

A short insight into the Universal Declaration of Human rights

I. Introduction

The adoption of the Universal Declaration of Human Rights (UDHR) on 10 December 1948, drafted by the High Commission of Human Rights and adopted by the United Nations General Assembly, has signalled the first major step towards the promotion and protection of human rights, on an international scale.¹ Eleanor Roosevelt, one of the main drafters and proponent of the Declaration referred to it as the "Magna Carta for all mankind".² Yet there has been significant debate as to whether this can be justified. Now, looking back at it after more than 60 years. Can the UDHR still be seen as a significant document that not only influenced and shaped our world after its drafting and but also the work of the United Nations, concerning the promotion and protection of human rights? Has the so called "great event both in the life of the United Nations and in the life of mankind"³ sustained its relevance?

There is probably no political document with a broader impact on our lives than the UDHR.⁴ Admittedly, the original form of the document lacked cohesiveness, due to the vague formulations and non-binding nature. Nonetheless, it is undebatable that the UDHR constitutes the foundation upon which the modern concept of human rights was established. The Universal Declaration of Human Rights, as a living document⁵, has set the basis for the promotion and protection of human rights by the United Nations (UN), it informed the passing of national legislature, and even evolved to become binding through customary international law.

This essay will unpack the significance of the UDHR, by examining its historical context, the establishment of the UN and its role in human rights protection. Following from this, the essay will examine the problems presented by the time of the adoption of the UDHR, and its impact on the UN bodies. The penultimate section will discuss general considerations of the Declaration's achievements and weaknesses. The key aim is to ascertain, whether the UDHR only constitutes a historical document that has lost its meaning or if it is still significant in our nowadays world and the work of the UN.

II. Historical Context

In order to understand the true meaning and significance of the UDHR, it is important to look at its historical background and context first. It all started with the establishment of the United Nations (UN), which was founded after the horrendous experience of the Second World War.⁶ Governments representing different countries of our world came together to rearrange the international

¹ Mashood A. Baderin and Manisuli Ssenyonjo, 'Development of International Human Rights Law Before and After the UDHR', Chapter 1, p.3
<https://www.ashgate.com/pdf/SamplePages/International_Human_Rights_Law_Intro.pdf> accessed 30 December 2015

² Randall Williams and Ben Beard, 'This Day in Civil Rights History' (Montgomery, AL: New South Books, 2009), p. 309.

³ taken from the research essay (speech by Eleanor Roosevelt, *On the Adoption of the Universal Declaration of Human Rights*)

⁴ Antoon de Baets, 'The Impact of the Universal Declaration of Human Rights on the Study of History', 2009, *History and Theory* 48, p.21

⁵ Odello M, Cavandoli S, "Emerging areas of human rights in the 21st century: The role of the Universal Declaration of Human Rights" 2011, Routledge, pp. 3-6

⁶ 'The History of the United Nations', <<http://www.un.org/en/sections/history/history-united-nations/>> accessed 11 January 2016

community⁷ and to "reaffirm faith in fundamental human rights"⁸. However, the United Nation's guiding principle was the formation of an international framework that would strengthen the promotion of peace and security and hereby inhibit further armed conflicts between the States.⁹ According to Article 1(3), the main purpose of the UN lies within the "international co-operation in solving international problems of an economic, social cultural, or humanitarian character, and in promoting and encouraging respect for human rights".¹⁰

Nonetheless, the words contained in the Charter were expressed generally, not even defining the term "human rights" and the Member States were under no obligation to take action "except to "pledge" pursuant to Article 56"¹¹.¹² The only substantive human right to receive specific mention in the UN Charter is that of equal protection (Art. 1(3), 13(1)(b) and 55). It was silent on mechanisms for the enforcement of human rights and contented itself with states "pledging" moral obligation. Nevertheless, the UN Charter can be seen as the legal basis and foundation upon which the UDHR was built.¹³

