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The Preamble of the United Nations Declaration of Human Rights

Keywords

Human Rights Law, Organizations, United Nations, International Law: History, Comparative Law, Economic Development

THE PREAMBLE OF THE UNITED NATIONS DECLARATION OF HUMAN RIGHTS

DR. JOHANNES VAN AGGELEN*

I. INTRODUCTION

The First World War was fought for the ideological independence of nationalities and for the establishment of a collective security system and international peace. The Second World War then essentially generated a crusade for human rights. Indeed the first part of the twentieth century witnessed a real counter-revolution, reincarnating all of the principles of liberty and equality without discrimination already enshrined in the English Magna Charta of 1215¹ and the French Declaration of the Rights of the Citizen of 1789.² The preamble of the Universal Declaration of Human Rights (Universal Declaration or Declaration) is the modern expression of these ideals.³

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1. For the full text of the Magna Carta, see *Yale Law School Avalon Project* (visited Apr. 5, 2000) <<http://www.yale.edu/lawweb/avalon/magframe.htm>>.

2. For a text of the Declaration of the Rights of Man and the Citizen, see S.E. FINER ET AL., *COMPARING CONSTITUTIONS* 208-210 (1995).

3. Universal Declaration of Human Rights, Dec. 10, 1948, G.A. Res. 217A(III), U.N. Doc. A/810 (1948) [hereinafter *Universal Declaration*]. These ideals permeate the text of the Preamble of the Universal Declaration, which holds as follows:

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

The victory of the United Nations over barbarism in 1945 could not have materialized without a formal recognition of human rights, and the fiftieth anniversary of the Universal Declaration gives an impetus for reflection on the *rationae materiae* of the preamble.⁴ This article considers the birth of the Declaration and its relationship with the United Nations Charter.⁵ Also examined are the contributions different countries and individuals made to the drafting of the preamble. Finally, this article notes many of the efforts the international community has made to recognize and define human rights in numerous, subsequent treaties and declarations, with attention paid to the influence the Declaration has had with respect to those efforts.

The godfather of the Universal Declaration, Professor René Cassin, saw the Declaration as a means to achieve a better world.⁶ Its spiritual mother, Mrs. Roosevelt, stated in an address at the Sorbonne that democracy, freedom and human rights had gained a definite meaning for the people of the world. She stressed "that we must not be deluded by the efforts of the forces of reaction to prostitute the great words of our free tradition and thereby confuse the struggle."⁷ Professor Cassin and Mrs. Roosevelt's views reflected the optimism carried forth in the drafting of the U.N. Charter. Additionally, when the General Assembly adopted the Universal Declaration on December 10, 1948,⁸ it referred to the idealistic concepts of the U.N. Charter and elevated the four freedoms proclaimed in the Atlantic Charter of August 12, 1941 to a

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 cooperation 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 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 of their jurisdiction.

Id. at pmb1.

4. The Fiftieth Anniversary of the Universal Declaration was celebrated by the United Nations, and worldwide. *See United Nations Website* (visited March 29, 2000) <<http://www.unitednations.org>>.

5. *See generally* U.N. CHARTER.

6. René Cassin, *How to achieve a better world - The Universal Declaration of Human Rights*, UNITED NATIONS REV., Sept. 1958, at 14-19.

7. Eleanor Roosevelt, Address at the Sorbonne, entitled *The Struggle For Human Rights* (Sept. 28, 1948) (cited in 484 DEP'T ST. BULL., Oct. 10, 1948).

8. Universal Declaration of Human Rights, Dec. 10, 1948, G.A. Res. 217A(III).

universal level.⁹ Thus, the Declaration became nothing less than the definitive statement of the prevailing hopefulness and the high ambitions in the realm of human rights at the end of World War II.

The Universal Declaration cannot, however, be regarded as having merely historical significance. It has tremendous contemporary importance because it entrusts every individual and every member of society to develop, through education, more respect for the fundamental rights and freedoms it espouses.¹⁰ In this regard, the Universal Declaration stands out in that it guides and inspires the endeavors of the United Nations in the field of human rights. The preambular paragraphs of the Declaration reflect the basic human rights philosophies of our times.

