obtain these essentials.

The Committee recognized that this right, like the right to education could not be given a single, universal definition. A determination of what should constitute adequate food and housing would depend upon the development within a country and also upon its resources. A norm to limit such adequacy would be difficult to establish.

**Article 15. SOCIAL SECURITY**

Every one has the right to social security. The state has a duty to maintain or insure that there are maintained Comprehensive arrangements for the promotion of health, for the prevention of sickness and accident, and for the provision of medical care and of compensation for loss of livelihood.

Although the Committee in commenting upon this article said: "The wording of the Article leaves full scope to private initiative, in countries where this is considered desirable, to accept as much of the responsibility as it can and will," it nevertheless placed upon the state the responsibility for organizing the resources of society. The article is socialistic in its tendency to place more responsibility on the state and consequently give it more authority.
Article 16. PARTICIPATION IN GOVERNMENT

Everyone has the right to take part in the government of his state. The state has a duty to conform to the will of the people as manifested by democratic elections.

By requiring that all states be democratic according to western democratic practices, this article was a challenge to the countries which considered themselves democracies in any but the western meaning of the term.

Article 17. EQUAL PROTECTION

Everyone has the right to protection against arbitrary discrimination in the provisions and application of the law because of race, religion, sex, or any other reason.

The phrase "arbitrary discrimination" provided a likely issue for debate. The Committee illustrated its own definition of the term by saying that arbitrary discrimination exists when men are barred from the exercise of a right because of who they are, (e.g. women, negroes, Catholics) instead of because of what they have done (e.g. criminals).

Article 18. LIMITATIONS ON EXERCISE OF RIGHTS

In the exercise of his rights everyone is limited by the rights of others and by the just requirements of the democratic state.

As was observed above, article 18 provides a limit within which all the rights must operate. The effect of its enforcement would be either to eliminate most of the objections to the preceding articles, or, if a sinister interpretation were placed upon the articles, to relegate them to obsolescence.

From this examination of the articles it may be conceded that the Statement of Essential Rights was well designed to create
discussion. That this was one of the objects of its formulators was expressed by the chairman in his address at the conclusion of the work of the Committee:

Of course the Institute's task is not done when it formulates and publishes a statement of basic individual rights. It should secure as wide public discussion as possible. If through public education a significant body of opinion is developed which recognizes that a just and lasting peace can be secured only in a world in which the essential individual rights are recognized as the goal of social action, then the pressure of public opinion will play a controlling part in molding post-war plans to produce conditions which increasingly will make human freedom a reality.\footnote{50 Loewenstein Papers.}
CHAPTER IV

THE DECLARATION OF HUMAN RIGHTS

When the Human Rights Commission proceeded to the task of framing an International Bill of Rights in January, 1947, its first problem was to decide whether the Bill should take the form of a declaration, a covenant binding upon parties signatory to it, or an amendment to the Charter. The position taken by the United States, that a declaration should first be drawn up and a covenant added later was considered by the Commission, but its adoption was deferred until February 10, when the plan of a Declaration first, a Covenant later was accepted on a vote of nine to none with one abstention.¹

Early in this session the radical difference of the understanding of human rights as between representatives of totalitarian and democratic governments appeared. On February 1, Mr. Ribnikar, the delegate from Yugoslavia suggested that new economic conditions made personal freedom attainable only on the condition that there be perfect harmony between the individual and the community, this to be accomplished by a fusion in which the interests

of society and of the individual became identical. The refutation of this position by Miss Toni Sender, a consultant representing the AFL made clear that the suggestion of the Yugoslavian delegate was unacceptable, that the idea of individual liberty was not outmoded. And Dr. Malik of Lebanon commented pointedly that man today had no need for protection against kings or tyrants, but rather against a new form of tyranny: that exercised by the masses and the state. Having joined battle at this point, the opposition of the ideologies of the Soviet nations to the western


3 Recognition of the valuable contributions of non-governmental organizations at San Francisco led to the incorporation of Article 71 into the Charter. By it the Economic and Social Council has accorded consultative status to 275 non-governmental organizations—commonly referred to as NGO’s. Ten of these have a consultative status known as Category A and they are deemed to "have a basic interest in most of the activities of the Council and are closely linked with the economic or social life of the area which they represent." These may bring items to the attention of the Council and may speak to the Council itself. The next group of about one hundred NGO’s have a consultative status known as Category B and are concerned with a limited field of activities. A third group, Category C, consisting of about 160 organizations, may be called on for consultation from time to time. Documents show that NGO’s have made many significant contributions to various commissions of the Economic and Social Council, the Commission on Human Rights among them. "The United Nations and the Non-Governmental Organizations," United Nations publication, reprinted from United Nations Review, II, September, 1955, 23.


democracies proved a hampering influence on every stage of the preparation of the Universal Declaration of Rights. 6

The plan followed by the Human Rights Commission in its work on the Declaration was that drawn up by the Economic and Social Council. According to this plan:

(a) the drafting committee of the Commission on Human Rights would submit its first draft to the second session:

6 In a speech delivered on September 28, 1948, Mrs. Roosevelt pointed out many of the difficulties the Commission had experienced in attempting to synthesize the Western and the Communist ideologies. She said in part: "Democracy, freedom, human rights, have come to have a definite meaning to the people of the world which we must not allow any nation so to change that they are made synonymous with suppression and dictatorship. There are basic differences that show up even in the use of words between a democratic and a totalitarian country. For instance "democracy" means one thing to the USSR and another to the United States of America, and, I know, in France. I have served since the first meeting of the nuclear commission on Human Rights Commission, and I think this point stands out clearly. . . . for instance the USSR will assert that their press is free because the State makes it free by providing the machinery, the paper, and even the money for salaries for the people who work on the paper. They state that there is no control over what is printed in the various papers that they subsidize in this manner, such, for instance, as a trade-union paper. But what would happen if a paper were to print ideas which were critical of the basic policies and beliefs of the Communist Government? I am sure some good reason would be found for abolishing the paper. . . . I think the best example one can give of this basic difference of the use of terms is 'the right to work.' The Soviet Union insists that this is a basic right which it alone can guarantee because it alone provides full employment by the government. But the right to work in the Soviet Union means the assignment of workers to do whatever task is given to them by the government without an opportunity for the people to participate in the decision that the government should do this. A society in which everyone works is not necessarily a free society and may indeed be a slave society. . . ." Department of State Bulletin, XIX, October 10, 1948, 457–466.
(b) this draft, if approved by the Commission would then circulate among all States, Members of the United Nations, for the purpose of inviting observations, suggestions, and proposals;

(c) the observations, suggestions, and proposals of the States were to be considered by the drafting committee as the basis for a re-draft, if necessary;

(d) upon approval by the Commission the new draft was to be considered by the Council with the intention of recommending it as an International Bill of Human Rights, to the General Assembly in 1948.7

At the January session the Commission asked the chairman, the vice chairman, and the rapporteur to formulate, with the assistance of the Secretariat, a preliminary draft of a bill of rights.8 By June 2 the draft, a 400-page document was completed. It contained an outline of forty-eight articles together with annotations to constitutions of all member states. On June 9 the Human Rights Drafting Committee began making its Declaration, based upon the Secretariat outline. The eight members of the drafting committee, having heard the suggestions of the Commission and having considered a memorandum filed by the United States,


8 Document E/CN.4/SR.12, 1. Drafting Committee: Chairman, Mrs. Roosevelt, United States of America; Vice Chairman, P. C. Chang, China; Rapporteur, Charles Malik, Lebanon; W. B. Hodgson, Australia; H. Santa Cruz, Chile; René Cassin, France; V. Koretsky, USSR; Geoffrey Wilson, United Kingdom.
detailed René Cassin to prepare the text of the initial redraft. This document, a declaration in thirty-six articles, was completed by July 1, 1947.9

The working group of the Commission10 detailed to consider the preliminary draft, met on December 10, 1947. In its nine meetings this working group proposed alterations and additions,11 but no attempt was made to draft the articles in final form, since this could not be done until comments from the Governments had been received. This draft, based upon the Secretariat document and the draft declarations and proposals of Chile, Cuba, India, Panama,12 and the United States, besides excerpts from the constitutions and legislation of many countries, approved by the Commission, contained thirty-three articles. Of these the first two articles established that: (1) Men are born free and equal and


10 Working Group on Declaration: Mrs. Roosevelt, United States of America; René Cassin, France; Mr. Stepanenko, Byelorussian SSR; Mrs. Amado, Panama; General Romulo, Philippines; Mr. Bogomolov, USSR.

11 Mrs. Roosevelt called the attention of the working group to the draft which the United States had made by reducing the drafting committee's forty-eight proposals to their essential contents in ten articles. The representative of Russia observed that it was not a question of drawing up a short or a long declaration, but a clear, straightforward, and complete one. The U.S. draft was not seriously considered. The Soviet delegation was not satisfied with any draft and reserved its right to present at a later stage of the work a Soviet draft. Document, E/CN. 4/57, 4; E/CN.4/77/Annex A, 1.

12 See above, Chapter III.
are brothers and (2) that all rights are limited by the rights of others. Of the substantive rights, nineteen dealt with civil rights; (3) Right to equality before the law, and freedom from discrimination; (4) Right to life, liberty, and security of person; (5) Right of Habeas Corpus; (6) Right to independent and impartial tribunals and the right to use a foreign language if necessary in court; (7) Right to presumption of innocence, a fair public trial, freedom from ex post facto laws, freedom from cruel or inhuman punishment or indignity; (8) Right to freedom - no slavery; (9) Right to protection under law against interference with reputation, privacy, and family; (10) Right to freedom of movement, and choice of residence; (11) Right to seek and to be granted asylum; (12) Right to recognition as a person before the law; (13) Equal right of men and women to marry and right of protection of the family by the State and Society; (14) Right to property; (15) Right to a nationality; (16) Freedom of religion; (17) Right to freedom of information; (18) Right of equal access to all channels of communication; (19) Right of assembly; (20) Right to petition, either one's own State or the United Nations; (21) Right to participate in government.

Nine articles dealt with social and economic rights:
(22) Right to engage in public employment and to hold public office; (23) Right to work; (24) Right to pay commensurate with work; (25) Right to preservation of health and highest standards of living which resources of State can provide; (26) Right to
social security; (27) and (28) Right to education; (29) Right to rest and leisure; (30) Right to participate in the cultural life of the community.

Article 31, the provision for minority rights, was left without a decision between two proposed texts: that of the drafting committee and that of the Sub-commission on the Prevention of Discrimination and the Protection of Minorities. The last two articles prescribed limitations on states; (32) No State may make laws other than those as are in conformity with the Charter of the United Nations and (33) There is no recognition of the right of any State or person to destroy rights and freedoms prescribed in this Declaration. 13

By May 1, 1948, the comments of governments were received and collated. The general comments concerned mainly the length of the Declaration and government responsibility as laid down in the Declaration. The governments of the United States and Australia, Brazil, Egypt, and the Netherlands considered that the Declaration could be improved by greater conciseness. 14 Regarding government responsibility, the United States and Brazil thought it inappropriate to state the rights in the Declaration in terms of governmental responsibility. 15 The Union of South Africa was

15 Ibid., 7-10.
thoroughly dissatisfied with the draft. In the concluding paragraph of its criticism it said:

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

Comments on the individual articles varied. The Netherlands and Brazil considered Article 1 superfluous. Brazil preferred that the idea of brotherhood be included in Article 2. On the subject of freedom from discrimination, Article 3, there was little comment, except on the wording. In Article 4 the Netherlands preferred the expression guaranteeing "bodily integrity and liberty of person" to the draft text: "liberty and security of person." On Articles 5 and 6 the comments suggested only slightly different wording. Brazil took exception to the statement in Article 7: "Nothing in the Article shall prejudice the trial and punishment of any person for the commission of any act which, at the time it was committed was criminal according to the general principles of law recognized by civilized nations." Her contention was that it involved the traditional precept nullum crimen sine

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There were no comments on Article 8. The principal objection to Article 9 was that the inviolability of the home cannot be laid down absolutely, but is subject to restriction arising out of the necessity for repressing crime. This idea was expressed by the Netherlands, Brazil, the Union of South Africa, and Norway. In Article 10 the Netherlands favor some modifications to the principle of freedom to leave a country so that urgent necessity of a country might allow it to retain those exercising a special profession, and that, generally, people who have undertaken special obligations should not be permitted to leave until their commitments have been fulfilled. The broad statement in Article 11 that not only shall all have the right "to seek" but also "to be granted asylum was attacked by the Netherlands and the Union of South Africa as being in conflict with the immigration laws all over the world. The Union of South Africa

17 Implicit in this article was the discussion concerning the Nuremberg and Tokyo trials of war criminals. If the principle nullum crimen sine lege as cited by Brazil, or the charge made by critics in the United States and in England of invoking ex post facto law, were relevant, the trials were illegal. However, the London Agreement covering the trials defined the crimes in terms not of any national laws but in terms of violations of universal natural rights. Article 6 C of the London Agreement reads: "Crimes against humanity: namely, murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population before or during the war; or persecution on political, racial, or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated." Trials of War Criminals, edited by Edward H. Young, Washington, 1949, XV, 11.
criticized the expression "enjoyment of fundamental civil rights" as being too vague and as tending by its very ambiguity to undermine national autonomy. To the rights of marriage and the family in Article 13 Brazil wished added the explicit statement of paternal authority during the minority of the children. The Union of South Africa criticized the clause giving freedom to marry "in accordance with the law" because, this State said, this clause gives any State the right to render the article meaningless by the procedure of imposing legal restrictions. The wording of Article 14 was criticized by Brazil and the Union of South Africa.

The big question on Article 15 related to the status of the United Nations. By assuming the protection of persons who do not enjoy the protection of any government, the United Nations would "come perilously near" the status of a super-state, according to the views of the Union of South Africa. The Netherlands questioned whether it would not be better to entrust the protection of people without nationality to the International Refugee Organization.

The comments on freedom of religion as stated in Article 16 invoked Article 2 to limit manifestations of religious beliefs by the necessity of public order. This was the opinion of Mexico and Brazil. The draft of Articles 17 and 18 on freedom of information were considered incomplete by the committee and the comments showed that Brazil and the Union of South Africa preferred the text proposed by the Sub-Commission on Freedom of Information.
and the Press to the texts submitted by the drafting committee. Brazil wished the right of assembly in Article 19 to be subject to domestic regulation, particularly because it considered some restrictions in regard to aliens justifiable.

The right of petition to the United Nations, the alternative to petition to one's own State, was criticized by the Union of South Africa as giving the United Nations a jurisdiction it did not possess. Brazil, Mexico, and the Union of South Africa thought that the right of everyone to take part in the government of his country and to hold public office in accordance with Articles 20 and 23 should be subject to restrictions imposed by domestic regulations.

The statement "The State is bound to take all necessary steps to prevent unemployment" as stated in Article 23 was considered inappropriate in the Declaration, according to the views of the United States, the Union of South Africa, and Egypt. The Union of South Africa objected to the statement in Article 24 that everyone has the right to receive pay commensurate with his ability and skill because it contended that the law of supply and demand often determined wages. The Union of South Africa also said that the stipulation of equal pay for men and women for equal work was not a fundamental human right and thought it would be preferable to leave it out of the Declaration. The second part of Article 25 concerning the duty of the State to hold itself responsible for the health and safety of its people was beyond the
scope of the Declaration, in the opinion of both the Netherlands and the United States. Egypt would limit the right to social security in Article 26 as well as the economic rights enumerated in Articles 23, 24, 25, by circumscribing them by the potentialities of the economic condition of each State.