III. Adoption of the UDHR

We have already identified, that the UN Charter contained some general references to the concept of human rights, i.e. to "reaffirm faith in fundamental human rights"¹⁴, without precisely explaining its actual meaning. Therefore, the Economic and Social Council (ECOSOC) established the Commission on Human Rights, which was supposed to compose the Universal Declaration of Human Rights (UDHR).¹⁵ This "history making" Declaration has been adopted by the General Assembly Resolution 217 (III) on 10 December 1948.¹⁶ 56 UN Member States, all vastly diverse in their cultures, and legal and political frameworks, deemed it necessary to codify and consequently promote, the protection of human rights.¹⁷ The Universal Declaration consists of 30 Articles that cover the fundamental and most important human rights, not only covering civil and political rights, such as the right to freedom and equality and to freedom of discrimination (Articles 1 and 2), but also social and cultural, e.g. the right to marry and found a family (Article 16).¹⁸ Although the UDHR served as an authoritative medium concerning the interpretation of the human rights provisions included in the UN Charter¹⁹, it was not supposed to have legal effect²⁰ in neither international or domestic law. As Eleanor Roosevelt stated, it was rather supposed to serve as a "common standard achievement for all peoples of all nations, which is not , and does not purport to be a statement of law or of legal obligation ".²¹ This non-binding nature of the Declaration "reflects the compromise between the

⁷ Steinerte E., Wallace R.M.M., ' United Nations protection of human rights', 2009, University of London Press, pp.10-11

⁸ Preamble of the United Nations Charter

⁹ supra note, 7

¹⁰ Article 1(3) UN Charter

¹¹ Article 56 UN Charter "to take joint and separate action in cooperation with the organisation for the achievement of the purposes set forth in Article 55".

¹² supra note, 7

¹³ supra note, 1

¹⁴ Preamble of the United Nations Charter

¹⁵ supra note, 7

¹⁶ The Impact of the Universal Declaration of Human Rights, United Nations Department of Social Affairs, 1951, p.20

¹⁷ supra note, 5

¹⁸ Rehman J., International Human Rights Law (2nd edn, Longman Pub Group 2009), p.80

¹⁹ supra note, 1

²⁰ supra note, 4

²¹ Lord Hoffmann, 'The universality of human rights', 2009, Law Quarterly Review, p.4

commitment to human rights and resistance to relinquishing state sovereignty".²² The UDHR represents a significant change after the experiences of the Second World War and encouraged the international community to act in concert, concerning the protection of human rights for all people. States were not longer able to claim state sovereignty as an apology to violate their citizens human rights.²³ The adoption of the UDHR has led to the international recognition that all individuals are eligible to human rights and freedoms "simply by virtue of their humanity".²⁴ The objective behind the UDHR was to establish a guidance for the protection of human rights, that the Member States could follow.²⁵

As a General Assembly resolution, the UDHR is not a legally binding instrument to the Member States.²⁶ It is difficult to acknowledge a provision which promises to protect human beings without indicating how that goal might be reached.²⁷ The international community needed a legally binding documents, rather than just a "political proclamation", in order to effectively protect human rights.²⁸ For this reason, the UDHR provided as a foundation for two legally binding documents, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), which entered into force in 1976. Together, these three documents form the International Bill of Rights.²⁹ A significant step further for the protection of human rights that has developed from the ICCPR is the the optional protocol to it, "in order to further achieve the purpose of" the ICCPR. Parties to this Covenant do not only put themselves under the scrutiny of the Human rights Committee, but rather "allow" individuals under its jurisdiction who claim violations of their rights to seek "help" from the committee (Article 1).

The UDHR has influenced the establishment and development of Treaties between States since its adoption. Several rules of international law, customary as well as treaty law, "have been developed at international and regional levels". Concerning multilateral treaties, there has been, e.g. the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and the International Convention on the Elimination of All Forms of Racial Discrimination (CERD). One Treaty which applies to a specific region can be seen in the European Convention for the Protection of Human Rights and Fundamental Freedoms (*ECHR*).³⁰

Regardless of this positive influence and development of the UDHR, it is eventually of note to mention one major weak point at the time of its adoption. By referring to the UDHR as the "Magna Carta for all mankind", Eleanor Roosevelt was indicating that this Declaration was aimed to be more "inclusive than its predecessor, the original British Magna Carta, "which was restricted to a privileged class in the nobility and feudal aristocracy".³¹ Unfortunately, considering the historical situation, it was an "inescapable irony that a declaration purporting to be a "Magna Carta for all mankind" was being drawn up at a time when half of the world's population was still under colonial domination".³² Many politicians and writers from Asia and Africa complained that their countries were not even represented at the UN in 1948 and that this adopted Declaration "reflects a peculiarly Western

²² Kathleen Renee Cronin-Furman, '60 Years of the UDHR: Towards an individual responsibility to protect', 2010, U. Int'l L. Rev.175-178

