

## UNIVERSAL DECLARATION OF HUMAN RIGHTS—EXPRESSION OF PAST ACHIEVEMENTS AND FUTURE ASPIRATIONS \*

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Fourteen years ago, on December 10, 1948, the General Assembly of the United Nations approved the Universal Declaration of Human Rights. Truly regarded as "the conscience of mankind, as a code of world ethics, as a universal law of morals,"<sup>1</sup> the Universal Declaration of Human Rights "represents the converging and integration on a global scale of many movements, movements hitherto restricted in a real diffusion but centuries-old and rooted deep in universal human nature and civilized culture. It is heir to all the great historic democratic movements—for constitutionalism, freedom, equality, fraternity, humanitarianism, liberalism, enlightenment, peace, opportunity, x x x. It is the contemporary culmination of man's long struggle for all his basic human values."<sup>2</sup>

The United Nations is committed to the promotion and encouragement of universal respect for, and observance of, human rights.

Thus, the Preamble of the Charter of the United Nations determined—

"to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and

"to promote social progress and better standards of life in larger freedom"

and for these ends—

"to employ international machinery for the promotion of the economic and social advancement of all peoples."

One of the purposes and principles of the United Nations as proclaimed in its Charter is—

"3. To achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in

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\*\* LL.B. (U.P.), 1934.

<sup>1</sup> Peter N. Drost, *Human Rights as Legal Rights*, p. 35.

<sup>2</sup> Myres McDougal & Gertrude C. K. Leighton, *The Rights of Man in the World Community: Constitutional Illusions v. Rational Action*. Studies in World Public Order, p. 335.

promoting and encouraging respect for human rights and for fundamental freedoms for all \* \* \*

Article 56 of the same Charter states that the United Nations shall promote—

“6. \* \* \* universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion.”

To assure that these purposes and principles are implemented, the Charter created the Economic and Social Council to make, among others, “recommendations for the purpose of promoting respect for, and observance of, human rights and fundamental freedoms for all.”<sup>3</sup>

This major pre-occupation of the United Nations was born of the wise recognition that unless the achievement and observance of human rights is attained for all men and women everywhere—without regard as to race, sex, language or religion—there could be no real hope for permanent peace and security in the world. As the Report of the UNESCO has lucidly appraised—

“The United Nations stands as the symbol to all of victory over those who sought to achieve tyranny through aggressive war. Since it was created to maintain the peace of mankind and, as it maintains peace, to make ever more full the lives of men and women everywhere, it is fitting that it should record its faith in freedom and democracy and its determination to safeguard their power to expand. That faith in freedom and democracy is founded on the faith in the inherent dignity of men and women. The United Nations cannot succeed in the great purposes to which it is committed unless it so acts that this dignity is given increasing recognition, and unless steps are taken to create the conditions under which this dignity may be achieved more fully and at constantly higher levels. Varied in cultures and built upon different institutions, the members of the United Nations have, nevertheless, certain great principles in common. They believe that men and women, all over the world, have the right to live a life that is free from the haunting fear of poverty and insecurity. They believe that they should have a more complete access to the heritage, in all its aspects and dimensions, of the civilization so painfully built by human effort. They believe that science and the arts should combine to serve alike peace and the well-being, spiritual as well as material, of all men and women without discrimination of any kind. They believe that, given goodwill between nations, the power is in their hands to advance the achievement of this well-being more swiftly than in any previous age.”<sup>4</sup>

<sup>3</sup> Chapter I, Art. 1.

<sup>4</sup> Chapter IX, Art. 62(2).

<sup>5</sup> Human Rights, *Comments and Interpretations*, Appendix II, p. 259.