The Netherlands thought the universal right to education should be modified to read "fundamental" education. The kind of education prescribed in Article 28 was accepted by the United Nations, but Mexico preferred that the article be stated in positive rather than negative terms. Article 29 was accepted as written. Mexico and Brazil stated that the right to participation in cultural life should not prejudice copyright and patent rights. In regard to protection of minorities in Article 31 the drafting committee and the Sub-Committee on Prevention of Discrimination and Protection of Minorities each produced a text. Brazil preferred the text of the Sub-Commission. Egypt thought the article out of place in a Declaration of rights for all men. Articles 32 and 33, prohibiting laws and activities in violation of the Charter, against the Declaration, were accepted.18

On May 3, 1948, the drafting committee met for its second session. Mrs. Roosevelt, the chairman, proposed that the procedure enjoined by the Economic and Social Council be followed, namely, to proceed to a re-draft on the basis of the comments.

of the various governments. The representative of the USSR wanted to begin the re-draft from basic principles rather than from the comments of the governments.\textsuperscript{19} He objected that the Declaration as it stood did not make proper provision for the respect of human rights as provided in the Charter.\textsuperscript{20} However, the decision of the chairman prevailed and the Declaration, together with the comments of the governments was discussed as the basis of the Committee's re-draft.\textsuperscript{21}

The re-draft of the Committee was submitted to the Human Rights Commission on May 21, 1948.\textsuperscript{22} A careful re-study of the text as drafted by the Committee was completed on June 18 and the Declaration as it now stood was given to the Economic and Social Council for submission to the General Assembly at its meeting in Paris in September, 1948. The principal changes in the Declaration were in favor of conciseness, the whole now covering twenty-eight instead of thirty-three articles. China, the United States, and the United Kingdom had insisted that all restrictions and limitations should be removed from the Declaration and be included in the Covenant in spite of contrary views of the East European

\begin{itemize}
\item \textbf{19 Document} E/CN.4/AC.1/SR.20, 1, 2.
\item \textbf{20 Document} E/CN.4/AC.1/SR.21, 2.
\item \textbf{21 Document} E/CN.4/AC.1/SR.34, 14.
\item \textbf{22 Document} E/CN.4/95, 5-15.
\end{itemize}
countries. The General Assembly's Social, Humanitarian, and Cultural Committee, generally known as Committee III undertook to debate the draft Declaration article by article until every point of view had been expressed and thoroughly discussed.

On December 10, 1948, the plenary session of the General Assembly adopted the text without objection. The vote was 48 to 0 with eight abstentions: Byelorussia, Czechoslovakia, Poland, Saudi Arabia, the Ukraine, the Union of South Africa, the Soviet Union, and Yugoslavia.

What was the status of the Declaration of Rights as an official document approved by the Assembly, and what was its impact? The most general negative appraisal of the Declaration of Rights scored its lack of legal sanction; the most general defense pointed to its moral impact. It is interesting to note that the original American Bill of Rights was subjected to like criticism


24 It has not been considered necessary to take up the discussion in the Third Commission since a thorough investigation and report has been made by Sister Mary Karin Koos in an unpublished Master's dissertation at Catholic University of America entitled The Legislative History of the International Bill of Rights, Washington, 1953. Also, the United Nations itself has published a development of the Articles of the Declaration with extended summaries of the discussion in the Third Commission in a book entitled These Rights and Freedoms, quoted above. The text of the Declaration as it was accepted by the Third Commission is given in Appendix A.

and provoked a similar defense. To Madison's objection that experience proves the inefficacy of a bill of rights Jefferson replied, "True. But though it is not absolutely efficacious under all circumstances, it is of great potency always, and rarely inefficacious."26

The legal status of the Declaration of Rights may be estimated from the answers to three questions: (1) Can the Declaration of Human Rights be considered an extension or interpretation of the Charter of the United Nations which, as an international treaty has legal binding power? (2) Did the Member Nations through their representatives intend the articles to be legally binding? (3) Have the articles been judicially interpreted as legally binding?

On the first question three of the delegates of the forty-eight States who voted in favor of the Declaration understood that it was an extension of the human rights provisions in the Charter. Mr. Malik of Lebanon said that the Members of the United Nations had already pledged themselves to promote respect for human rights in the Charter and they now had these rights set down for them in detail in the Declaration.27 Professor René Cassin insisted that the Declaration had no less legal value than


27 Official Records of Third Session of Assembly, 860.
the proposed convention since it was a development of the Charter, and the Charter had already brought human rights within the scope of positive international law. Mr. Ugon of Uruguay called the Declaration "a natural complement of the Charter" and considered its enforcement obligatory upon the Member States. Mr. Andrews of the Union of South Africa supposed that the Declaration was an authoritative definition of the fundamental rights and freedoms that had been left undefined in the Charter. It was because of the obligations that such an interpretation imposed, said Mr. Andrews, that South Africa refused to vote in favor of the Declaration.

In a discussion of the views of the various delegates who considered the Declaration binding as an interpretation of the Charter, the international lawyer, Hersh Lauterpacht, made the distinction between a "morally" authoritative interpretation and a "legally" authoritative interpretation. His conclusion was that the Declaration was a morally but not a legally authoritative interpretation of the Charter.

28 Ibid., 866.
29 Ibid., 887.
30 Ibid., 910, 911.
31 Hersh Lauterpacht, "The Universal Declaration of Human Rights," The British Yearbook of International Law, 1948, 366.
Hans Kelsen in his study of the Declaration also denied that the document was a legally authoritative interpretation of the Charter and added that such an authoritative interpretation could be given only by an amendment to the Charter.32

On the question regarding the intention of States to make a legally binding instrument the representatives quoted above, with the exception of the Union of South Africa, did vote for the Declaration under the impression that they were making a legally binding instrument by reason of its relation to the Charter. Belgium presented a modified understanding of the legal character of the Declaration. The Belgian representative, appealing not to the Charter, but to the unanimous decision of the peoples and Governments of the United Nations, considered that the Declaration had "the beginnings of legal value."33 The discussions of the majority of the delegates, however, gave evidence that they did not support the Declaration as a legally binding instrument, but awaited the Covenant to give legal protection for the rights in the Declaration. The delegates of five nations expressly stated that the Declaration had no legal force. The delegate from Australia said that the Declaration represented a common ideal; it was not binding in law.34 The representative from the Netherlands

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33 Official Records of Third Session of Assembly, 880.

34 Ibid., 876.
and the one from Mexico said that although it had no legally binding force, the Declaration, nevertheless, would have great moral force. The delegate from New Zealand was of the same opinion, but was not convinced of the importance of the moral force: he looked with greater confidence to the Covenant. The Polish delegate, in common with the Soviet delegations, took the attitude that the Declaration was a retrogressive movement because of its lack of legal authority, which he interpreted as a sign of the weakness of the United Nations.

Hans Kelsen disposed of the problem of intention to bind legally by noting the wording in which the Assembly promulgated the Declaration. Had it had the intention to bind, he said, it would have used expressions that indicated the intention to give legal sanction. Instead it "proclaimed" the Declaration "as a common standard of achievement for all peoples and all nations."

A. B. Lyons in a review of Pieter Drost's *Human Rights as Legal Rights*, made a statement which synthesized the Belgian viewpoint of modified legal status with the more general viewpoint that the Declaration is not at all legally binding. He said, "The Declaration, of course, is not, and was not intended to be legally

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35 Ibid., 873, 885.
36 Ibid., 888.
37 Official Records of Third Session of the Assembly, 904, 905.
binding, but its universality gives it some legal significance.\(^39\)

This conclusion leads to the answer to the third question: Have the articles been given legal interpretation? There are instances to show that they have. Yet they have not been such as would prove that the Declaration had legal binding power, but that the universality of acceptance of the Declaration gave it legal significance. Specific cases in which the Declaration was thus invoked have occurred in the United States and in foreign countries. The New York Supreme Court in the case *Wilson vs. Hocker* held that discrimination as to sex practised by trade unions was objectionable. Since there was no statute law violated in the case the court invoked Articles 2 and 23 of the Declaration stating: "Indicative of the spirit of our times are the provisions of the Universal Declaration of Human Rights, adopted in 1948 at the third Session of the General Assembly of the United Nations without dissenting vote." The decision was then based upon the unlawfulness of discrimination "as a violation of fundamental principle."\(^40\)

In *Fuli vs. State of California* a case under the California Alien Land Law which forbade ownership of real property in


\(^40\) Case quoted in *The Impact of the Universal Declaration of Human Rights*, United Nations publication, New York, 1953, 37.
the state by aliens ineligible to citizenship was brought into the California District Court of Appeals in 1950. The Court held that the Alien Land Law conflicted with the Charter of the United Nations and quoted Articles 2 and 17 of the Universal Declaration. On an appeal to the Supreme Court of California, that court held that the Charter provisions were not intended to supersede domestic legislation. Nevertheless the legislation was declared invalid on the ground that it conflicted with the equal protection clause of the fourteenth amendment.

In the case of Pietras brought before the Belgian Civil Court of Courtrai in November, 1951, the question was whether a citizen whose previous nationality was considered permanent by legislation covering it, was thereby prohibited from acquiring a new nationality. In the decision it was stated: "this provision does not prevent a person from becoming a Belgian national even though his previous nationality was considered by the legislation governing it to be permanent." One reason given inter alia was that modern law presumes the right of a national to change his allegiance and that it is expressly so stated in Article 15 of the Universal Declaration.

41 Ibid.
43 Yearbook of Human Rights, 1951, 14, 15.
The case of Borovsky vs. Commissioner of Immigration came before the Supreme Court of the Philippines in September, 1951. Borovsky was a deportable alien whom the immigration authorities were having difficulty in deporting. Consequently he was held in custody for over two years. The case came into court when Borovsky asked a second time for a writ of habeas corpus. In the decision to free him from imprisonment the court declared:

Moreover by its Constitution the Philippines "adopts the generally accepted principles of international law as part of the law of Nations" and in a resolution entitled "Universal Declaration of Human Rights" and approved by the General Assembly of the United Nations of which the Philippines is a member, at its plenary meeting on 10 December, 1948, the right to life and liberty and all other fundamental rights as applied to all human beings were proclaimed.

The decision then quoted Articles 1, 2, and 9 in its support.44

The impact of the Declaration, aside from its influence in judicial decisions can be assessed in terms of its moral impact, its relation to International Law, and its influence on International Agreements and National Legislation. The most common claim made for the Declaration is that it provided a common standard of achievement in respect for human rights and that it offered hope and inspiration to many not at this time enjoying those rights. These ideas were usually referred to as representative of the "moral" influence of the Declaration. They were

44 Ibid., 287, 288.
the burden of much of the argument in favor of the Universal Declaration before the General Assembly in 1948. However, there was also criticism of the weakness of merely moral influence. Mr. Vyshinsky said it was no use to say that ideas must be opposed to ideas: ideas had not stopped Hitler from making war. Mr. Manuilsky of the Ukrainian Soviet Socialist Republic compared the present with the French Declaration of Rights and pointed out that the proclamation of equality had not effected equality, but that, on the contrary, economic inequality had become more pronounced in bourgeois than in feudal society. And Mr. Katz-Suchy of Poland considered a declaration with mere moral force a retrograde movement compared with the Communist Manifesto which had proclaimed the compulsory nature of human rights one hundred years before.

In a balanced judgement on the importance of the moral impact one authority on international law said:

45 Everyone of the following is recorded as advancing the moral influence of the Declaration as reason for supporting it: Mrs. Roosevelt of the United States, Mr. Cassin of France, Mr. Van Roijen of the Netherlands, Mr. Watt of Australia, Mr. Thors of Iceland, Mr. De Athayde of Brazil, Mr. Davies of the United Kingdom, Mr. Campos Ortiz of Mexico, Mrs. Menon of India, Mr. Pearson of Canada, Mr. Matienzo of Bolivia, and Mr. Vasconcellos of Paraguay. Official Records of the Third Session of the Assembly, 873-901.

46 Ibid., 855.
47 Ibid., 869.
48 Ibid., 904.
A Declaration clearly does not make law, and there is something to be said for a statement of ideal rights to be widely promulgated in this form. It may engender internal as well as external pressures on States to approach the standard thus set. On the other hand, the disparity which will certainly continue between many national legislations and the International Declaration will elicit some further mockery of "pious wishes." 49

When all is said about the moral impact of the Declaration, it must still be admitted that it is an intangible, and therefore unmeasurable influence. But it may become a tangible. Professor Lauterpacht, a widely accepted international lawyer, has observed:

The moral claims of today are often the legal rights of tomorrow. The law of nature, even when conceived as an expression of mere ethical postulates, is an inarticulate but powerful element in the interpretation of existing law. Even after human rights and freedoms have become part of the positive fundamental law of mankind, the ideas of natural law and natural rights which underlie them will constitute that higher law which must forever remain the ultimate standard of fitness of all positive law, whether national or international. 50

There is a challenge in this statement. The chances of the moral claims of today's Declaration becoming the legal rights of the future involve the problems of international law and its sanction, of the future of world organization and its status, and of the Covenant of Human Rights. As such the


50 Hersh Lauterpacht, International Law and Human Rights, New York, 1950, 74.
discussion belongs properly to the section on the Covenant. But it is relevant here to note that the moral claims of today, referred to in this statement, are the articles of the Universal Declaration of Human Rights. The implication obviously is that the articles of the Declaration are really part of the natural law. To this, Jacques Maritain has added several distinctions.

Some articles of the Declaration, e.g., the right to existence and to personal freedom are, in fact, part of the natural— which Maritain distinguished from *jus gentium* by observing that natural law is universally known by human reason and by inclination, whereas *jus gentium* is derived from the natural law through rational knowledge. Maritain said: "... he St. Thomas means that the very mode or manner in which human reason knows natural law is not rational knowledge, but knowledge through inclination."  

Other articles, e.g., the ownership of material goods, belong to natural law by reason of their being derived through rational knowledge, and are part, therefore, of *jus gentium*, or more commonly, the law of Nations, or International Law. Still other rights, e.g., the social rights that free men from want, correspond to the requirements of the law of Nations, but depend upon positive law for their fulfillment. With these distinctions in mind, we can understand that some of the "moral claims" of the Declaration are already actually binding upon all men by reason of their being

part of the natural law; others, by being rational interpretations of the natural law belong to the law of Nations; and others merely corresponding to the requirements of the law of Nations, do not bind of themselves, but require promulgation as positive law.

The west European nations gave a tangible proof of the impact of the Declaration of Rights in the Convention concluded by the members of the Council of Europe on November 4, 1950. The lack of sanction attaching to the Declaration and the uncertainty of the conclusion of an acceptable Covenant prompted the countries of western Europe to draw up a "Convention for Protection of Human and Fundamental Freedoms." The original text of the Convention was a chart of ten rights arrived at by combining several rights listed separately in the Universal Declaration, with specific reference to the articles thus summarized. This text was submitted to legal experts who met in February, 1950, to consider the document. A conflict developed between lawyers with a civil law background for whom the simple enumeration of rights as stated in the draft was correct and sufficient, and the lawyers with a common law background who demanded definitions of conditions and circumstances governing each article of the draft. A compromise was

52 Members of the Council of Europe: Belgium, Denmark, France, the Federal Republic of Germany, Greece, Iceland, Ireland, Italy, Luxembourg, the Netherlands, Norway, the Saar, Sweden, Turkey, and the United Kingdom. Impact of the Universal Declaration of Human Rights, 29.

effected by which the original ten articles were incorporated in a Convention that totaled, with the addition of definitive articles, eighty articles. The Convention differed from the Declaration specifically, however, by its legal commitments: one giving the individual access to an international organ capable of protecting him, and a second one instituting a judicial body to interpret and pass judgment on violations of human rights.\textsuperscript{54} The Convention was signed November 4, 1950, in Rome by Ministers of thirteen nations of the Council of Europe; the other two nations registered their signatures before the end of the month.\textsuperscript{55}

If the Universal Declaration is considered as a "standard of achievement," one further instance of its impact may be cited. Although the Declaration had no direct influence upon the National Constitutions drawn up in the years immediately following the Declaration, yet the similarity in the provisions makes it reasonable to relate the latter to the former. Thus the Constitutions of Indonesia, 1949;\textsuperscript{56} Albania, 1950;\textsuperscript{57} El Salvador, 1950;\textsuperscript{58}

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\textsuperscript{55} *Impact of Universal Declaration of Rights*, 29.

\textsuperscript{56} *Yearbook of Human Rights*, 1949, 113-117.

\textsuperscript{57} *Ibid.*, 13, 14, 15.

\textsuperscript{58} *Ibid.*, 246-251.
Syria, 1950; Haiti, 1950; and the Hashemite Kingdom of Jordan, 1951; all contain elaborate provisions for safeguarding human rights. Many of them worded in statements identical with those in the Universal Declaration. The Japanese Peace Treaty made a direct reference to the Declaration as a "standard of achievement";

Whereas Japan for its part declares its intention to apply for membership in the United Nations and in all circumstances to conform to the principles of the Charter of the United Nations; to strive to realize the objectives of the Universal Declaration of Human Rights...