²³ Bonny Ibhawoh, 'Human rights for some: Universal human rights, sexual minorities, and the exclusionary impulse', 2014, International Journal, p.613

²⁴ *ibid.*

²⁵ Rehman J., International Human Rights Law (2nd edn, Longman Pub Group 2009), p.80

²⁶ *supra* note, 1

²⁷ Tomuschat C, Human Rights: Between Idealism and Realism (Oxford University Press 2014), pp. 33-36

²⁸ < <http://legal.un.org/avl/ha/iccpr/iccpr.html>> accessed 11 January 2016

²⁹ *supra* note, 1

³⁰ *supra* note, 21

³¹ *supra* note, 21

³² *supra* note, 21

liberal tradition."³³ The reality indicates that the rights contained in the UDHR are not being enjoyed by everyone within the Member States, as well as globally, although international law affirms the fundamental rights of all people and proclaims the universality of human rights. It must be admitted, that the exclusion of the citizens living in colonized countries constitutes a crucial weak point of the Declaration's claim to universality. "Universal human rights" are therefore blamed to be largely rhetorical and aspirational.³⁴ Indeed, this is true and it should be the UN's highest endeavour to possibly bring certain amendments to its functions in order for it to be accessible to the international community. Having said that, it is as important to mention that the UDHR played a significant role in the decolonization role. Article 21 UDHR announced that the "will of the people shall be the basis of the authority of government" and hereby reconstructed the right of self-determination.³⁵

All in all, it can be concluded that the adoption of the UDHR, besides all its flaws, marks a incomparable first step towards the international promotion and protection of human rights by the UN.

IV. Impact of the UDHR and the UN Bodies

The adoption of the UDHR has served as a "springboard" for the further development of the UN bodies.³⁶ The UDHR specifies and defines the human rights mentioned in the UN Charter, which constitutes the basic legal authority for all action taken by the United Nations in the field of human rights.³⁷ In addition, the UDHR has served as the "source of inspiration" for the working bodies of the UN, to advance its standard setting for the protection of human rights.³⁸ During the next twenty years after its adoption, the UN established a total of 34 human rights instruments.³⁹ The General Assembly allegedly referred to the UDHR about 75 times, acknowledging its significance.⁴⁰ The UN's effort in regards to the promotion and protection of human rights covers a broad range of different functions such as "preventing discrimination, protecting minorities, improving the status of women and many more." It is true, that some of these activities were found on the legal basis of the Charter and thus prior to the adoption of the UDHR. But, nevertheless, "they have without question received a strong impetus, a widened perspective and a distinct orientation from the proclamation by the General Assembly of the Universal Declaration."⁴¹

So far, the greatest impact of the UDHR in the work of the United Nations can be seen in the positive actions taken by principle organs, e.g. ECOSOC, General Assembly, when attending to specific breaches of human rights. These bodies have influenced and guided the development of the provisions laid down in the UDHR.⁴²

Examples for these actions, can be found in the work of ECOSOC, which established the Commission on Human Rights in 1946. Its successor, the Human Rights Council (HRC) was created by the UN General Assembly resolution 60/251 in 2006 and holds the responsibility to promote and protect the human rights and freedoms for all.⁴³

³³ Lord Hoffmann, 'The universality of human rights', 2009, *Law Quarterly Review*, p. 4

³⁴ Bonny Ibhawoh, 'Human rights for some: Universal human rights, sexual minorities, and the exclusionary impulse', 2014, *International Journal*, p.614

³⁵ *ibid.*

³⁶ *supra* note, 5

³⁷ *supra* note, 15

³⁸ Hurst Hannum, 'Status of the Universal Declaration of Human Rights in National and International Law', 25 *Ga. J. Int'l & Comp. L* 287 1995-1996, p.290

³⁹ *supra* note, 5

⁴⁰ Rehman J., *International Human Rights Law* (2nd edn, Longman Pub Group 2009), p.78-84.

⁴¹ *supra* note, 15

⁴² *supra* note, 5

⁴³ United Nation: Human Rights <<http://research.un.org/en/docs/humanrights/charter>> accessed 4.01.16

The HRC has been subject to criticism, concerning his composition. This body, whose aim is the promotion and protection of human rights in the Member States, presently consists of States such as Cuba, Pakistan, Congo and Saudi Arabia, who just recently executed political prisoners.⁴⁴ The Council here comprises of "some of the world's worst human rights malefactors."⁴⁵ Should the Council improve such limitations, which unfortunately question its endeavour, then it is very likely for the purpose of the Charter to be carried out in the near future.