Verily, an enduring peace and security must "include the conditions of peace and a reduction of the severe frustrations that drive men to violence. Some deprivations and threats of external dictation men find more intolerable than war. Peace as the common man conceives it includes more than freedom from war and threats of war: it includes the freedom, without external dictation from any arbitrary power, to maintain and enhance by peaceful, non-coercive procedures the value positions both of himself and of all others with whom he identifies."<sup>6</sup>

In approving the Universal Declaration of Human Rights, on December 10, 1948, the General Assembly of the United Nations 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." (Emphasis supplied)

#### THREE CLASSES OF RIGHTS—

The "rights and freedoms" which are to be secured, recognized, observed and promoted may be classified into three basic types: (1) civil liberties and political rights; (2) economic and social rights; and (3) international rights.

The first of these—the civil liberties and political rights—extends to personal liberties, including among others, freedom and security of the person, freedom of thought, religion, assembly, etc.,<sup>7</sup> as well as the *political* right to participate in government on an equal basis.<sup>8</sup> The second category—economic and social rights—comprises the right to social security, work, and choice of employment, and to education, leisure and an adequate standard of living.<sup>9</sup> The third category—international rights—includes the rights to nationality, freedom of transit, and political asylum.<sup>10</sup>

#### 1. *Civil Liberties and Political Rights*—

The traditional civil liberties and political rights of man encompassed in the Universal Declaration of Human Rights began as

<sup>6</sup> McDougal and Leighton, *supra* note 2, p. 338.

<sup>7</sup> Arts. 3-20.

<sup>8</sup> Art. 21.

<sup>9</sup> Arts. 22-29.

<sup>10</sup> Arts. 13-15.

rights to regulate man's relations to political and social groups, with the main purpose of protecting man in actions which do not derogate from the freedom or well-being of others and of assigning to him the exercise of functions by which he might exert a proper influence on the institutions and laws of the State. Later on, propelled by religious movements and the emergence of national states, more freedoms were formulated to free man from unwarranted interference in his thought and expression, the freedom of conscience, worship, speech, assembly, association and the press. Each of these freedoms has always been defended by the proposition that they may be granted without danger to the peace of the State, but that they may not be withheld without danger.<sup>11</sup>

More concretely, civil rights, which are formulated in terms of equality before the law and due process of law, are designed to guarantee the individual against arbitrary, oppressive and unreasonable governmental treatment. Political rights, on the other hand, are formulated in the institutions of government and in the conditions by which consent is expressed.<sup>12</sup>

#### *Equality—*

The Universal Declaration of Human Rights starts with the statement that—

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."<sup>13</sup>

This does not mean to assert that human beings are born equal in physical, moral and intellectual attributes. All that it implies is that the worth of human personality is equal; and that every man is entitled to the same rights and opportunities by virtue of his membership in the human race. His claim to the satisfaction of his needs is as deserving of recognition as that of any other man.<sup>14</sup>

This stress on equality is sought to be assured by Article II of the Declaration which provides—

“(1) Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour,

<sup>11</sup> Human Rights, *supra* note 5, pp. 263-264.

<sup>12</sup> Richard McKeen, *The Philosophical Bases and Material Circumstances of the Right of Man*; Human Rights, pp. 42-43.

<sup>13</sup> Art. I.

<sup>14</sup> Cf. Fromm, *Escape from Freedom*, p. 263-265; Ritchie, *Natural Rights*, pp. 253-254; Cf. Enrique M. Fernando, *An International Bill of Human Rights*, p. 23.

sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

"(2) 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 this territory be an independent, Trust, Non-Self-Governing territory, or under any other limitation of sovereignty."<sup>15</sup>

Under the specific provisions of the Declaration, everyone has the right to life, liberty and the security of person,<sup>16</sup> to freedom of thought, conscience and religion,<sup>17</sup> of opinion and expression,<sup>18</sup> and of peaceful assembly and association;<sup>19</sup> no one is to be held in slavery or servitude,<sup>20</sup> nor subjected to torture or to cruel, inhuman and degrading treatment or punishment,<sup>21</sup> or arbitrary arrest, detention or exile;<sup>22</sup> everyone has the right to recognition everywhere as a person before the law;<sup>23</sup> all are equal before the law and entitled without discrimination to equal protection of the law,<sup>24</sup> each with 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;<sup>25</sup> everyone has the right 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<sup>26</sup> subject to due process requisites in criminal prosecutions;<sup>27</sup> everyone has the right to own property.<sup>28</sup>

The political liberty is comprised in Article 21 which provides that everyone has the right to take part in the government of his country, directly or through freely chosen representatives, the right to equal access to public service in his country; and that 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.