The importance of the Declaration has grown tremendously since it was first signed, far beyond its role as guidance and inspiration for the United Nations. Far beyond merely ambition, the Declaration is now widely considered to be part of customary international law.¹¹ As such it is binding on all states,¹² and it continues to guide the development of

9. The four freedoms of the Atlantic Charter, included in the Joint Declaration signed by Sir Winston Churchill and President Roosevelt were: freedom of speech, freedom of worship, freedom from want, freedom from fear. The Atlantic Charter is Reprinted by the Yale Law School's Avalon Project, at <<http://www.yale.edu/lawweb/avalon/wwii/atlantic.htm>> (visited July 6, 2000). Similar references were subsequently incorporated into the so-called "Declaration of the United Nations" of January 1, 1942. Joint Declaration of the United Nations, U.N.T.S. 1942 No.5 (Cmd. 6388). This Declaration was signed by the representatives of twenty-six countries, including the United States, the United Kingdom, the USSR and China. Although there exists an abundant literature on numerous aspects of the Universal Declaration, there is almost no specific doctrine on the preamble. For further information on the aspects of drafting the Universal Declaration, see, e.g., Rene Cassin: *Quelques Souvenirs Sur la Declaration Universelle de 1948*, 15 REVUE DE DROIT CONTEMPORAIN 11-24 (1968); J. Humphrey, *The UN Charter and the Universal Declaration of Human Rights*, in THE INTERNATIONAL PROTECTION OF HUMAN RIGHTS 39-58 (Evan Luard ed. 1967), J. Humphrey, *The International Law of Human Rights in the Middle Twentieth Century*, in THE PRESENT STATE OF INTERNATIONAL LAW AND OTHER ESSAYS 75-109 (M. Bos ed., 1973); J. Humphrey: *The Universal Declaration of Human Rights: Its History, Impact and Juridical Character*, in HUMAN RIGHTS: THE THIRTY YEARS AFTER THE UNIVERSAL DECLARATION 21-37 (B.G. Ramcharan, ed., 1979); JOHANNES MORSINK, THE UNIVERSAL DECLARATION OF HUMAN RIGHTS: ORIGINS, DRAFTING, AND INTENT (1999); HUMAN RIGHTS: FIFTY YEARS ON: AN APPRAISAL (Tony Evans ed. 1998); REFLECTIONS ON THE UNIVERSAL DECLARATION OF HUMAN RIGHTS: A FIFTIETH ANNIVERSARY ANTHOLOGY (Barend van der Heijden & Bahia Tahzib-Lie eds. 1998); THE UNIVERSAL DECLARATION OF HUMAN RIGHTS: FIFTY YEARS AND BEYOND (Yael Danieli et al. eds. 1999);

10. See Universal Declaration, *supra* note 3, at pmb., ¶ 8.

11. See, e.g., Ian Brownlie, PRINCIPLES OF PUBLIC INTERNATIONAL LAW, 575 (5th ed. 1998).

12. Customary International Law is formed by the existence of both consistent and widespread state practice and *opinio juris*. Where a principle is customary international law it is binding on all nations except those who declare themselves persistent objectors to the principle. *Cf.* North Seas Continental Shelf Cases (F.R.G. v. Den./Neth.), 1969 I.C.J. 3, 27 (Feb. 20).

international human rights law, in practice as well as in aspiration.¹³

II. THE NATURE AND INFLUENCE OF THE PREAMBLE TO THE UNIVERSAL DECLARATION ON HUMAN RIGHTS

A treaty's preamble aims at defining in general terms the parties' purposes and the considerations that led them to agree. Likewise, the preamble of the Universal Declaration explains why the drafters proclaimed the list of rights that they did.¹⁴ It is this explanation wherein the drafters and the nations they represented came together to express their intention and recognition that the Declaration would be considered an expression of the past and future of international human rights instruments.¹⁵ Moreover, it was their intention that the rights expressed in the Declaration would come to be seen not as a means to peace but as a birthright.¹⁶