59 Ibid., 280-283.
60 Ibid., 116-118.
61 Ibid., 1951, 212-213.

This declaration of intention on the part of Japan was criticized by members of the United States Senate when the treaty was presented for ratification in 1952. As a result the following memorandum was submitted by the Department of State:

"There is nothing in the peace treaty which makes human rights a matter of international contract of which gives any Allied nation the right to interfere in Japan's internal affairs on account of human rights. There is no article of the treaty which mentions human rights.

"The preamble of the treaty contains a number of declarations of intention as is customary and one of these is a statement by Japan that she intends 'to strive to realize the objectives of the universal declaration of human rights.' Some wanted the treaty to include a legal obligation to respect human rights and fundamental freedoms. This was done in the case of the Italian and satellite treaties. However, there has developed in the United States considerable objection to trying to make human rights a matter of enforceable treaty obligation because, under our Constitution, treaties become 'the supreme law of the land', and a treaty on human rights might perhaps impair states' rights in relation to this subject. Therefore, we did not make human rights a matter of treaty obligation.

"However, almost all of the nations of the world, except the Soviet bloc, have accepted the universal declaration of human
At the same time that the Commission on Human Rights was engaged in drawing up the Declaration of Rights, two sub-commissions were engaged on problems concerned with Freedom of the Press, and with Prevention of Discrimination and Protection of Minorities. The work of these sub-commissions will be considered separately.

rights as a statement of worthy objectives and the Japanese wanted to be in the same category. Also, almost all of the provisions of this declaration are already engrafted in the Japanese Constitution adopted during the occupation.

"It would be rather absurd for the United States to oppose Japan's making the kind of declaration of intent that she wanted and that other free nations have made." Japanese Peace Treaty and Other Treaties Relating to Security in the Pacific, Hearings before the Senate Committee on Foreign Relations, 82nd Congress, 2nd session, 153.
CHAPTER V

THE SUB-COMMISSIONS

Sub-Commission on Freedom of Information
and of the Press

Problems concerned with freedom of information and of
the press were presented to the Assembly of the United Nations in
1946 by the head of the United States delegation to the General
Assembly, Edward R. Stettinius. He transmitted communications
addressed to him by the United Press Association and the Standing
Committee on World Freedom of Information of the American Society
of Newspaper Editors, and by the delegation of the Philippine
Commonwealth, asking that an international conference on freedom
of information and of the press be called. Mr. Stettinius in his
letter of transmission advised that the United States hoped that
the Human Rights Commission would undertake the study of the pro-
blem as soon as possible. The conference asked for by the Phil-
ippine delegation was discussed but not decided upon by the Gen-
eral Committee of the Assembly. When the problem was turned over
to the nuclear commission on Human Rights, that group asked that
it be authorized to establish a sub-commission on freedom of
information and the press. On June 21, 1946, the Commission on Human Rights was empowered to establish the sub-commission and give it its terms of reference. A second resolution submitted by the Philippine Republic that an international conference on freedom of the press be called, was acted upon by the General Assembly at its sixty-fifth plenary meeting. The Economic and Social Council was instructed to convolve the conference. The Human Rights Commission at its first regular session from January 27, to February 10, 1947, discussed the functions and composition of the Sub-Commission and decided to establish it. The functions of the Sub-Commission were to examine the rights, obligations, and practises to be included in the concept of freedom of information, and to report any issues that arose to the Human Rights Commission, and to perform other functions as requested by the Commission or the Council.1

As the Sub-Commission soon realized, its main function, that of determining the definition and scope of freedom of information, had to be postponed in favor of the immediate need of

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1 Document E/CN.4/Sub.1/11, 1-3. The members of the first Sub-Commission were: Mr. Z. Chafee, United States of America; Mr. P. H. Chang, China; Mr. R. J. Cruikshank, United Kingdom; Mr. Jose Isaac Fabrega, Panama; Mr. George V. Ferguson, Canada; Mr. Roberto Fontaina, Uruguay; Mr. Andre Geraud, France; Dr. G. J. van Heuven Goedhart, the Netherlands; Mr. J. M. Lomakin, Union of Soviet Socialist Republic; Mr. Salvador Lopez, Philippine Republic; and Mr. Lev Sychava, Czechoslovakia.
preparing the agenda for the International Conference on Freedom of Information. That function, entrusted to the Sub-Commission by the Economic and Social Council under the ambiguous terms of "other functions requested" occupied the attention of the Sub-Commission during its first session from May 19 to June 18, 1947.

The Sub-Commission recommended that the Conference be called in March or April of 1948; that all States whether or not members of the United Nations be requested to send delegates to the Conference; that specialized agencies which had concluded agreements with the United Nations should send representatives; and that each State should send not more than five delegates and five alternatives, with advisers as required.\(^2\) The matter of drawing up principles for the guidance of the representatives to the Conference provoked prolonged debate and illustrated the great differences among the ideals of the various States. Mr. Lomakin of the U.S.S.R. submitted the following list of principles:

The tasks of the Press:
(a) To struggle for international peace and security.
(b) To develop friendly relations among nations based on respect for the principle of independence, equal rights, and self-determination of peoples;
(c) To organize the struggle for democratic principles, for the unmasking of the remnants of fascism, and for the extirpation of fascist ideology in all its forms.
(d) To cooperate in solving problems of an economic, social, cultural, or humanitarian character and to encourage respect for human rights and for fundamental freedoms

for all without distinction of race, sex, language, or religion.

(e) Along with the development of freedom of information, to organize an effective campaign against organs of the Press and information which are inciting the peoples to war and aggression, and for a decisive and unrelenting unmasking of warmongers. 3

Mr. López of the Philippines proposed:

Consideration of the objective of the press, radio, and films as media of information, including the following:

(a) To tell the truth without prejudice and to spread knowledge without malicious intent.

(b) To facilitate the solution of the economic, social and humanitarian problems of the world as a whole through the free interchange of information bearing on such problems.

(c) To help promote respect for human rights and for fundamental freedoms for all without distinction of race, sex, language, or religion.

(d) To help maintain international peace and security through understanding and cooperation between peoples. 4

Six specific problems were placed on the agenda for the consideration of the conference. These concerned measures to facilitate gathering of information, measures to facilitate the international transmission of information; measures to implement the right of all to receive accurate information and the obligation of the Press to provide it; consideration of continuing machinery to promote the free flow of true information; modes

3 Ibid., 7.

4 Ibid., 8.

The principles adopted by the Conference were those submitted by López with the addition of a single clause drawn from (e) of Mr. Lomakin's list, and added to (d) of the list of Mr. López: "... and to combat forces which incite war by removing bellicose influences from media of information." Department of State Bulletin, XVIII, March 14, 1948, 339.
of action to implement resolutions and agreements of the Conference. 5

The Conference met at Geneva in 1948 and prepared three conventions which were accepted by large majorities. The first was a Draft Convention on the Gathering and International Transmission of News, sponsored by the United States, and provided for freedom of movement and protection for foreign correspondents. The second was a Draft Convention concerning the Institution of an International Right of Correction, sponsored by France, framed to afford protection against false or distorted reporting likely to injure relations between nations. The third was a Draft Convention on Freedom of Information sponsored by the United Kingdom which guarded against government interference in the search for news and its dissemination. Since only the preparation of the agenda for the Conference and not the Conference itself was the work of the Sub-Committee, the results of this Conference will be given in summary. 6

Of the three conventions prepared by the Conference, only the Convention on the International Rights of Correction, an article designed to afford protection against false or distorted


reporting likely to injure relations between states, was submitted for signature and that not until March 31, 1953. A significant result of the Conference, however, was the realization that the difference of understanding of freedom of information was not the simple opposition of the totalitarian states to the democratic states: there were all shades of differences among them. The extreme view of absolute freedom from government interference, sponsored by the United States was as unacceptable to many members of the Conference as the limited rights sponsored by the totalitarian states. Moreover, many of the smaller states objected to the powerful news agencies of the United States and the United Kingdom and were highly critical of the treatment accorded them by these agencies. The Conference was unsuccessful in the conclusion of arguments. Although large majorities at the Conference accepted the three Draft Conventions, one on "Gathering and International Transmission of News," another on "International Right of Correction," and a third on "Freedom of Information," the Assembly decided not to open them for signature, until, in 1953, it did present the Convention on the International Right of Correction.

The second undertaking of the Sub-Commission on Freedom of Information and of the Press was the definition of terms and

the formulation of an article for inclusion in the Declaration of Human Rights and in the Covenant. This occupied the attention of its members in the session which met from January 19, to February 10, 1948. The article for the Declaration as drafted by the Sub-Committee read: "Everyone shall have the right to freedom of thought and communication: this shall include freedom to hold opinions without interference; and to seek, receive, and impart information and ideas by any means and regardless of frontiers." This text was adopted in substance, with almost identical wording in the final form of the Declaration as Article 19. The lengthy draft prepared for the Covenant has, however, been greatly modified in the several versions of that document. As submitted by the Sub-Commission on Freedom of Information the article stated:

I. Every person shall have the right to freedom of thought and expression without interference by governmental action: this right shall include freedom to hold opinions, to seek, receive, and impart information and ideas, regardless of frontiers, either orally, by written or printed matter, in the form of art, or by legally operated visual or auditory devices.

II. The right to freedom of expression carries with it duties and responsibilities. Penalties, liabilities, or restrictions limiting the right may therefore be imposed for causes which have been clearly defined by law, but only with regard to

(a) Matters which must remain secret in the vital interests of the State.
(b) Expressions which incite persons to alter by violence the system of government.
(c) Expressions which directly incite persons to commit criminal acts.

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(d) Expressions which are obscene.
(e) Expressions injurious to the fair conduct of legal proceedings.
(f) Expressions which infringe rights of literary and artistic property.
(g) Expressions about other persons which defame their reputations or are otherwise injurious to them without benefiting the public.

Nothing in this paragraph shall prevent a State from establishing on reasonable terms a right of reply or a similar corrective remedy.

III. Previous censorship of written and printed matter, the radio and newsreel shall not exist.

IV. Measures shall be taken to promote the freedom of information through the elimination of political, economic, technical and other obstacles which are likely to hinder the free flow of information.

By 1949 the Sub-Commission had completed the functions for which it had been established. However, the Economic and Social Council decided to extend the life of the Sub-Commission for three years and to expand its terms of reference. The extension was given especially for the purpose of allowing time for the completion of a code of ethics for journalists. While the Sub-Commission was engaged in this project, and others, criticism developed. The Sub-Commission was said to have attempted too many projects at the same time, to be unrealistic, to have neglected political barriers to freedom of information and to have concentrated upon technical problems. As a result the Economic and Social Council decided that the Sub-Commission should not meet during 1951. At the 1950 session of the Assembly, however, there

9 Document, E/CN.4/Sub. 1/65
was severe criticism of the Council's decision and the Assembly reversed it, deciding that the Sub-Commission should continue until the Code of Ethics had been completed. The draft submitted by the Sub-Commission in 1952 contained five articles. In summary they required that truth be the paramount consideration of the press; that no mere rumors, unfounded accusations, calumnies, slander, or libel be printed; that only such tasks as are compatible with the dignity of journalism be accepted; that background for foreign reports be sought; and that the profession, not the government, hold itself responsible for enforcing the code.10

The text of the code was submitted to informational enterprises and professional associations for comment, but little attention was paid to it. Of the 500 enterprises to which it was sent only 54 had responded in 1953. The Sub-Commission on Freedom of Information and of the Press made its last report in March, 1952.11

Sub-Commission on Prevention of Discrimination and Protection of Minorities

At the fifth meeting of the Economic and Social Council's Drafting Committee the delegate of the Soviet Union circulated two proposals: one to establish a sub-committee on the


protection of minorities and another to establish a sub-commission on the prevention of discrimination. The Chairman of the Human Rights Commission, Mrs. Roosevelt, agreed to the proposition submitted by the Soviet Union, but suggested that the two sub-commissions be combined as the Sub-Commission on Prevention of Discrimination and Protection of Minorities. The Commission decided in favor of this suggestion. The functions of the sub-commission were: to define the principles to be applied in the field of prevention of discrimination and in the field of protection of minorities, and to make recommendations to the Commission. Besides these, it should perform any other functions entrusted to it by the Economic and Social Council and the Commission on Human Rights.

The Sub-Commission opened its first session on November 22, 1947. Although a serious attempt was made at this meeting to agree on definitions of terms, only the definition of prevention of discrimination was accepted: "The prevention of discrimination is the prevention of any action which denies to individuals or

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The members of the original sub-commission were appointed by the Economic and Social Council: A. P. Borisov, United Soviet Socialist Republics; C. F. Chang, China; Jonathan Daniel, United States of America; Erik Ener Ekstrand, Sweden; William Morris Jutson McNamara, Australia; M. R. Massani, India; Elizabeth Monroe, United Kingdom; Joseph Nisot, Belgium; Arturo Meneses Pallares, Ecuador; Herard Roy, Haiti; Rizazada Shafeq, Iran; Samuel Spanien, France.
groups of people equality of treatment which they may wish.13

The Sub-Commission worked on the definition of "minorities" until 1951, but the Commission on Human Rights consistently rejected the definitions suggested. Some members of the Commission thought the terms too broad; some thought them too narrow. The Sub-Commission decided to adhere to the 1951 definition:

(i) the term minority includes only those non-dominant groups in a population which possess and wish to preserve stable ethnic, religious or linguistic traditions or characteristics markedly different from those of the rest of the population;
(ii) such minorities should properly include a number of persons sufficient by themselves to preserve such traditions or characteristics; and
(iii) such minorities must be loyal to the State to which they are nationals.14

More encouraging progress was made in suggesting texts of Articles for the Declaration of Human Rights. Articles 6, 13, 28, and 36 as drafted by the Sub-Commission were considered in the final drafting of the Declaration and considerably modified the original texts.15

The second session of the Sub-Committee was scheduled for the fall of 1948. At the last meeting of the seventh session of the Economic and Social Council, August 28, 1948, it was suggested by Mr. Thorp, United States representative, that the meeting

13 Document, E/600, 12.
of the Sub-Commission be postponed until after the meeting of the Human Rights Commission. The reason he gave was that the Human Rights Commission planned to change the terms of reference of the Sub-Commission and that it should, therefore, not meet until the new terms had been prepared for it. The Russian delegate, Mr. Arutunian, supported by Mr. Kaminsky of the Byelorussian Soviet Socialist Republic, was very much opposed to the suggestion, and by invoking various rules of procedure against its discussion, succeeded in obtaining a withdrawal of the motion which left the decision regarding the time of the meeting to the General Assembly.16 Upon the advice of the Secretary General, however, the Interim Committee on Programme of Meetings eliminated the 1948 meeting of the Sub-Committee. Mr. Korozov of the U.S.S.R. considered the decision unlawful, invalid, and a sign of political motivation within the Economic and Social Council. To him it appeared that there was a tendency to avoid discussion of prevention of discrimination.17 By the time the second session of the Sub-Commission was held in 1949 certain tensions had become apparent. Already the question of the time of the meeting had been discussed along national lines—the nations of eastern Europe


lining up against postponement, the western democracies favoring it. Now there appeared dissatisfaction within the Sub-Committee itself which looked upon itself as a body constituted to propose practical measures to prevent discrimination and to protect minorities. Instead, it found in its new terms of reference that its work was to be "purely theoretical and analytical in character."  