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<sup>15</sup> Art. 2.

<sup>16</sup> Art. 3.

<sup>17</sup> Art. 18.

<sup>18</sup> Art. 19.

<sup>19</sup> Art. 20.

<sup>20</sup> Art. 4.

<sup>21</sup> Art. 5.

<sup>22</sup> Art. 9.

<sup>23</sup> Art. 6.

<sup>24</sup> Art. 7.

<sup>25</sup> Art. 8.

<sup>26</sup> Art. 10.

<sup>27</sup> Art. 11.

<sup>28</sup> Art. 17.

## 2. *Social and Economic Rights*—

The second category of rights pertains to social and economic rights "which grew out of the recognition that to live well and freely men must have at least the means requisite for living . . . the right of all to share in the advancing gains of civilization and to have full access to the enjoyment of cultural opportunities and material improvements."<sup>29</sup>

In the words of President Roosevelt:

"We have come to a clear realization of the fact that true individual freedom cannot exist without economic security and independence x x x.

"Necessitous men are not free men. People who are hungry and out of a job are the stuff of which dictatorships are made."

Social and economic rights were first treated as extensions of civil and political rights. However, as the functions of government became more complex, more difficult and vastly multiplying in number due to a fast changing economic structure and technological advances made during the last century, it was realized that the traditional personal and political rights of man are "apt to remain purely theoretical if they are not accompanied by the modern human rights to government assistance in respect of the economic, social and educational conditions of the individual."<sup>30</sup> It is now axiomatic that personal and political liberties can be enjoyed only when they are accompanied with social equality and economic security.

Thus, the Declaration specifically provides that every one as a member of society has the right to social security and to realization, thru national efforts and internal cooperation 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;<sup>31</sup> the right to work entitled to equal pay for equal work at remuneration that is just and favorable coupled with the right to form and join trade unions;<sup>32</sup> the right to rest and leisure;<sup>33</sup> the right to an adequate standard of living;<sup>34</sup> the right to education;<sup>35</sup> the right to freely participate in the cultural life of the community;<sup>36</sup> and the right to a social and in-

<sup>29</sup> Human Rights, *supra* note 5, pp. 265-266.

<sup>30</sup> Drost, *supra* note 1, p. 165.

<sup>31</sup> Art. 22.

<sup>32</sup> Art. 23.

<sup>33</sup> Art. 24.

<sup>34</sup> Art. 25.

<sup>35</sup> Art. 26.

<sup>36</sup> Art. 27.

ternational order in which the rights and freedoms set forth in the Declaration can be fully realized.<sup>37</sup>

### 3. *International rights*—

The International rights refer to—the right to freedom of movement and residence within the borders of each state; the right to leave any country, including his own, and to return to his country,<sup>38</sup> the right to seek and to enjoy in other countries asylum from persecution,<sup>39</sup> and to the right to a nationality, of which no one shall be arbitrarily deprived.<sup>40</sup>