The UDHR has served as a fundament for the work of the United Nation's specialized agencies, when encountering problems concerning the promotion or the protection of human rights. It has informed the decisions and subsequent outcomes of the work of several Commissions, e.g. the Commission of the Status of Women, and Sub-Commissions, e.g. Prevention of Discrimination and Protection of Minorities, and the special committees dealing with problems of slavery and refugees.⁴⁶

Further evidence of the influence of the UDHR in the work of the ECOSOC can be found in important adopted resolutions that were passed on its basis. For instance, Article 15 UDHR⁴⁷ of the Declaration was cited in a resolution of the ECOSOC concerning the nationality of married women. Article 19⁴⁸ of the Declaration relating to the right to freedom of opinion and expression was cited in a resolution of the ECOSOC condemning interference with radio signals.⁴⁹

A survey of the work of all organs of the UN reveals a steady expansion of positive action to cover the whole field of rights proclaimed in the Declaration.⁵⁰ These institutional developments have had an immense impact of the national legal systems of the Member States. Their national law is being scrutinized through the UN's bodies and the protection of human rights now transcends national borders.⁵¹ Although these developments should be applauded, the fact remains that mostly no active effort in combating human rights violations was made, given the notion of state sovereignty. This was indicated in the case of Rwanda (1994), where the UN's failed to react to the genocide that was taking place. Instead, several recommendations were made and thereafter not followed upon. From this, it can be submitted that the intentions behind the establishment of the UN's bodies as well as their effectiveness in combating human rights violations can be questioned.

V. Achievements and weaknesses

Let us begin with the words of a British Delegate who compared the Declaration with the Magna Carta, saying that " this is, indeed, an historic occasion because never before have so many nations joined together to agree upon what they consider to be basic and fundamental rights and freedoms of the individual".⁵² Considering the time of its drafting, precisely after the World had experienced two tremendous wars, the adoption of the UDHR can be acknowledged as a very remarkable and unique achievement.

⁴⁴ Current Membership of the Human Rights Council, < <http://www.ohchr.org/EN/HRBodies/HRC/Pages/CurrentMembers.aspx>> accessed 11.January 2016

⁴⁵ The Hypocrisy of the UN's Human Rights Council, < <http://www.worldaffairsjournal.org/blog/joel-brinkley/hypocrisy-uns-human-rights-council>> accessed 11 January 2016 ; 'Saudi execution of political prisoners sparks protest- the Round up' , by Hannah Lynes <<http://ukhumanrightsblog.com>> accessed 5th January 2016

⁴⁶ supra note, 15

⁴⁷ Article 15 UDHR : the right to a nationality

⁴⁸ Article 19 UDHR: the right to freedom of opinion and expression

⁴⁹ The Impact of the Universal Declaration of Human Rights, United Nations Department of Social Affairs, 1951

⁵⁰ *ibid.*

⁵¹ supra note, 5

⁵² Jochen Von Bernstorff, 'The Changing fortunes of the Universal Declaration of Human Rights: genesis and symbolic dimensions of the turn to rights in international law', 2008, European Journal of International Law, p.3

Despite the promising nature of the venture, many international lawyers doubted the legal aspect of the Declaration, seeing it "negligible at best and detrimental at worst".⁵³ They could not understand how it should be possible to protect and promote human rights, without having a legally binding document and any enforcement mechanism. The Member States were keen to keep the provisions included in the Declaration general and non-binding, due to their national unsolved problems, e.g. the US were facing conflicts with race relations, while many European countries wanted to limit the application of the declaration in their colonies.⁵⁴ This refusal of any legal obligation, made the seemingly willingness to protect human rights very questionable. The pursued political and moral interest contained in the Declaration seemed to matter more than its actual legal significance. An example for this can be found in the vague formulations of the provisions, which at the same time included broad restrictions and in some instances even legal flaws, e.g. Article 14 UDHR, which allows people to seek asylum, without containing a right to be granted asylum.⁵⁵

Unfortunately, it needs to be said that the international community, precisely said the UN, still needs to grow stronger together, to achieve the protection of human rights in all of its Member States. Today's reality indicates that to many people across the globe "remain excluded from the most basic rights."⁵⁶