Mr. Meneses Pallares of Ecuador deplored the situation which he felt was caused by (1) the difficulty of safeguarding respect for human rights by means of an international organization, (2) fear of intervening in matters essentially of domestic jurisdiction, and (3) diffidence of the Commission on Human Rights. Also, within the Sub-Commission there were acrimonious discussions on the relative amount of discrimination practised in the countries that were represented by members on the Sub-Commission. Thus the Russian member, Mr. Borisov, held up for imitation the Russian Constitution in which Article 123 guaranteed equal political, economic, social and cultural rights, at the same time pointing out that in the United States, as an example, there were many states with laws restricting the participation of citizens in voting on grounds of racial or property qualification. On which Mr. Masani of India made the insinuating observation:

Mr. Borisov had the advantage over other members of belonging to a country where, he had stated, the problem of minorities had been solved in a very satisfactory manner. Such a statement dissipated misgivings which might be felt by reading certain articles in the press. For example, the New York Times of 16 June published a dispatch from Cairo according to which the U.S.S.R. was on the one hand conducting an anti-semitic campaign on its own territory, and, on the other, was purging Moslem elements; and eminent professors of Moslem theology were faced with the alternative of being deported to Siberia or of going into hiding.21

Also, the Sub-Commission chafed under limitations of finances. A proposal to visit Trust Territories in order to find the real conditions of native populations, another to publish a triennial yearbook, and another to prolong the session of the Sub-Commission in 1950, were turned down by the Secretariat as outside the budgetary allowance for the Sub-Commission.22

Another cause of dissatisfaction within the Sub-Commission concerned the status of the body itself. Some members agitated for full commission status; others wanted at least the privilege of reporting directly to the Economic and Social Council, as the Sub-Commission on Freedom of Information and the Press was permitted to do. The Secretariat was opposed to both proposals, observing on the second that the problems which the Sub-Commission on Freedom of Information and of the Press brought directly to the Economic and Social Council were merely technical problems.23

Under these circumstances the Sub-Commission was able to accomplish little. By 1950 there was much criticism of the accomplishments of the Sub-Commission, but when the meeting for 1951 was cancelled by the Economic and Social Council, ostensibly for administrative and budgetary reasons, the Near Eastern, Asian, and Latin American delegations charged that the Council was dominated by the great Powers. The Assembly consequently asked the Council to reconsider its decision\(^24\) and the result was that the fourth session of the Sub-Commission was scheduled for October, 1951.\(^25\)

The fourth session of the Sub-Committee was concerned mainly with outlining the future tasks in the field of protection of minorities and prevention of discrimination.\(^26\) When the Economic and Social Council met in 1951 it again decided to cancel the meetings of the Sub-Commission, this time until 1954,\(^27\) but once again the General Assembly invited the Economic and Social Council to reconsider its decision and to call a meeting of the Sub-Commission in 1952.\(^28\)

\(^24\) Document, E/1877.


At the 1952 meeting the Sub-Commission made recommendations concerning data on all anti-discrimination provisions of the League of Nations and the United Nations for the use of States drawing up new constitutions, and co-operation of non-governmental organizations in eradicating prejudice and discrimination. It suggested that UNESCO publish its findings on religious discrimination; it proposed that Member-States review their legislation with a view to abolishing all discrimination; it proposed that special attention be paid to the problem of minorities in international treaties; and it asked the Secretary-General to publish a popular book on the work of the United Nations in preventing discrimination and protection of minorities.29

In the 1953 session the most important undertaking planned by the Sub-Commission was a study to be undertaken cooperatively with UNESCO on discrimination in education.30 This was the initiation of a program of research which was to include studies on unemployment and occupations, political rights, religious rights, residence and movement, immigration and travel, the right to choose a spouse, enjoyment of family rights, and the termination of national, racial, and religious hostility. Some of the proposed studies have since been completed; many are still in progress.

CHAPTER VI

THE COVENANT

AND THE SIGNIFICANCE OF THE UNITED STATES ATTITUDE

The history of the Covenant on Human Rights provides a substantial contribution to the history of mid-twentieth century political and social thought. As the drafting of this instrument progressed, the attempts to define rights in terms that would be internationally acceptable revealed the political and social thinking not only of the members of the Commission, but of the governments and, to some extent, of the peoples they represented. As such, the history of the successive drafts is valuable. It is more to the purpose of this dissertation, however, to examine the problems that were encountered in the work of drafting and to take note of factors contributing to their solution or to their resistance to solution. The progress of the drafts as they succeeded one another will be given in summary only or as the changes affected specific problems or were affected by them.

The Human Rights Commission began its serious work on the Covenant after the Declaration of Rights had been accepted by the Assembly in December, 1948. The basis of its work was a text prepared by representatives of the United Kingdom in
1947. The first draft was completed in May, 1948, before the Universal Declaration had been accepted. In May, 1949, the United States submitted detailed proposals as modifications of this draft, and these were considered in subsequent discussions. As work progressed, all the Member-States made suggestions and provided arguments for and against these texts. The first draft to reach the General Assembly was presented to that body on October 18, 1950. The problems raised at this meeting were indicative of the difficulties with which the work of the Covenant was to be beset; the problems of (a) general adequacy of the articles; (b) problem of application of the Covenant to federal States as well as to Unitary States; and the application in Non-Self-Governing and in Trust Territories; (c) the desirability of including articles on economic, social, and cultural rights; and (d) the problem of implementation.

On the question of adequacy the discussion brought out three different positions. The first position, that of the United Kingdom, the United States, and the countries of Western Europe generally, was that only fundamental civic rights should have place
in the Covenant. Their reasoning was that the Covenant should give expression to the minimal obligations of States to recognize and to insure human rights. By this token the Covenant would include only those rights which were already generally accepted in civilized countries and which most nations would readily accept. The second position, that taken by the Latin American countries as well as those of the Near East and Asia, was that the Covenant should be the goal toward which all governments ought to strive in the defense of human rights. They thought, too, that their own Governments could be brought to respect more of the rights, stated in their constitutions but not enforced, if all of these rights were also written into the Covenant. The third position regarding adequacy was that held by the Soviet bloc. Their efforts were bent in the direction of inclusion of economic, social, and cultural rights, together with provisions expressive


Uruguay, Ibid., 128.
India, Ibid., 128, 129.
Iraq, Ibid., 131.
of their totalitarian philosophy. The problem of including social and economic rights in the single or in a second separate Covenant was on the agenda as part of Problem C. The Soviet advance in attempting to include a discussion on it under Problem A was therefore ignored. The question of adequacy was thus not decided until the place for the social and economic rights was agreed upon as will be seen later.\(^8\)

The second problem, Problem B, occasioned considerable discussion. It was the question of the application of the Covenant to federal States as compared with its application to centralized, unitary States. The United States with its history of conflict over states' rights was particularly concerned with this problem. Mrs. Roosevelt read the proposal submitted by the United States in relation to Article 43 which dealt with the application of the Covenant to federal States. The proposal suggested that:

any articles which were determined to be appropriate in whole or in part for action by the constituent parts of the federal State, the federal government should bring such articles, with favorable recommendation, to the notice of the appropriate authorities of the constituent parts at the earliest possible moment.

Czechoslovakia: Ibid., 118.

\(^8\) See below pages 121, 122, 123.
In making this suggestion the delegate of the United States said it would be necessary to include such an article in the Covenant in order to make it possible for federal States to adhere to it. The delegates of Australia, Canada, the Netherlands, and New Zealand associated themselves with the United States proposal. The delegate from the United Kingdom agreed conditionally and argued that the federal States should not themselves be allowed to determine which articles of the Covenant were appropriate for federal action and which should be reserved to the States. Mr. Bohari of Pakistan was unsympathetic to the alleged difficulty of the representatives of federal States. His observation was that when it was a question of voting on one clause of the Covenant, those States voted as States, but they changed themselves into federal governments when it was a question of signing the Covenant. He would concede that the federal States might not be able to sign because they were advised against it by their constituents, but should they sign, then they should assume the same treaty obligations that unitary States assumed. The delegate from Iraq agreed with Mr. Bohari. The delegate from Yugoslavia

Australia: Ibid.
Canada: Ibid., 135.
New Zealand: Ibid.

10 Ibid., 371
12 Ibid., 137.
observed that in spite of the fact that his was a federal State composed of six states, he would not accept the idea of disparity of obligations implied in the suggested Federal State clause.\textsuperscript{13} The delegate from Uruguay pointed out that from the standpoint of international law a federal State, as distinct from a confederation was considered a single unit. He did admit that the Covenant, if signed by a federal State, might require some modification in the form of reservations.\textsuperscript{14} The representatives from Denmark, Cuba, Colombia, Mexico, Poland, the U.S.S.R., the Byelorussian S.S.R., the Ukrainian S.S.R., India, Dominican Republic, and Czechoslovakia were opposed to the inclusion of a federal clause.\textsuperscript{15} Mr. Cassin of France approached the problem in pragmatic fashion: he was opposed to the federal clause, but he was

\textsuperscript{13} \textit{Ibid.}; It should be observed that the delegate from Yugoslavia used the term "federal" as it is interpreted in the USSR and countries under its control. It does not have the same impact as the term has in western countries, as, for example, in the United States, where the federated states are autonomous in all areas not directly specified in the Constitution as under the government of the United States. The different meanings attached to terms was here, as elsewhere, cause of considerable misunderstanding.

\textsuperscript{14} \textit{Ibid.}, 138.

\textsuperscript{15} Denmark: \textit{Ibid.}
Cuba: \textit{Ibid.}, 139.
Colombia: \textit{Ibid.}
Mexico: \textit{Ibid.}
India: \textit{Ibid.}, 144.
Dominican Republic: \textit{Ibid.}, 137.
Czechoslovakia: \textit{Ibid.}, 144.
willing to choose inserting it as a lesser evil than that of indefinite procrastination of the large federal States in ratifying the Covenant.\textsuperscript{16} The Norwegian and Brazilian delegates agreed that some concession to the federal States was warranted in exchange for a ratification that might otherwise be withheld.\textsuperscript{17}

The second part of Problem B, that of the application of articles of the Covenant to Non-Self-Governing and Trust Territories was recognized as having implications different from the preceding one. As is the case in the United Kingdom the metropolitan government in many instances undertook no obligation on behalf of the colonies without consulting local governments. There was logic in asking that the principle of the maximum of autonomy for Non-Self-Governing territories be maintained in this instance, these governments felt.\textsuperscript{18} However, the delegates lined up, both for and against the inclusion of a clause limiting the responsibility of the ruling State in the case of territories. India took a decided stand. The delegate from that country objected to the colonial clause as discriminatory. The imperialistic Powers, India urged, were seeking to absolve themselves from obligations concerning human rights in those parts of the world where they needed most to be applied. Besides, if the governing

\begin{itemize}
  \item \textsuperscript{16} \textit{Document}, A/C.\textsc{3}/SR.292, 138.
  \item \textsuperscript{17} Norway: \textit{Ibid.}, 142.  
    Brazil: \textit{Ibid.}, 143.
  \item \textsuperscript{18} \textit{Document}, A/C.\textsc{3}/SR.294, 150.
\end{itemize}
countries were sincere about wanting autonomy for the colonies they needed only to withdraw and leave the colonies to their own government. As the delegates expressed themselves it became clear that the few if important imperial governments were outnumbered by the non-imperial countries. France and Belgium joined with the United Kingdom in sponsoring the limiting clause. Syria, the U.S.S.R., the Ukrainian S.S.R., Ethiopia, Czechoslovakia, Poland, China, Pakistan, India, Iraq, Saudi Arabia, Byelorussian S.S.R., Indonesia, Lebanon, Cuba, Mexico, Pazhwh, and Egypt stood with India against it.

Although the Soviet bloc had inserted the problem of inclusion of social and economic rights into their criticism of the general adequacy of the first eighteen articles, the other countries withheld discussion until it was brought formally in the Assembly as Problem C, on October 30, 1950. The first comment, that of the representative from Brazil, suggested one or more separate covenants on social and economic rights. He insisted that it was the most urgent task of the Commission to draft one Covenant comprising the basic "natural and inalienable rights" and to draft it in such terms as could and would be accepted by a large majority of the members of the United Nations. Once that was accomplished, he affirmed, men would also be assured all the

economic, social and cultural rights.  

To this idea the delegate from New Zealand agreed, as did the delegates from the United States, Denmark, the United Kingdom, Greece, Venezuela, and the Dominican Republic. The Netherlands delegate took exception to this position on one point only: he would include the right to possess property in the basic, if not natural and inalienable rights. The Cuban representative, Mr. Rodriguez, disagreed. He considered a single covenant, including economic, social, and cultural as well as civic rights preferable from the legal point of view, more compatible with the wishes of the peoples, and more realistic in relation to the needs of contemporary society. The Soviet bloc had already committed itself to the same position during the discussion of Problem A and the representatives from Mexico, Iran, Egypt, Iraq, Argentina, and Syria now concurred. The delegate from France did not agree with the statement of the delegate from Brazil that the economic and social rights would automatically be assured once the civil and political rights were observed, but he realized also, that because of the difficulty of securing ratification for a covenant that would include all the classes of rights, it would be better to draft several covenants.

23 Ibid., 173.
24 Ibid.,
25 Ibid., 178-189.
This delegate suggested also, that the United Nations could learn much from the International Labor Organization in the matter of securing ratification. While he believed the ILO's practice of bringing national legislation into line with a proposed covenant before securing ratification was too slow, he thought a modification of that method, whereby a State would ratify and subsequently alter domestic legislation within a specified time, would be ideal.26 The representative of the ILO responded to this suggestion by pointing out that the experience of his organization proved that problems of ensuring economic and social rights were extremely complex and that general principles were not enough. In some instances the principles must be applied in progressive stages; sometimes earlier decisions must be revised in light of later development; and the interrelationship of economic arrangements, the interdependence of industries and occupations must be kept in mind lest the consequence of change defeat the purposes of the general principles. The International Labor Organization therefore hoped for continuance of the procedure under which matters within the competence of the ILO were referred by the Council and the Assembly to the ILO for action. He also hoped that the experience and facilities of the ILO would be kept in mind in any action proposed.27

The problem of implementation, the last of the four to be taken up for discussion at this session, came before the Third Committee of the General Assembly on November 1, 1950. As drawn up by the sixth session of the Commission on Human Rights, the machinery for implementation included a Committee of seven members whose qualifications should be "high moral standing and recognized competence in the field of human rights." If a State Party should consider that another State Party was not giving effect to a provision of the Covenant, it might bring the matter to the attention of the offending State. If after six months the matter was not adjusted to the satisfaction of both Parties, either State might refer the matter to the Committee of Seven. The Committee was given powers to deal with any matter which was not within the specific competence of some other organ of the United Nations, or which was not at that moment before the International Court of Justice. 28

Mr. Cassin, the representative from France brought up the problem of limitation of sovereignty which any kind of international implementation of human rights must demand. To him the proposition, already an accepted practice in the ILO, that States submit periodic reports on their own implementation seemed the best solution. The provisions as set down in the draft Covenant were entirely unsatisfactory in his estimation, especially because

the complaints registered by States with the Committee might be of a virulent political character.

Mr. Cassin also criticized the provision that States might appeal to the Committee, but that individuals might not. This lack of right of petition for individuals was scored by a number of representatives. The representative from the Netherlands thought that this omission weakened the safeguards for the implementation of human rights. 29 The representative from Sweden argued in favor of the right of individuals to petition the Committee, although she would give that body the right to eliminate anonymous petitions and those of a malicious or abusive character. The delegate from Uruguay considered the machinery for implementation in this instance paradoxical: for fear of granting individuals the right to bring charges against their own country, it had been found preferable to give States the right to bring charges against one another, which the Uruguayan delegation considered much more serious. 30 The Brazilian delegate expressed the opinion that it was clearly the individual who should be protected from possible abuse on the part of governments, and that an instrument should be drafted giving him the right of petition. 31 To this the delegates from Syria, Guatemala, and

29 Document, A/C.3/SR.300, 191
30 Ibid., 192.
and India agreed. 32 The delegate from the United States pointed out that the Human Rights Commission had not overlooked the right of individual petition, but that it proposed to add to the Covenant a protocol, to be ratified separately from the Covenant, which would ensure the right to individuals. The Commission hoped by this method to secure ratification for the Covenant from States which were not prepared to accept the right of petition by individuals. 33 The delegate from Mexico supported the plan as proposed by the Commission. 34 The delegate from the United Kingdom explained that the Commission had been guided by two considerations in withholding individual right to appeal.

In the first place the Commission thought it would be difficult to grant the right and still safeguard it from abuse—that it might be used for political purposes was the principal abuse the Commission had in mind. In the second place there was danger, the Commission thought, of lowering the prestige of national law courts should the individual be guaranteed right of appeal to an international body from a national court. 35 The delegate from Greece said that he concurred fully in this observation.