The Universal Declaration of Human Rights may well be symbolized as the expression of past achievements and the validation of future aspirations. While the conception of the rights of man, of the dignity and brotherhood of man, and of his common citizenship in a great society has been in the minds of sages thru the ages, and its formal formulations dated back to the 17th century, the peoples of the world had to go thru the ordeal of the second world war before the idea of the internationalization of human rights was accepted and the “promoting and encouraging respect for, and observance of, human rights and fundamental freedoms for all” was included among the main purposes of the world organization.<sup>41</sup> It is true that the end of the first world war saw an early attempt at a general formulation of the rights of groups in the shape of the principle of national determination, but its incompleteness and vagueness were readily realized.<sup>42</sup> Mention may also be made of efforts made by learned international societies to adopt a declaration of the international rights of man, but it was noted that only the tradition rights which figured already in most constitutions were mentioned and the position of the individual in international law was not clarified whilst neither obligations nor international sanctions were explicitly provided.<sup>43</sup> History also records that the League of Nations ignored the problem of human rights in its general aspects because of its opinion that the time was not yet ripe for such an innovation in international relations. The approval of the Universal Declaration of Human Rights on December 10, 1948 could therefore be accurately regarded as “the converging and integration on a global scale of many movements . . . the contemporary culmination of man’s long struggle for all his basic human values.”<sup>44</sup>

<sup>37</sup> Art. 28.

<sup>38</sup> Art. 13.

<sup>39</sup> Art. 14.

<sup>40</sup> Art. 15.

<sup>41</sup> Cf. Drost, *supra* note 1, p. 170.

<sup>42</sup> Human Rights, *supra* note 5, p. 252.

<sup>43</sup> Drost, *supra* note 1, p. 170.

<sup>44</sup> McDougal and Leighton, *supra* note 2, p. 335.

Admittedly, the Universal Declaration of Human Rights, adopted as a recommendation of the General Assembly of the United Nations, is not a treaty and its provisions are not binding law. It does not purport to be an enforceable covenant; it is a mere general expression of world policy as to civil and social rights designed to command the attention of world opinion.<sup>45</sup> The adhering vote in the General Assembly, however, has committed the great majority of Member States to a course of action, the fulfillment of which, it is ardently hoped, could approach the promised millenium. As stated by one international writer:

"But then to deny its legal character does not mean that the Declaration has no value and historical importance. As a political document containing, as it were, an alliance of all powers of peace in the battle for the recognition of the individual as the beginning and end of all organized society, it may well have tremendous consequences."<sup>46</sup>

To the same effect is the statement made by a member of the International Court of Justice:

"The joint proclamation of these individual rights, made by the civilized nations, will constitute not only a perfect guarantee for man, the full expansion of his personality, in every corner of the globe; it will also be a proof of the political identity of nations, of the realization of democracy throughout the world, of the universal spread of culture. All national declarations will have a common denominator. x x x Relations between States are based on the assumption that the internal politics of each nation are the concern of all nations. The international declaration will thus be a factor for democratization and international peace."<sup>47</sup>

As a foundation for convictions universally shared by men, the Universal Declaration of Human Rights may truly be said to be the validation of the aspiration of human kind for world peace and security guided by a common expression of faith and ideal.

It is only from a perspective of centuries that the realization of the Universal Declaration of Human Rights under international law may be contemplated, estimated and rationally appraised. But its approval on December 10, 1948 by members of the World Organization might as well be as great as the day "when the idea dawned that every man is a human being, an end in himself, with a claim for the development of his own personality, and that human

<sup>45</sup> Drost, *supra* note 1, p. 32; McDougal and Leighton, *supra* note 2, p. 346; Hans Keisen, *Principle of International Law*, pp. 144-145.

<sup>46</sup> Drost, *supra* note 1, p. 32.

<sup>47</sup> Levi Carneiro, *On the Draft Convention and Universal Declaration of the Rights of Man*. Human Rights, pp. 177-178.

beings had a dignity and worth, respect for which is the firm basis of human association.”<sup>48</sup>

Let us hope that the Declaration of Human Rights, being a lucid expression of an abiding faith in human dignity, the embodiment of principles shared by all men, may yet be the instrument to promote and encourage universal respect for, and observance of, human rights to the end that enduring peace and collective security shall reign among the peoples of all nations.

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<sup>48</sup> Merriam, *Systematic Politics*,