Keeping all of these improvable aspects in mind, it is still possible to find achievements of the UDHR in our nowadays world and the work of the UN. First thing I want to mention is the increased membership from 48 governments in 1948, to now 193 Member States, who have all decided to accept the provisions of the UDHR.⁵⁷

After more than 67 years, the UDHR remains the basis for nowadays human rights protection, and although not planned to be legally binding, it served as a platform for the development of international human rights law and the work of the UN.⁵⁸ The UDHR is now published in more than 360 languages and is the most translated document in the world.⁵⁹

As we have seen, many established bodies of the UN for the protection of human rights are originally based on the UDHR. Some of the Declaration's provisions are now embodied in Treaties and are even accepted as customary international law, which is binding to the States. In addition to this, the Declaration served directly or indirectly as a guideline for many regional and domestic bills, constitutions and policies, which seek to protect human rights⁶⁰, e.g. the European Convention on Human Rights (ECHR)⁶¹, the Human Rights Act 1998.⁶²

The UDHR managed to be a moral and then legal influence across the world, not only to the State's governments, but also to ordinary citizens. This is indicated by a statement made by Nelson Mandela, about the impact of the adoption of the Declaration by the UN in South Africa, where apartheid was formally introduced in the same year. "For all opponents of this pernicious regime, the simple and noble words of the Declaration were a sudden ray of hope in one of our darkest moments. During the many years that follow (...) this document serves as a shining beacon and an

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⁵⁴ supra note, 21

⁵⁵ supra note, 50

⁵⁶ supra note, 21

⁵⁷ Francesca Klug, 'The Universal Declaration of Human Rights: 60 years on', 2009, Public Law, p.2

⁵⁸ supra note, 21

⁵⁹ supra note, 4

⁶⁰ Hurst Hannum, 'The Status of the Universal Declaration of Human Rights in National and International Law, 1995-1996, 25 Ga. J. Int'l & Comp.L. 287, p.289

⁶¹ Lord Steyn, 'Human rights: the legacy of Mrs Roosevelt', 2002, Public Law, p.4

⁶² Lord Hoffmann, 'The universality of human rights', 2009, Law Quarterly Review, p.4

inspiration to many millions of South Africans".⁶³ Admittedly, the UDHR could not manage to prevent horrible periods, such as the time of apartheid. Nonetheless, it gave people hope to fight for their rights and make a change.

VI. Conclusion

The adoption of the UDHR by the United Nations constitutes an incomparable accomplishment of today's world. Over the last 67 years, this document managed to be the milestone on which the work for the promotion and protection of human rights by the UN was founded. Through creating this Declaration 3 year after the horrendous experiences of the Second World War, the UN achieved to bring the world's nations together and has set the standard for a common goal to protect human rights worldwide. Besides, the UDHR formed the basis on which many of the UN bodies were founded, e.g. Human rights Council. Through this, the dynamic nature of human rights law has challenged and shaped the expansion of the work of the UN. The General Assembly continuously refers to the UDHR, proclaiming its importance and the Member State's duty to hold its provisions. Nonetheless, in order to fully exploit the intention laid down in the declaration, there are still a lot of weak points that need to be eliminated. not only recommendations, but rather find active ways to solve the problems, binding obligations on member states, since human rights should be the same everywhere. also elimination of the veto power, or generally unequal treatment of the States in the UN.

Although not intended to be binding, the UDHR has led to the establishment of the two binding covenants, i.e. ICCPR and ICECSR, and served as a model for many more Treaties and national legislation. Best example "for us" HRA, which gives us direct access to our human rights.

Some of the Declaration's provisions have even evolved to be binding through customary law, which now enables the UN and its bodies to hold all States accountable for their actions. They are no longer tolerated to use State sovereignty as an excuse to violate their citizen's rights. The UN, since its adoption of the UDHR, definitely achieved to promote an understanding of the unique meaning, inherent dignity, and equal worth of all the people of our world. Ordinary citizens are now aware of the rights they have and at the same time gain hope that there is an institution that aims to protect their human rights.

The stratification of the world upon economic, political, social, racial, religious lines and ensuing breaches of fundamental human rights has deemed the declaration seemingly more relevant than ever. A recent example can be regarded in the Saudi execution of political prisoners. It is appropriate to conclude, that no other document has influenced our world more than the UDHR. As seen, it accomplished to prove its significance until today and will continue to do so in the future.

⁶³ supra note, 53

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