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34 Ibid., 194.
35 Ibid., 196.
and approved of the method of implementation in the Draft Covenant.  

The delegate from Turkey took an opposite view. In his opinion, the Covenant, being an international treaty, imposed reciprocal obligations upon the signatory States. Therefore, only States would be in a position to judge whether one of them was respecting the undertakings it had assumed on signing the Covenant. 

The delegate from Chile associated himself with this attitude, observing that there was less danger of States unduly denouncing each other than of the clause remaining inoperative because of governmental sense of responsibility, which would easily deter a State from making a denunciation of another State. 

The threat of intrusion upon domestic sovereignty by any kind of international implementation was especially criticized by the Soviet bloc. In the estimation of these States the question of implementation was entirely a matter of domestic concern and could not be defined, as the U.S.S.R. delegate stated, "without taking into account differences in political, economic, and social structure between States." On November 2, 1950, the Assembly decided it was ready to entertain resolutions and amendments on the four problems which had been discussed.

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37 Ibid., 195.
The Philippine and Syrian delegates jointly proposed a resolution to do away with the colonial clause. They considered it an anachronism in the twentieth century to refuse to grant fundamental human rights to the people in dependent territories. The resolution was adopted by a vote of 30 votes to 11, with 8 abstentions.40

Brazil, Turkey and the United States proposed a resolution accepting the first eighteen articles of the draft Covenant as adequate. With some modifications and especially with an amendment by the delegate from Mexico that the economic, social and cultural rights should be added, not in a separate instrument, but within the first covenant, and with a stipulation that the articles must be stated more precisely, the resolution was accepted on a vote of 27 to 13, with 7 abstentions.41

The next resolution concerned the federal-state clause. The Mexican delegate pointed out the importance of any decision in this matter, not only on the Covenant on human rights, but on all subsequent instruments signed by members of the United Nations. After considerable debate, in which substantially the same ground was covered as during the earlier discussion, the resolution calling for more study on the advisability of including a federal

state clause was adopted by a vote of 31 to 3 with 14 abstentions.\textsuperscript{42}

On the question of territorial application, the resolution was adopted to insert in the Covenant an article to the effect that the provisions of the Covenant were extended to and were equally applicable to a metropolitan State and to all its territories.\textsuperscript{43}

When the Human Rights Commission convened in March, 1951, the principal item on its agenda was a re-draft of the Covenant based upon these policy decisions of the Third Committee of the Assembly. The first problem taken up was that of the inclusion of economic, social and cultural rights in a single covenant. Those in favor, particularly the Soviet bloc, wished to consider the Assembly's decisions binding; those opposed judged that the decisions were in form of an advice which the Commission might profitably heed, but by which it was not bound.\textsuperscript{44} After a week and a half of discussion, during which there was total lack of agreement, the Commission adopted the resolution to transform itself into

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a working group with the task of studying in private meetings the various proposals concerning economic, social, and
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\textsuperscript{42} Document, A/C.3/SR.309, 239.

\textsuperscript{43} Document, E/CN.4/513, 14.

\textsuperscript{44} Document, E/CN.4/SR.203, 204.
cultural rights, in cooperation with representatives of the specialized agencies concerned.45

By July 3, 1951, Articles 19 to 32, comprising the economic, social, and cultural rights, had been accepted by the Commission. Article 19, proposed by the representative from France, was particularly significant and came to be known as the "umbrella" clause. By it the States Party to the Covenant undertook

... to take steps, individually and through international cooperation, to the maximum of their available resources, with a view to achieving progressively the full realization of the rights recognized in this part of the present Covenant.46

In pursuance of adequate and acceptable implementation, the Commission strengthened the Committee to which reports and complaints were to be directed, and added two to its membership. Moreover it added nine articles outlining the system of reporting by States Parties on the progress made in achieving the observance of the rights set forth in the Covenant.47 No decisive action was taken on the right of individuals and organizations other than States to bring petitions before the Committee. The proposal of Uruguay, setting up an elaborate system to handle individual petitions,48 was rejected. The idea of drafting a

separate draft protocol was entertained, but it was not voted upon.

The 1951 session of the Human Rights Commission was in many respects unsatisfactory to itself and left much of its work unfinished. This was recognized by the Economic and Social Council, but it decided to re-submit the unfinished draft of the Covenant to the General Assembly in order that governments not represented on the Commission nor in the Council might be given an opportunity of again expressing their views. Particularly, the Council asked the Assembly in deference to a request made by India to the Commission to reconsider its decision to include economic, social, and cultural rights in the same Covenant with political and civic rights.

In the discussion on this point, the necessity of including both civil and social rights in one covenant was opposed by some members who pointed out the differences between the two classes of rights: differences in their relative foundation in natural law; differences in degrees of application; differences in methods of implementation; differences in time element. The Assembly acceded to the request of the Economic and Social Council and in Resolution 543 (VI) adopted by a vote of 27 in favor, 20 against, 3 abstentions, two separate covenants, stating that the

two should contain as many similar provisions as possible. The Commission was further requested by the Assembly to prepare for inclusion in the two draft covenants one or more clauses relating to the admissibility or non-admissibility of reservations and to the effects to be attributed to them.\footnote{Document, A/2172, 75.}

By 1953 no decision was taken on the matter of reservations. However, several texts had been submitted. The United Kingdom had drafted an article allowing any state to make a reservation "to the extent that any law in force in its territory is in conflict with, or to the extent that its law does not give effect to, a particular provision of Part III of this Covenant. (Part III contains substantive rights.)" A second draft article proposed by China, Egypt, Lebanon, and the Philippines provided that any state might make a reservation "compatible with the object and purpose of the Covenant." A Soviet amendment proposed that any State might make a reservation to any provision in the Covenant. The Covenant then would be in force "in relations between the States which have made the reservations and all other

\footnote{Two later attempts by the Soviet Union to reverse this decision of the Assembly were defeated; the favorable attitude of the States toward separate covenants after 1951 has been attributed to three factors: (1) the real differences recognizable between the two classes of rights; (2) the efforts of the United States in foreign capitals and in United Nations' lobbies and committee rooms, and (3) the realization of the difficulty of securing ratification for a covenant in the United States and in Great Britain. Green, \textit{United Nations and Human Rights}, 41-42.}
Parties to the Covenant, in respect of all its provisions except those with regard to which the reservations have been made."

Chile and Uruguay made a counter-provision: "No State Party to the Covenant may make reservations in respect of its provisions."

The Belgian delegate introduced a provision into the debate upon the above proposals declaring that a State might make the reservation that it assumed no responsibilities in regard to the Covenant for any dependent territory. Since the effect of this reservation would be to negate the territorial clause in the Covenant, the provision was decisively defeated.\textsuperscript{51}

In recapitulation, the principal problems confronting the Human Rights Commission up to 1953 in its effort to draft a Covenant of Human Rights were the problem of drafting a single Covenant, including both civil and social rights, which was resolved by the decision of the Assembly in 1951 to draft two separate covenants which was a reversal of its 1950 position; the problem of State vs. individual rights of petition which was at first decided against individual right but later, upon pressure from various delegations was modified to an instruction to proceed with consideration of provisions in favor of rights of non-governmental organization and individuals to bring petitions; the

\textsuperscript{51} Report of the Tenth Session of the Commission on Human Rights, 28-33.
problem of reservations upon which no conclusion was reached; the problem of the federal State vs. the unitary state which was left unresolved until after 1953;\(^5\) the "territorial" or "colonial" clause which was rejected making metropolitan countries responsible for the enforcement of the Covenant in their territories; and other problems.

An observation that stands the test of critical investigation is the statement that the position of the United States on any question was of concern to all the member states of the United Nations.\(^5\) Even when the United States took no position at all its decision to take none carried significance. No better demonstration of this fact is available than the record of United States' participation in the work of the Human Rights Commission. The references in the preceding chapters are part of that record. Beginning with the work of the United States delegation at San Francisco and the efforts of the non-governmental organizations of this country at the Conference, the United States has been in some instances an important factor in the achievement of the

\(^5\) In 1954 after withdrawal of the United States as defender of the clause the Soviet draft: "The provisions of the Covenant shall extend to all parts of Federal States without any limitation or exceptions" was accepted. Green, \textit{Human Rights}, 55.

successes of the Commission and in others an important restraining influence, deflecting or interrupting the course of action. Since considerable attention has already been given to the initial contributions of the United States toward the creation of the Commission and since its position in the development of the Declaration of Rights, in the work of the sub-committees and on the problems presented by the Charter have been considered in their context, there remains the consideration of the attitude of the United States toward ratification of the Covenant.

The wary attitude of the United States against any encroachment upon domestic jurisdiction was apparent in the discussion on the Declaration. In regard to the economic and social rights Mrs. Roosevelt said that her country had made it clear that it did not consider that the economic, social, and cultural rights implied an obligation on governments to assure the enjoyment of these rights by direct governmental action. Yet the United States did not repudiate the idea of a binding Covenant. John Foster Dulles said at this time:

"We must go on with the drafting of a Covenant which will seek to translate human rights into law. It does not minimize the importance of our own Declaration of Independence to recognize that the Constitution and its Bill of Rights were required to establish the body of law necessary to achieve practical results."

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54 Mrs. Eleanor Roosevelt, Department of State Bulletin XIX, December 19, 1948, 494.

55 John F. Dulles, Department of State Bulletin XX, January, 1949, 19.
There is evidence in this statement, as there is in the Report of Secretary of State Stettinius, on the San Francisco Conference, that the official thought in the United States at this time was that the individual States could embody into their own domestic law for implementation. Stettinius proposed

... an international bill of rights which [could] be submitted to member nations with a view to incorporation in their fundamental law, just as there [was] a Bill of Rights in the American Constitution.56

In accordance with this line of thought it was the United States delegation in the Human Rights Commission that took the lead in advocating formulation of a Declaration of Rights instead of a Covenant.57 When the delegate from the United Kingdom pressed for a Covenant enforceable under international law, the United States compromised by agreeing to a Declaration first, a Covenant later.58

The idea of an internationally enforceable agreement on human rights brought to the fore the question of sovereignty as guaranteed in the Charter of the United Nations. Article 2, paragraph 7 of that instrument reads:

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

56 Stettinius, Report to the President, 118.
57 James Sisianian, Interview, February 27, 1956.
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.

The two opposing explanations of this section have not clarified the matter. According to one argument, the Members of the United Nations are legally competent to draw up within the framework of the United Nations for ratification by their governments, a treaty, which after ratification becomes legally binding. The opposing argument denies such competence; it regards Article 2, paragraph 7 of the Charter as a prohibition against drawing up within the framework of the United Nations any kind of instrument, which would encroach upon the domestic jurisdiction of the States. At San Francisco it had seemed clear that the Article was not intended to be a technical and legalistic formula, but was to reassure the Nations that the new organization would work through the governments rather than interfere directly in the economic or social affairs of the member States.59

Exactly how to define what should fall within the domestic jurisdiction of a State presented another problem; in practice, the United Nations has generally followed the traditional rule of international law that if the substance of a matter is controlled by international agreement or other provisions of international law, then it ceases to be solely within the domestic

59 Human Rights and Domestic Jurisdiction, 15.
jurisdiction of the states concerned. In the matter of human rights, these would become of international concern according to this rule upon the ratification of a Human Rights Covenant. In the United States the opposition to this idea was expressed in a resolution presented by Senator Bricker in 1951. This resolution proposed that the covenant, if ratified would prejudice the rights of Americans now protected by the Bill of Rights; that the proposed Covenant was unacceptable to the United States, and that the United States representatives at the United Nations should "withdraw from further negotiations with respect to the Covenant on Human Rights, and all other covenants, treaties, and conventions which seek to prescribe restrictions on individual liberty which, if passed by Congress as domestic legislation, would be unconstitutional." The resolution was never acted upon, but it was followed by another in February, 1952, to revise the treaty-making powers under the Constitution. This second resolution, introduced by Senator Bricker and fifty-six supporting members of the Senate came to be known as the "Bricker Amendment." Its provisions were:

Section I: A provision of a treaty which denies or abridges any right enumerated in this Constitution shall not be

60 Ibid., 16.
61 Senate Resolution 177, 82nd Congress, First Session, July 17, 1951.
of any force or effect. 62

Section II: No treaty shall authorize or permit any foreign power or any international organization to supervise, control, or adjudicate rights of citizens of the United States within the United States enumerated in this Constitution or any other matter essentially within the domestic jurisdiction of the United States.

Section III: A treaty shall become effective as internal law in the United States only through the enactment of appropriate legislation by the Congress.

Section IV: All executive or other agreements between the President and any international organization, foreign power, or official thereof shall be made only in the manner and to the extent to be prescribed by law. Such agreements shall be subject to the limitations imposed by treaties, or the making of treaties, by this article. 63

62 This section was derived from the American Bar Association proposal of February 26, 1952, which reads: "A provision of a treaty which conflicts with any provision of this Constitution shall not be of any force or effect. A treaty shall become effective as internal law in the United States only through legislation by Congress which it could enact under its delegated powers in the absence of such treaty." Quoted from A B A Journal, May, 1952, 435-36, in Herbert Brownell, Jr., Statement before Senate Committee on the Judiciary, April 7, 1953.

63 Ibid., 7, 20, 26, 40.
Intended in its inception to insure the supremacy of the Constitution over treaties, the Amendment as it was drawn up aroused wide interest. In favor of it were lawyers who were concerned about the use of treaty power to effect economic and social changes; groups in and out of the government who favored states' rights; those who were opposed to any kind of international cooperation; and civic groups, patriotic organizations, newspapers, magazines, as well as individuals who were honestly concerned over what they considered the misuse of executive agreements at Yalta and Potsdam. 64

The 1952 text was modified by changing Section I to read "A provision of a treaty which conflicts with any provision of the Constitution shall not be of any force or effect;" by slight changes in Section III; by the elimination of Section II, and the substitution of a much shorter provision for Section IV: "Executive agreements shall be subject to regulation by the congress and to the limitations imposed on treaties by this article." 65

It was this text which when it was presented in January, 1953, provoked discussion that led to the formulation of a statement of the policy of the new administration toward treaties in the social and human rights fields. On April 6, 1953, Secretary of State Dulles, testifying before the Senate Committee on the Judiciary

64 Green, The United Nations and Human Rights, 62.
65 Ibid.
said:

... while we shall not withhold our counsel from those who seek to draft a treaty or covenant on human rights, we do not ourselves look upon a treaty as the means we would now select as the proper and most effective way to spread throughout the world the goals of human liberty to which this nation has been dedicated since its inception. We therefore do not intend to become a party to any such Covenant or present it as a treaty for consideration by the Senate. 66

Although Dulles' statement was timed to help defeat the Bricker Amendment, it was not merely an opportunistic idea; it reflected the real attitude of the new Administration. On April 3, 1953, Dulles had written to Mrs. Oswald B. Lord, the new United States representative on the Human Rights Commission to appraise her of the position the Administration was taking. Although he withheld the statement that the United States would not ratify the Covenant, he explained at length the reasons why it seemed wiser to

press ahead in the United Nations for the achievement of the standards set forth in the Universal Declaration of Human Rights through ways other than the proposed Covenants on Human Rights. 67


Neither the Bricker Amendment nor any revision or restatement of it has been accepted. The last attempt to date, April, 1956, under the name of the Dirksen Amendment was unacceptable to the Eisenhower Administration. Chicago Sun Times, April 13, 1956.

67 John Foster Dulles, Letter released to Press on April 7, 1953.
This letter from Dulles, together with his statement of April 6, already quoted, made it necessary for Mrs. Lord in her opening statement as a delegate, to tell the Commission:

The climate of world opinion does not yet seem favorable to the conclusion of the covenants in the United Nations. The Covenants will not have the expected effectiveness in the field of human rights. For these reasons, my Government has concluded that in the present stage of international relations it would not ratify the covenants.

The chairman of the Commission, Dr. Mahmoud Azmi of Egypt remarked that the United States’ announcement came as a bombshell. It was conceded that any hopes for ratification were now indefinitely postponed.

CHAPTER VII

CONCLUSION

The investigation of the work of the Human Rights Commission from 1945 to 1953 allows the drawing of only limited conclusions. If the nations seemed psychologically prepared to protect human rights, the progress of their work to 1953 is evidence that nationalism was still a force great enough to resist any encroachment upon national sovereignty. A study of the comparatively easy acceptance of the Declaration of Rights which in no way compromised national sovereignty and of the difficulties experienced in the attempt to reach agreement upon a covenant which put limits upon autonomous national action indicates the extent to which the nations of the world were prepared to go in interdependent action. This is not a judgment upon the merits of the case. Perhaps the cause of human rights is much better served by the present impasse than it would be by ratification, since ratification under present circumstances might lead to the erection of a superstate controlled by the expositors of one dominant ideology, one which might exert tremendous influence, yet not be consonant with the true basic aspirations of man.
In this connection Pope Pius XII in an address given on April 7, 1951 suggested that there was much preliminary work to be accomplished before the nations could expect to be ready for the kind of interdependent action which would not result in the erection of a dominant super-state. What must first of all be achieved, he said, is the harmony of a normal organic order which must rule particular relations among individuals and among peoples. In illustration of the need he pointed out defects as they existed in political, economic, social, cultural, and moral fields.

In political life the idea that a man equals a vote, that he is merely a number, that his position and role in the family and in his profession are unimportant, all militate against the normal organic order. In the economic field the normal organic order is disturbed by allowing maximum profitability to be the determining consideration in the location of industry and the distribution of work. In the cultural and moral fields Pius XII pointed precisely to defects which would undermine the effectiveness of any accomplishment of the Human Rights Commission: the divorce of individual liberty from objective and social values. He pointed out especially the viciousness of freedom of education, of the young without reference to an objective standard of values. In the estimation of Pius XII the absence of normal organic order argued against the possibility of global action and he suggested
that if it were possible under present conditions it might prove highly undesirable.¹

What then did the Human Rights Commission accomplish in the first eight years of its existence? What did it fail to accomplish? What is the significance of its accomplishments? Of its failures?

The outstanding accomplishment of the Human Rights Commission was undoubtedly the formulation and ratification of the Declaration on Human Rights. But the creation of the Commission and its inclusion in the San Francisco Charter as literally the only "Charter" commission was itself an accomplishment. (As

¹ "At the present time the life of nations is everywhere disintegrated by the blind worship of numerical strength. The citizen is the voter. But, as such, he is in reality nothing but one of the units, the total of which constitutes a majority or a minority, which the shifting of a few votes or even of a single one would suffice to reverse. As far as parties are concerned, he is of importance only for his voting value. No concern is shown for his position and role in his family and his profession.

"In the economic and social fields: There can be no natural organic unity among those engaged in production so long as quantitative utilitarianism—the consideration of maximum profitability—is the sole norm which determines the location of plants and the distribution of work, so long as the concept "class" artificially divides men in society and there no longer exists a spirit of co-operation within occupational groups.

"In the cultural and moral fields: Individual liberty, freed from all bonds and all laws, all objective and social values, is in reality only a death-dealing anarchy, especially in the education of the young.

"Unless the universal political organization rests upon these indispensable foundations, there is risk of its being infected with the deadly germs of mechanical unitarism." "Pope Pius XII on World Federal Government," New York, 1951.
the study shows), the official delegates to the Convention might have delayed the creation of the Commission indefinitely had it not been for the insistence of those delegates of non-governmental organizations of the United States who considered it imperative that the Commission have Charter status.

It was significant that the organizations which pressed for the establishment of the Commission were from the United States. If, as Trygve Lie has said, the establishment of the United Nations Headquarters in New York was a recognition of the "shift of the world political center across the Atlantic," the pressure of the official and non-official delegates of the United States for a Human Rights Commission was an indication of the direction that political activity in the United Nations would take.

On the other hand, the failure of the ratification of the Covenant on Human Rights was due to no other circumstance more than to the refusal of the United States to ratify. The internal reasons for withdrawal by the United States do not especially concern the history of the Commission and its work, but as demonstrating the extent to which the United States was prepared to compromise its sovereignty in favor of a world organization, it is of real significance. It was the concern of the United States that the obligations assumed by ratification of the Covenant might, in view of the treaty clause in the constitution, be superior to

2 Trygve Lie, In the Cause of Peace, New York, 1954, 55
legislation passed under the constitution.\textsuperscript{3} It has been argued that the Covenant would become binding only so far as the legislature would sanction it. But no argument convinced the United States to ratify in 1953.\textsuperscript{4}

If the failure of the United States to ratify the covenant was the "circumstance" which kept the Covenant on Human Rights from becoming an effective instrument for safeguarding human rights, it is necessary to look elsewhere for the "reason." The basic difficulty under which the Commission on Human Rights labored was the lack of philosophical harmony. Jacques Maritain, summarizing the responses of the thinkers and philosophers of the world on a questionnaire on rights prepared by UNESCO in 1947 clearly pointed up the difficulty and concluded from his observations that the Commission could accomplish an enumeration of rights, but would fail in implementing it. He said:

There is nothing to prevent the achievement in this way by the pragmatic rather than the theoretical approach of a new and wider declaration of human rights marking a notable stage in the unification of the world, and wherein more especially the concept exclusive individualism of man

\textsuperscript{3} The American Bar Association was especially active in writing and speaking on the dangers involved in ratification. See: "Report of the American Bar Association Committee for Peace and Law through United Nations," September, 1950, 26-45.

\textsuperscript{4} A carefully developed refutation of the threat of the treaty power under the constitution to internal legislation was made by the Attorney General of the United States, Herbert Brownell, "Statement before the Senate Committee on the Judiciary," Washington, 1953.
as a being inherently entitled to rights and liberties for working out of his personal destiny, and the concept exclusive to Marxism of man as a being with rights and liberties deriving from his role in the historic evolution of the community of which he is a part, would supplement and integrate each other—I mean purely pragmatically and only for the promulgation of a number of principles for action and rules of behavior.5

But:

It is the implementation of these declarations which is sought from those who subscribe to them; it is the means of securing effective respect for human rights from States and Governments that it is desired to guarantee. On this point I should not venture to express more than the most guarded optimism. For to reach agreement, no longer merely on the definition of human rights, but on arrangements for their exercise in daily life, the first necessity . . . would be agreement on a scale of values.6

The absence of a common ground in philosophy was the basic reason for lack of agreement on the Covenant. But besides the basic difficulties there were complications that may be termed sociological and political. Thus, terms like "Democracy", "Freedom to work", "Freedom of education", "Freedom of the press", were given a definition in the communist ideology different from that accepted in the Western democracies. The difference in interpretation not only made agreement on the use of terms very nearly impossible, but also led to the much graver apprehension that even after agreement had been reached in the Declaration there would not be common understanding of the obligations which would

6 Ibid., ix.
be assumed under the Covenant. In that way the sociological and political differences were contributing causes to the failure of agreement on a covenant to safeguard human rights.

The work of the sub-commissions of the Human Rights Commission, although largely unsuccessful, is historically significant. The attitude toward freedom of information and of the press as expressed by each of the member countries indicated the direction the history of that country had taken in the matter of freedom to express, disseminate, and receive information. Moreover, the very frustration and failure of the Sub-Commission on Freedom of Information and of the Press to translate the principle of freedom of information and of the Press into a convention or a code highlighted the basic issues involved. [Practical programs for accomplishing this purpose have been developed since the demise of the Sub-Commission. In 1951, following the last meeting of the Sub-Commission, the Economic and Social Council adopted the proposal of the United States that a rapporteur be appointed in a personal capacity for a year. His duty was to prepare a report covering major problems in the field of freedom of information and to recommend what practical action should be taken. At the 1954 meeting the rapporteur, Salvador P. Lopez of the Philippines, presented an analysis of national and international activities, the reasons for the success and failure of the work of the Sub-Committee, a statement of current practises and of barriers to the free flow of news, and a series of recommendations. The
frankness of the rapporteur’s report subjected him to considerable abuse and criticism, especially by the Soviet delegation, but many of his recommendations were adopted, some by overwhelming majorities. However, the adoption of these resolutions, relating for the most part to programs for study and action did not represent any further agreement on the basic issue of what constitutes freedom of information than had been reached by the Sub-Commission.7

The Sub-Commission on the prevention of Discrimination and Protection of Minorities was the one section of the Human Rights Commission that received the full and enthusiastic support of Soviet Russia. The United States, in contrast, appears to have used its influence consistently to postpone meetings of the Sub-Commission, to limit the sphere of its influence, and to curtail the extent of its discussions. It is the single instance of apparently political motivation on the part of the United States in the activity of the Human Rights Commission. The taunt of Russia that the United States was purposely blocking action in this sub-commission because it feared to have its own lapses in regard to racial discrimination publicized and brought to judgment was not an unfounded suspicion.

In the consideration of the impact of the Declaration of Human Rights there are observations which seemed only sanguine hopes in 1948, but which in the short space of five years had

begun to prove valid. As disagreements over the Covenants became more acute, the realization grew that the ratification of the Declaration by a large majority of the Members of the United Nations was in itself a notable achievement. And, though no legal sanction attaches to the Declaration, that instrument has in practice influenced the interpretation of law.

An item of great interest, but one that the history of the first five years has not made clearly evident is the impact of the Declaration on international law. One of the better known international lawyers, Charles de Visscher of Belgium, drew up a document on the relationship between human rights and international law which was incorporated in the Records of the Commission. The document was entitled "The Fundamental Rights of Man as the Basis for a Restoration of International Law." In it he developed the thesis: "... the human person is the justification and final end of all law, (territorial and international) established by the will of men." In his development he called attention to the close connection between human rights and natural law; to the support and stimulation which this idea received from Christianity; to the growth of jus gentium in the Roman Empire; to the beginning of the conflict between human rights and the pursuit of the political ends of the State in the period of the Renaissance and Reformation; to the re-action in the eighteenth

century, which, and here he quoted Leon Blum's L'Etat moderne: "raised up the individual, not against the state, but to a level with the state;" and to the current thought that the "juridical conscience of the civilized world today demands the acknowledge-
ment of the rights of the individual which are beyond the reach of state action." To expect a better international order to emerge from direct relations between states he called pure delu-
sion, since the state, by its very nature, constantly seeks to strengthen its own power and to extend its sovereignty. Hence it must be founded not on relations between States but upon relations of the individuals to the State, on the intellectual and institu-
tional counter-weights which in democratic countries preserve the State from deviations which arise from the pursuit of power for its own sake. His characterization of the totalitarian State in
this connection is penetrating:

By its complete control over the individual and by the psychological tensions it spreads from people the totalitarian State presents the political phenomenon exalted to the highest degree of intensity. In it a perverted mysticism conceals the collective appetites for domination beneath formulas of individual renunciation. Propensity to imperial-
ist expansion is its principle of action and rule of life. All its disciplines finally converge in war; it is the born enemy of international organization.10

However, Charles de Visscher wondered whether in the
present climate of strong nationalism and within a social

9 Ibid., 3, 4.
10 Ibid., 5.
structure which in many countries impels men to sacrifice more of their liberty and personal responsibilities to an idea of security guaranteed by the State, there is any assurance that human rights can be saved. He asked the pointed question: "Is the individual really ready to sacrifice something of his well-being in order to retain his freedom?" That question is one that may well be raised concerning the whole problem of human rights. From the announcement of the Four Freedoms to the latest discussion on the Covenants the tendency to regard security as the greatest need today is in evidence. Perhaps there is no conflict between freedom and security. As phrased by Mr. James Simsarian, the State Department's representative at the Human Rights Commission Sessions, the aim is security; the conflict that exists is the conflict between the idea of security as given by the State and security arrived at by the free exercise of rights. This statement does not solve the problem. If the aim is security, even security arrived at by the free exercise of rights, there is implied a subordination of freedom to security. Can man today reverse the trend and make a declaration of independence from the need for security? An individual might, but as was reported in the discussion of the Committee which drew up the Statement of Essential Human Rights, the present economy of society has so encroached upon man's independence that, practically, some measure of

11 James Simsarian, Interview
security is necessary for man's very existence.

In closing, an observation upon the motivation that created the Human Rights Commission and that guided its work may be appended. Any appearance of pure altruism is false. The creation of the Commission at San Francisco was due to pressure from non-governmental organizations in the United States, all of whom had some stake in human rights from the very make-up of their constituency. The most vocal of the delegates, members of the Jewish organizations, had, perhaps, the most vivid realization of the need for such a guarantee for rights because of the recent atrocities committed against Jews in Nazi Germany. The members of Catholic Associations were not less concerned. The delegates who represented manufacturing and trade as well as those for civic, social, and religious organizations were aware of the threat to peace which disregard of human rights involved in the modern world. The interests of their organizations like the interests of all mankind, were aligned with world-stability and peace.

The work of the Commission seems less amenable to examination of its motives. Having declared that principles, not solution of problems were the proper sphere of activity for the Commission, the Economic and Social Council limited thereby the work of the Commission to a realm where a judgment of motivation seems impossible. But the methods employed by the Commission to arrive at principles are not beyond an appraisal. The insistence
of each member country to have those rights written into the Declaration which were already in its own constitution or tradition left scant room for discussion of principles in the philosophical sense. It was again self-interest—national self-interest in this case—which directed the work of the Commission. Likewise it is the self-interest of sovereign nations which withheld ratification.

A question which will remain unanswered is: What might have resulted from a different approach—an attempt at discovering the principles underlying human rights? What kind of Declaration and Covenant would have resulted? Would they have been accepted?
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APPENDIX A

There is a lengthy literature associated with various aspects of the problem of natural law. To the Jews, God gave a special revelation describing their obligations to God and man. Of ten major precepts given to Moses, six prescribe respect for the rights of man. This basic code was amplified in Mishna, Talmud, and the later Codes.

Among the Greek philosophers the idea of natural law and corresponding natural rights developed in opposition to the idea of convention as the basis of law and right. Socrates questioning Hippias in Xenophon's Memorabilia asked whether those laws which all men observed everywhere in any country could be laws established by men. Since Hippias realized that not all men spoke the same language and that men could not all get together in order to draw up laws by agreement, Socrates concluded to the natural

1 Exodus XX, 13-17. "Thou shalt not kill; Thou shalt not commit adultery; Thou shalt not steal; Thou shalt not bear false witness against thy neighbor; Thou shalt not covet thy neighbor's house; neither shalt thou desire his wife, not his servant, nor his handmaid, nor his ox, nor his ass nor anything that is his."
or unwritten law as the basis of justice. Further, since conventionalism, the greatest example of which is Epicureanism, identified the good with the pleasant, it was necessary for the philosophers to prove that the good was rather that which was "in order" according to nature. For man that was the good life. From that premise they concluded that the rules circumscribing that life were according to nature and were, therefore, the natural law.3

Within the framework of the natural law as discussed by Aristotle there is mention made of what he calls "the natural slave." In view of the great variety of natural talents and abilities among men he concluded that there was a class of men in society who were by nature more fit to be slave than a free man.4

Later the Stoic philosophers developed a doctrine of the theoretic equality of all men in their interpretation of natural law, but this equality had little reverberation in the practical order. For the Stoic all men, sharing in reason, were


3 Ibid., 126, 127.

equal. Nevertheless the Stoics accepted slavery, since external circumstances, they argued, were not what made a man free or slave.5

There seems to be a reflection of this attitude in the Roman law since the jurists of the classical period of Roman law undoubtedly knew Stoicism as well as the other philosophies of Greece. However, it is debatable whether the theories of the philosophers had any appreciable influence on the jurists of the Roman law. A somewhat vague relationship can be established between a recognition of natural rights and the Roman Code, in view of the fact that the basis of Roman jurisprudence was the law of nature.

It is generally conceded that Christianity was responsible for a modification of the Roman Law in the direction of greater respect for human rights and freedom. The general influence of the Catholic Church may be traced through decrees of the popes and councils, the canon law, and the consistent teaching of the theologians.

The theologians of the Church, especially the scholastics of the later medieval period, upheld the rights of men as rights based on the natural law as known through reason and revelation. The Renaissance witnessed a deterioration of this

5 C. H. Mollwain, Growth of Political Thought in the West, New York, 1932, Chapters 5 and 6.
position because of the influence of nominalism.¹

The main propagator of this doctrine was William of Occam (ca. 1300-1350) who taught that "God is primarily absolute and omnipotent Will and that natures and essences of things are not recognizable by man's intellect, and consequently that the natural order of being, which belongs to the practical reason advising us what ought to be done or omitted is not knowable to us."² Consequently, the precepts of what the scholastics called natural law were really, according to Occam, arbitrary decrees of God's Will. Therefore they were not immutable and so immutable human rights could not be deduced from them by reason.

With the rise of Protestantism men of the new sects continued to use the term "natural law" but since they had little faith in rational argument they tended to invoke much more the authority of the Bible. Later through Biblical criticism and the

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¹ In a study of the natural law of the Renaissance period, Heinrich Rommen asserted:
"Nominalism and its consequence at least in part, the Reformation, constituted the dissolving desolate period in the theory of Natural Law." If that is so some attention must be given to the tenets of Nominalism and the consequences of their spread and acceptance. Heinrich Rommen, "Natural Law in the Renaissance Period," University of Notre Dame Natural Law Institute Proceedings, II, ed. Alfred Scanlan, Notre Dame, 1948, 92. Heinrich Rommen is a legal and philosophical writer. He is the author of The State in Catholic Thought, St. Louis, 1945, and The Natural Law, St. Louis, 1947.

² Ibid., 94.
rise of Deism even this source of authority was discredited. For human rights the implications are apparent. With the rejection of both reason and the Bible, the doctrine of human rights rested solely on a positive bestowal by the state.

With this deterioration of the doctrine of natural rights on the philosophical and theological level the absolute monarch of the sixteenth and seventeenth centuries made a somewhat different approach to the problem. The idea of kings ruling by Divine Right became a practical necessity to the rulers of Europe when natural law was no longer accepted. By claiming Divine Right the king achieved two ends: unlimited power within the realm and sovereign spiritual authority. There was no possible appeal against an act of the king since there is no appeal against a divinely-instituted authority.

As has been discussed in Chapter I, the "modern" concept of natural rights is one which considers "natural" that which men actually do rather than that which reason suggests they are by nature obligated to do. This position is assumed by Hobbes in his Leviathan. John Locke, though he contended that he followed the classical teaching on natural law and spoke of man's natural rights as derived from the law of nature, nevertheless shows himself a follower of Hobbes.

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8 Ibid., 97.
APPENDIX B

UNIVERSAL DECLARATION OF HUMAN RIGHTS

Preamble

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

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

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

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

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

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

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

Now, therefore,

The General Assembly

Proclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

Article 1

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 2

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

Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent,trust, non-self-governing or under any other limitation of sovereignty.

Article 3

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

Article 4

No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.
Article 5

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

Article 6

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

Article 7

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

Article 8

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

Article 9

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

Article 10

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

Article 11

1. Everyone charged with a penal offense has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

2. No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.
Article 12

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

Article 13

1. Everyone has the right to freedom of movement and residence within the borders of each State.

2. Everyone has the right to leave any country, including his own, and to return to his country.

Article 14

1. Everyone has the right to seek and to enjoy in other countries asylum from persecution.

2. This right may not be invoked in the case of prosecutions genuinely arising from nonpolitical crimes or from acts contrary to the purposes and principles of the United Nations.

Article 15

1. Everyone has the right to a nationality.

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

Article 16

1. Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.

2. Marriage shall be entered into only with the free and full consent of the intending spouses.

3. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

Article 17

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

Article 18

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

Article 19

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

Article 20

1. Everyone has the right to freedom of peaceful assembly and association.

2. No one may be compelled to belong to an association.

Article 21

1. Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.

2. Everyone has the right of equal access to public service in his country.

3. The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

Article 22

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each state, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.
Article 23

1. Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.

2. Everyone, without any discrimination, has the right to equal pay for equal work.

3. Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.

4. Everyone has the right to form and to join trade unions for the protection of his interests.

Article 24

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

Article 25

1. Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

2. Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

Article 26

1. Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

2. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or
religious groups, and shall further the activities of the United Nations for the maintenance of peace.

3. Parents have a prior right to choose the kind of education that shall be given to their children.

**Article 27**

1. Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

2. Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

**Article 28**

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

**Article 29**

1. Everyone has duties to the community in which alone the free and full development of his personality is possible.

2. In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

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

**Article 30**

Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.
APPENDIX C

DRAFT COVENANT ON CIVIL AND POLITICAL RIGHTS

The States Parties hereto,

Considering that, in accordance with the principles in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recognizing that these rights derive from the inherent dignity of the human person,

Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free men enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights,

Considering the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms,

Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under responsibility to strive for the promotion and observance of the rights recognized in this Covenant,

Agree upon the following articles:

PART I

Article 1

1. All peoples and all nations shall have the right of self-determination, namely, the right freely to determine their political, economic, social and cultural status.

2. All States, including those having responsibility for the administration of Non-Self-Governing and Trust Territories and those controlling in whatsoever manner the exercise of that right by another people, shall promote the realization of that right in all their territories, and shall respect the maintenance of that right in other States, in conformity with the provisions of the United Nations Charter.

3. The right of peoples to self-determination shall also include permanent sovereignty over their natural wealth and resources. In no case may a people be deprived of its own means of subsistence on the ground of any rights that may be claimed by other States.

PART II

Article 2

1. Each State Party hereto undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in this Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

2. Where not already provided for by existing legislative or other measures, each State undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of this Covenant, to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in this Covenant.

3. Each State Party hereto undertakes:
   (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;
(b) To develop the possibilities of judicial remedy and to ensure that any person claiming such a remedy shall have his right thereto determined by competent authorities, political, administrative or judicial;
(c) To ensure that the competent authorities shall enforce such remedies when granted.

Article 3

The States Parties to the Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in this Covenant.

Article 4

1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties hereto may take measures derogating from their obligations under this Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.

2. No derogation from articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18 may be made under this provision.

3. Any State Party to the Covenant availing itself of the right of derogation shall inform immediately the other States Parties to the Covenant, through the intermediary of the Secretary-General, of the provisions from which it has derogated, the reasons by which it was actuated and the date on which it has terminated such derogation.

Article 5

1. Nothing in this Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in this Covenant.

2. There shall be no restriction upon or derogation from any of the fundamental human rights recognized or existing in any Contracting State pursuant to law, conventions, regulations or custom on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.
PART III

Article 6

1. No one shall be arbitrarily deprived of his life. Everyone's right to life shall be protected by law.

2. In countries where capital punishment exists, sentence of death may be imposed only as a penalty for the most serious crimes pursuant to the sentence of a competent court and in accordance with law not contrary to the principles of the Universal Declaration of Human Rights or the Convention on the Prevention and Punishment of the Crime of Genocide.

3. Any one sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.

4. Sentence of death shall not be carried out on a pregnant woman.

Article 7

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation involving risk, where such is not required by his state of physical or mental health.

Article 8

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

2. No one shall be held in servitude.

3. (a) No one shall be required to perform forced or compulsory labour;

   (b) The preceding sub-paragraph shall not be held to preclude, in countries where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court;

   (c) For the purpose of this paragraph the term "forced or compulsory labour" shall not include:
(i) Any work or service, not referred to in sub-paragraph (b), normally required of a person who is under detention in consequence of a lawful order of a court;

(ii) Any service of a military character and, in countries where conscientious objection is recognized, any national service required by law of conscientious objectors;

(iii) Any service exacted in cases of emergency or calamity threatening the life or well-being of the community;

(iv) Any work or service which forms part of normal civic obligations.

Article 9

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgment.

4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that such court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

5. Anyone who has been the victim of unlawful arrest or deprivation of liberty shall have an enforceable right to compensation.

Article 10

1. All persons deprived of their liberty shall be treated with humanity.
2. Accused persons shall be segregated from convicted persons, and shall be subject to separate treatment appropriate to their status as unconvicted persons.

3. The penitentiary system shall comprise treatment directed to the fullest possible extent towards the reformation and social rehabilitation of prisoners.

Article 11

No one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation.

Article 12

1. Subject to any general law of the State concerned which provides for such reasonable restrictions as may be necessary to protect national security, public safety, health or morals or the rights and freedoms of others, consistent with the other rights recognized in this Covenant:
   (a) Everyone legally within the territory of a State shall, within that territory, have the right to (i) liberty of movement and (ii) freedom to choose his residence;
   (b) Everyone shall be free to leave any country, including his own.

2. (a) No one shall be subjected to arbitrary exile;
   (b) Subject to the preceding sub-paragraph, anyone shall be free to enter his own country.

Article 13

An alien lawfully in the territory of a State Party to the Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by and be represented for the purpose before the competent authority or a person or persons especially designated by the competent authority.

Article 14

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The Press and public may be excluded from all or part of a trial for reasons
of morals, public order or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the Court in special circumstances where publicity would prejudice the interest of justice; but any judgment rendered in a criminal case or in a suit at law shall be pronounced publicly except where the interest of juveniles otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

(a) To be informed promptly in a language which he understands and in detail of the nature and cause of the accusation against him;

(b) To have adequate time and facilities for the preparation of his defence;

(c) To defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case where he does not have sufficient means to pay for it;

(d) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(e) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;

(f) Not to be compelled to testify against himself, or to confess guilt.

3. In the case of juveniles, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.

4. In any case where by a final decision a person has been convicted of a criminal offence and where subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly-discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.
Article 15

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequently to the commission of the offence, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby.

2. Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations.

Article 16

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

Article 17

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, home or correspondence, nor to unlawful attacks on his honour and reputation.

2. Everyone has the right to the protection of the law against such interference or attacks.

Article 18

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to maintain or to change his religion, or belief, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

2. No one shall be subject to coercion which would impair his freedom to maintain or to change his religion or belief.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.
Article 19

1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in the foregoing paragraph carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall be such only as are provided by law and are necessary, (1) for respect of the rights or reputations of others, (2) for the protection of national security or of public order, or of public health or morals.

Article 20

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.

Article 21

1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

2. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of this right by members of the armed forces or of the police.

3. Nothing in this article shall authorize States Parties to the International Labour Convention of 1948 on Freedom of Association and Protection of the Right to Organize, to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.
Article 22

1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

2. The right of men and women of marriageable age to marry and to found a family shall be recognized.

3. No marriage shall be entered into without the free and full consent of the intending spouses.

4. The legislation of the States Parties to this Covenant shall be directed towards equality of rights and responsibilities for the spouses as to marriage, during marriage and at its dissolution. In the last-mentioned case the law shall lay down special measures for the protection of any children of the marriage.

Article 23

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 of this Covenant and without unreasonable restrictions:

(a) To take part in the conduct of public affairs, directly or through freely chosen representatives;

(b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;

(c) Of access, on general terms of equality, to public service in his country.

Article 24

All persons are equal before the law. The law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 25

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.
Article 26

Any advocacy of national, racial or religious hostility that constitutes an incitement to hatred and violence shall be prohibited by the law of the State.

PART IV

Article 27

1. There shall be established a Human Rights Committee (hereinafter referred to as "the Committee"). It shall consist of nine members and shall carry out the functions hereinafter provided.

2. The Committee shall be composed of nationals of the States Parties to the Covenant who shall be persons of high moral standing and recognized competence in the field of human rights, consideration being given to the usefulness of the participation of some persons having a judicial or legal experience.

3. The members of the Committee shall be elected and shall serve in their personal capacity.

Article 28

1. The members of the Committee shall be elected from a list of persons possessing the qualifications prescribed in article 27 and nominated for the purpose by the States Parties to the Covenant.

2. Each State Party to the Covenant shall nominate at least two and not more than four persons. These persons may be nationals of the nominating State or of any other State Party to the Covenant.

3. A person shall be eligible to be renominated.

Article 29

1. At least three months before the date of each election of the Committee, other than an election to fill a vacancy declared in accordance with article 33, the Secretary-General of the United Nations shall address a written request to the States Parties to the Covenant inviting them to submit their nominations within two months.
2. The Secretary-General of the United Nations shall prepare a list in alphabetical order of all the persons thus nominated, and shall submit it to the International Court of Justice and to the States Parties to the Covenant.

3. The Secretary-General of the United Nations shall request the International Court of Justice to fix the time of elections for members of the Committee and to elect such members from the list referred to in the preceding paragraph and in accordance with the conditions set out in this part of the Covenant.

Article 30

1. The Committee may not include more than one national of the same State.

2. In the election of the Committee consideration shall be given to equitable geographical distribution of membership and to the representation of the different forms of civilization.

3. The quorum laid down in article 25, paragraph 3, of the Statute of the International Court of Justice shall apply for the holding of the elections.

4. The persons elected shall be those who obtain the largest number of votes and an absolute majority of the votes of all the members of the International Court of Justice.

Article 31

1. The members of the Committee shall be elected for a term of five years. They shall be eligible for re-election if re-nominated. However, the terms of five of the members elected at the first election shall expire at the end of two years; immediately after the first election the names of these five members shall be chosen by lot by the President of the International Court of Justice.

2. Elections at the expiry of office shall be held in accordance with the preceding articles of this part of this Covenant.

Article 32

1. If, in the unanimous opinion of the other members, a member of the Committee has ceased to carry out his functions for any cause other than absence of a temporary character, the Chairman of the committee shall notify the Secretary-General of
the United Nations who shall then declare the seat of such member to be vacant.

2. In the event of the death or the resignation of a member of the Committee, the Chairman shall immediately notify the Secretary-General of the United Nations who shall declare the seat vacant from the date of death or the date on which the resignation takes effect.

Article 33

1. When a vacancy is declared in accordance with article 32 the Secretary-General of the United Nations shall notify each State Party to the Covenant, which may, if it is necessary, within one month, with a view to election to the vacant seat on the Committee, complete its list of available nominees to four persons.

2. The Secretary-General of the United Nations shall prepare a list in alphabetical order of the persons thus nominated and shall submit it to the International Court of Justice and the States Parties to the Covenant. The election for the vacancy shall then proceed in accordance with articles 29 and 30.

3. A member of the Committee elected to replace a member whose term of office has not expired, shall hold office for the remainder of that term. Provided that if such term of office will expire within six months after declaration of the vacancy in accordance with article 32, no nomination shall be requested and no election shall be held to fill that vacancy.

Article 34

1. Subject to the provisions of article 32, a member of the Committee shall remain in office until a successor has been elected. But if the Committee has, prior to the election of his successor, begun to consider a case, he shall continue to act in that case, and his successor shall not act in it.

2. A member of the Committee elected to fill a vacancy declared in accordance with article 32 shall not act in any case in which his predecessor had acted, unless the quorum provided in article 39 cannot be obtained.

Article 35

The members of the Committee shall, with the approval of the General Assembly of the United Nations, receive emoluments
from United Nations resources on such terms and conditions as the General Assembly may decide having regard to the importance of the Committee's responsibilities.

Article 36

1. The Secretary of the Committee shall be a high official of the United Nations, elected by the Committee from a list of three names submitted by the Secretary-General of the United Nations.

2. The candidate obtaining the largest number of votes and an absolute majority of the votes of all the members of the Committee shall be declared elected.

3. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the Committee and its members; the staff shall be part of the United Nations Secretariat.

Article 37

1. The Secretary-General of the United Nations shall convene the initial meeting of the Committee at the Headquarters of the United Nations.

2. After its initial meeting, the Committee shall meet:
   (a) At such times as it deems necessary;
   (b) When any matter is referred to it under article 40;
   (c) When convened by its Chairman or at the request of not less than five of its members.

3. The Committee shall meet at the Headquarters of the United Nations or at Geneva.

Article 38

Every member of the Committee shall, before taking up his duties, make a solemn declaration in open committee that he will exercise his powers impartially and conscientiously.

Article 39

1. The Committee shall elect its Chairman and Vice-Chairman for the period of one year. They may be re-elected. The first Chairman and the first Vice-Chairman shall be elected at the initial meeting of the Committee.
2. The Committee shall establish its own rules of procedure, but these rules shall provide, inter alia, that:
   (a) Seven members shall constitute a quorum;
   (b) Decisions of the Committee shall be made by a majority vote of the members present; if the votes are equally divided the Chairman shall have a casting vote;
   (c) If a State refers a matter to the Committee under article 40,
      (i) Such State, the State complained against, and any State Party to this Covenant whose national is concerned in such matter may make submissions in writing to the Committee;
      (ii) Such State and the State complained against shall have the right to be represented at the hearing of the matter and to make submissions orally;
      (d) The Committee shall hold hearings and other meetings in closed session.

Article 40

1. If a State Party to the Covenant considers that another State Party is not giving effect to a provision of the Covenant, it may, by written communication, bring the matter to the attention of that State. Within three months after the receipt of the communication, the receiving State shall afford the complaining State an explanation or statement in writing concerning the matter, which should include, to the extent possible and pertinent, references to domestic procedures and remedies taken, or pending, or available in the matter.

2. If the matter is not adjusted to the satisfaction of both Parties within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter to the Committee, by notice given to the Secretary of the Committee, and to the other State.

3. Subject to the provisions of article 41 below, in serious and urgent cases the Committee may, at the request of the complaining State, deal expeditiously with the matter on receipt of that request in accordance with the powers conferred on it by this part of the Covenant and after notifying the States concerned.

Article 41

Normally, the Committee shall deal with a matter referred to it only if available domestic remedies have been invoked
and exhausted in the case. This shall not be the rule where the application of the remedies is unreasonably prolonged.

**Article 42**

In any matter referred to it the Committee may call upon the States concerned to supply any relevant information.

**Article 43**

1. Subject to the provisions of article 41, the Committee shall ascertain the facts and make available its good offices to the States concerned with a view to a friendly solution of the matter on the basis of respect for human rights as recognized in this Covenant.

2. The Committee shall in every case, and in no event later than eighteen months after the date of receipt of the notice under article 40, draw up a report which will be sent to the States concerned and then communicated to the Secretary-General of the United Nations for publication.

3. If a solution within the terms of paragraph 1 of this article is reached the Committee shall confine its report to a brief statement of the facts and of the solution reached. If such a solution is not reached the Committee shall draw up a report on the facts and state its opinion as to whether the facts found disclose a breach by the State concerned of its obligations under the Covenant. If the report does not represent in whole or in part the unanimous opinion of the members of the Committee, any member of the Committee shall be entitled to attach to it a separate opinion. The written and oral submissions made by the Parties to the case in accordance with article 39, paragraph 2(c), shall be attached to the report.

**Article 44**

The Committee may recommend to the Economic and Social Council that the Council request the International Court of Justice to give an advisory opinion on any legal question connected with a matter of which the Committee is seized.

**Article 45**

The Committee shall submit to the General Assembly, through the Secretary-General or the United Nations, an annual report on its activities.
Article 46

The States Parties to this Covenant agree that any State Party complained of or lodging a complaint may, if no solution has been reached within the terms of article 43, paragraph 1, bring the case before the International Court of Justice after the report provided for in article 43, paragraph 3, has been drawn up.

Article 47

The provisions of this Covenant shall not prevent the States Parties to the Covenant from submitting to the International Court of Justice any dispute arising out of the interpretation or application of the Covenant in a matter within the competence of the Committee.

Article 48

1. The States Parties to this Covenant, including those who are responsible for the administration of any Non-Self-Governing Territory undertake to submit reports annually to the Committee on the measures taken by them to meet the obligations set forth in article 1 of this Covenant.

2. The States Parties to this Covenant who are responsible for the administration of any Non-Self-Governing Territory, undertake, through elections, plebiscites or other recognized democratic means, preferably under the auspices of the United Nations, to determine the political status of such territory, should the Committee make a proposal to that effect and such proposal be adopted by the General Assembly. Such decision shall be based on evidence of the desire of the inhabitants of such territory as expressed through their political institutions or parties.

3. The States Parties to this Covenant shall report to the Committee any violation of the right laid down in paragraph 3 of article 1.

PART V

Article 49

1. The States Parties to this Covenant undertake to submit a report on the legislative or other measures, including judicial remedies, which they have adopted and which give effect to the rights recognized herein (a) within one year of the entry
into force of the Covenant for the State concerned and (b) there-
after whenever the Economic and Social Council so requests upon
recommendation of the Commission on Human Rights and after con-
sultation with the State Parties.

2. Reports shall indicate factors and difficulties, if
any, affecting the progressive implementation of article 22, para-
graph 4, of this Covenant.

3. All reports shall be submitted to the Secretary-
General of the United Nations for the Economic and Social Council
which may transmit them to the Commission on Human Rights for in-
formation, study and, if necessary, general recommendations.

4. The specialized agencies shall receive such parts of
the reports concerning the rights as fall within their respective
fields of activity.

5. The States Parties directly concerned, and the above
agencies may submit to the Economic and Social Council observa-
tions on any general recommendation that may be made in accordance
with paragraph 3 of this article.

Article 50

Nothing in this Covenant shall be interpreted as impair-
ing the provisions of the Charter of the United Nations and of the
constitutions of the specialized agencies, which define the re-
spective responsibilities of the various organs of the United Na-
tions and of the specialized agencies in regard to the matters
dealt with in this Covenant.

PART VI

Article 51

1. This Covenant shall be open for signature and rati-
fication or accession on behalf of any State Member of the United
Nations or of any non-member State to which an invitation has
been extended by the General Assembly.

2. Ratification of or accession to this Covenant shall
be effected by the deposit of an instrument of ratification or
accession with the Secretary-General of the United Nations, and
as soon as twenty States have deposited such instruments, the
Covenant shall come into force among them. As regards any State
which ratifies or accedes thereafter the Covenant shall come into force on the date of the deposit of its instrument of ratification or accession.

3. The Secretary-General of the United Nations shall inform all Members of the United Nations, and other States which have signed or acceded, of the deposit of each instrument of ratification or accession.

Article 52

The provisions of the Covenant shall extend to all parts of federal States without any limitations or exceptions.

Article 53

The provisions of the present Covenant shall extend to or be applicable equally to a signatory metropolitan State and to all the territories, be they Non-Self-Governing, Trust or Colonial Territories, which are being administered or governed by such metropolitan State.

Article 54

1. Any State Party to the Covenant may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendments to the States Parties to the Covenant with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposal. In the event that at least one-third of the States favours such a conference the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of States present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

2. Such amendments shall come into force when they have been approved by the General Assembly and accepted by a two-thirds majority of the States Parties to the Covenant in accordance with their respective constitutional processes.

3. When such amendments come into force they shall be binding on those Parties which have accepted them, other Parties being still bound by the provisions of the Covenant and any earlier amendment which they have accepted.
DRAFT COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

The States Parties hereto,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recognizing that these rights derive from the inherent dignity of the human person,

Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free men enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights,

Considering the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms,

Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under responsibility to strive for the promotion and observance of the rights recognized in this Covenant,

Agree upon the following articles:

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PART I

Article 1

1. All peoples and all nations shall have the right of self-determination, namely, the right freely to determine their political, economic, social and cultural status.

2. All States, including those having responsibility for the administration of Non-Self-Governing and Trust Territories and those controlling in whatsoever manner the exercise of that right by another people, shall promote the realization of that right in all their territories, and shall respect the maintenance of that right in other States, in conformity with the provisions of the United Nations Charter.

3. The right of peoples to self-determination shall also include permanent sovereignty over their natural wealth and resources. In no case may a people be deprived of its own means of subsistence on the grounds of any rights that may be claimed by other States.

PART II

Article 2

1. Each State Party hereto undertakes to take steps, individually and through international co-operation, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in this Covenant by legislative as well as by other means.

2. The State Parties hereto undertake to guarantee that the rights enunciated in this Covenant will be exercised without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 3

The States Parties to the Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in this Covenant.
Article 4

The State Parties to this Covenant recognize that in the enjoyment of those rights provided by the State in conformity with this Covenant, the State may subject such rights only to such limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society.

Article 5

1. Nothing in this Covenant may be interpreted as implying for any State, group or person, any right to engage in any activity or to perform any act aimed at the destruction of any of the rights or freedoms recognized herein, or at their limitation to a greater extent than is provided for in this Covenant.

2. No restriction upon or derogation from any of the fundamental human rights recognized or existing in any country in virtue of law, conventions, regulations or custom shall be admitted on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.

PART III

Article 6

1. Work being at the basis of all human endeavour, the States Parties to the Covenant recognize the right to work, that is to say, the fundamental right of everyone to the opportunity, if he so desires, to gain his living by work which he freely accepts.

2. The steps to be taken by a State Party to this Covenant to achieve the full realization of this right shall include programmes, policies and techniques to achieve steady economic development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.

Article 7

The States Parties to the Covenant recognize the right of everyone to just and favourable conditions of work, including:

(a) Safe and healthy working conditions;
(b) Remuneration which provides all workers as a minimum with:

(i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular, women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work; and

(ii) A decent living for themselves and their families; and

(c) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay.

Article 8

The States Parties to the Covenant undertake to ensure the free exercise of the right of everyone to form and join local, national and international trade unions of his choice for the protection of his economic and social interests.

Article 9

The States Parties to the Covenant recognize the right of everyone to social security.

Article 10

The States Parties to the Covenant recognize that:

1. Special protection should be accorded to motherhood and particularly to maternity during reasonable periods before and after childbirth; and

2. Special measures of protection, to be applied in all appropriate cases, within and with the help of the family, should be taken on behalf of children and young persons, and in particular they should not be required to do work likely to hamper their normal development. To protect children from exploitation, the unlawful use of child labour and the employment of young persons in work harmful to health or dangerous to life should be made legally actionable; and

3. The family, which is the basis of society, is entitled to the widest possible protection. It is based on marriage, which must be entered into with the free consent of the intending spouses.
Article 11

The States Parties to the Covenant recognize the right of everyone to adequate food, clothing and housing.

Article 12

The States Parties to the Covenant recognize the right of everyone to an adequate standard of living and the continuous improvement of living conditions.

Article 13

1. The States Parties to the Covenant, realizing that health is a state of complete physical, mental and social well-being, and not merely the absence of disease or infirmity, recognize the right of everyone to the enjoyment of the highest attainable standard of health.

2. The steps to be taken by the States Parties to the Covenant to achieve the full realization of this right shall include those necessary for:
   (a) The reduction of infant mortality and the provision for healthy development of the child;
   (b) The improvement of nutrition, housing, sanitation, recreation, economic and working conditions and other aspects of environmental hygiene;
   (c) The prevention, treatment and control of epidemic, endemic and other diseases;
   (d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

Article 14

1. The States Parties to the Covenant recognize the right of everyone to education, and recognize that education shall encourage the full development of the human personality, the strengthening of respect for human rights and fundamental freedoms and the suppression of all incitement to racial and other hatred. It shall promote understanding, tolerance and friendship among all nations, racial, ethnic or religious groups, and shall further the activities of the United Nations for the maintenance of peace and enable all persons to participate effectively in a free society.

2. It is understood:
   (a) That primary education shall be compulsory and available free to all;
(b) That secondary education, in its different forms, including technical and professional secondary education, shall be generally available and shall be made progressively free;

(c) That higher education shall be equally accessible to all on the basis of merit and shall be made progressively free;

(d) That fundamental education for those persons who have not received or completed the whole period of their primary education shall be encouraged as far as possible.

3. In the exercise of any functions which they assume in the field of education, the States Parties to the Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians, to choose for their children schools other than those established by the public authorities which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious education of their children in conformity with their own convictions.

Article 15

Each State Party to the Covenant which, at the time of becoming a party to this Covenant, has not been able to secure in its metropolitan territory or other territories under its jurisdiction compulsory primary education, free of charge, undertakes, within two years, to work out and adopt a detailed plan of action for the progressive implementation, within a reasonable number of years, to be fixed in the plan, of the principle of compulsory primary education free of charge for all.

Article 16

1. The States Parties to the Covenant recognize the right of everyone:

(a) To take part in cultural life;

(b) To enjoy the benefits of scientific progress and its applications.

2. The steps to be taken by the States Parties to this Covenant to achieve the full realization of this right shall include those necessary for the conservation, the development and the diffusion of science and culture.

3. The States Parties to the Covenant undertake to respect the freedom indispensable for scientific research and creative activity.
PART IV

Article 17

1. The States Parties to this Covenant undertake to submit in conformity with this part of the Covenant reports concerning the progress made in achieving the observance of the rights recognized herein.

2. (a) All reports shall be submitted to the Secretary-General of the United Nations for the Economic and Social Council;
(b) Any State Party which is also a member of a specialized agency shall at the same time transmit, in respect of matters falling within the purview of that agency, a copy of its report, or relevant extracts therefrom, as appropriate, to that agency.

Article 18

1. The States Parties shall furnish their reports in stages, in accordance with a programme to be established by the Economic and Social Council after consultation with the States Parties to this Covenant and the specialized agencies concerned.

2. Reports may indicate factors and difficulties affecting the degree of fulfilment of obligations under this Covenant.

3. Where relevant information has already previously been furnished to the United Nations or to any specialized agency by any State Party it will not be necessary to reproduce that information but a precise reference to the information so furnished will suffice.

Article 19

Pursuant to its responsibilities under the Charter in the field of human rights, the Economic and Social Council may make arrangements with the specialized agencies in respect of their reporting to it on the progress made in achieving the observance of the provisions of this Covenant falling within the scope of their activities. These reports may include particulars of decisions and recommendations on such implementation adopted by their competent organs.
Article 20

The Economic and Social Council may transmit to the Commission on Human Rights for study and general recommendation or as appropriate for information the reports concerning human rights submitted by States, and those concerning human rights submitted by the specialized agencies.

Article 21

The States Parties directly concerned and the specialized agencies may submit comments to the Economic and Social Council on any general recommendation under Article 20 or reference to such general recommendation in any report of the Commission or any documentation referred to therein.

Article 22

The Economic and Social Council may submit from time to time to the General Assembly, with its own reports, reports summarizing the information made available by the States Parties to the Covenant directly to the Secretary-General and by the specialized agencies under Article ... indicating the progress made in achieving general observance of these rights.

Article 23

The Economic and Social Council may bring to the attention of the international organs concerned with technical assistance or of any other appropriate international organ any matters arising out of the reports referred to in this part of the Covenant which may assist such organs in deciding each within its competence, on the advisability of international measures likely to contribute to the progressive implementation of this Covenant.

Article 24

The States Parties to the Covenant agree that international action for the achievement of these rights includes such methods as conventions, recommendations, technical assistance, regional meetings and technical meetings and studies with governments.

Article 25

Nothing in this Covenant shall be interpreted as impairing the provisions of the Charter of the United Nations and of the constitutions of the specialized agencies, which define
the respective responsibilities of the various organs of the United Nations and of the specialized agencies in regard to the matters dealt with in this Covenant.

PART V

Article 26

1. This Covenant shall be open for signature and ratification or accession on behalf of any State Member of the United Nations or of any non-member State to which an invitation has been extended by the General Assembly.

2. Ratification of or accession to this Covenant shall be effected by the deposit of an instrument of ratification or accession with the Secretary-General of the United Nations, and as soon as twenty States have deposited such instruments, the Covenant shall come into force among them. As regards any State which ratifies or accedes thereafter the Covenant shall come into force on the date of the deposit of its instrument of ratification or accession.

3. The Secretary-General of the United Nations shall inform all Members of the United Nations, and other States which have signed or acceded, of the deposit of each instrument of ratification or accession.

Article 27

The provisions of the Covenant shall extend to all parts of federal States without any limitations or exceptions.

Article 28

The provisions of the present Covenant shall extend to or be applicable equally to a signatory metropolitan State and to all the territories, be they Non-Self-Governing, Trust, or Colonial Territories, which are being administered or governed by such metropolitan State.

Article 29

1. Any State Party to the Covenant may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendments to the States Parties to the Covenant with a
request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposal. In the event that at least one-third of the States favours such a conference the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of States present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

2. Such amendments shall come into force when they have been approved by the General Assembly and accepted by a two-thirds majority of the States Parties to the Covenant in accordance with their respective constitutional processes.

3. When such amendments come into force they shall be binding on those Parties which have accepted them, other Parties being still bound by the provisions of the Covenant and any earlier amendment which they have accepted.
APPROVAL SHEET

The dissertation submitted by Sister Mary Samuel Van Dyke, O.P., has been read and approved by five members of the Department of History.

The final copies have been examined by the director of the dissertation and the signature which appears below verifies the fact that any necessary changes have been incorporated, and that the dissertation is now given final approval with reference to content, form, and mechanical accuracy.

The dissertation is therefore accepted in partial fulfillment of the requirements for the Degree of Doctor of Philosophy.

May 9, 1959

[Signature of Adviser]