Although the Universal Declaration of Human Rights is not a legally binding treaty, rather a resolution adopted by the General Assembly in the form of a declaration, this does not affect the nature of its preamble.¹⁷ Indeed, because the Declaration is not a treaty, but rather customary international law, the preamble has greater significance. The preamble has been interpreted into many of the instruments whose use thereof constitutes the widespread practice element of custom. Further, the preamble is an integral part of the Declaration and defines what the original fifty-six States had in mind when they adopted the Declaration,¹⁸ and its words should be used as

13. See Hurst Hannum, *The Status of the Universal Declaration of Human Rights in National and International Law*, 25 GA. J. INT'L & COMP. L. 187 (1995/6). Some authors consider the Declaration's preamble and its provisions to be part of *jus cogens*. See, e.g., W. P. Gormley: *The Emerging Dimensions of Human Rights: Protection at the International and Regional Levels: The Common Standard of Mankind*, 17 BANARAS L.J. 1-41 (1981).

14. MORSINK, *supra* note 9, at 313.

15. The second paragraph of the preamble of the Universal Declaration declares that, "... disregard and contempt for human rights *have resulted* in barbarous acts which *have outraged* the conscious of mankind... and freedom from want and fear *has been proclaimed* as the highest aspiration..." Universal Declaration, *supra* note 3, at pmbl. (emphasis added). See also Morsink, *supra* note 14, at 319.

16. See Universal Declaration, *supra* note 3, at pmbl., ¶ 1; MORSINK, *supra* note 9, at 320.

17. On the formal distinction between the General Assembly resolution in the form of a recommendation or a declaration see *Use of the Terms Declaration and Recommendation Memorandum* by the Office of Legal Affairs, U.N. Doc. E/CN.4/L.610 (1962) (an early United Nations Secretariat draft).

18. Forty-eight States voted in favor of the Declaration, with eight States abstaining. Six of the eight abstentions were members of the Soviet Bloc. The eight abstaining States were: the USSR, the Ukrainian Soviet Socialist Republic, the Byelorussian SSR, Czechoslovakia, Yugoslavia, Poland, South Africa and Saudi Arabia. Those nations did not disagree with the notion of human rights, but felt that human rights in a socialist state were integral with the State, since the government was in fact the collective individual. These nations did not vote against the Declaration, but differed in how the

evidence of these ideas and purposes in any interpretation of the ensuing articles.¹⁹ The influence of the Declaration's preamble thus extends beyond the ordinary in that it serves as part of the positive statement of international human rights law that is the whole of the Declaration.

III. THE PREAMBLE OF THE UNIVERSAL DECLARATION IN THE CONTEXT OF THE UNITED NATIONS CHARTER

The ideas expressed in the preamble of the United Nations Charter anchored and inspired the drafting of the preamble of the Universal Declaration.²⁰ The U.N. Charter itself contains seven specific references to human rights.²¹ Article 13b, which entitles the General Assembly to make recommendations in the field of human rights,²² may even be considered the cradle of the Declaration. By making the study and promotion of international human rights and fundamental freedoms a United Nations mandate, this Article laid the groundwork for the fundamental tenet of the Declaration. Clearly, the drafters of the U.N. Charter and then the Declaration saw the need for education to further the common goal of human rights and fundamental freedoms.

In addition to helping lead the way to the Declaration's drafting, the U.N. Charter's language was mirrored in the Declaration. For example, The second preambular paragraph of the U.N. Charter reads, "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. . . ."²³ The author of this paragraph, Field Marshal Smuts, presented his draft to the San Francisco Conference in a slightly different form. His proposal read, "To re-establish faith in fundamental human rights, in the sanctity and ultimate value of human personality, in the equal rights of men and women and of

rights should be expressed. See Official Records of the Third Session of the General Assembly, Part I, 1948, 183rd plenary meeting, at 929.

19. See Universal Declaration, *supra* note 3, at pmb. (the Proclamation issued as the last paragraph of the Preamble).

20. See Humphrey, THE INTERNATIONAL PROTECTION OF HUMAN RIGHTS, *supra* note 9, at 9-46.

21. See U.N. CHARTER pmb., ¶ 2; art. 1, ¶ 3; arts. 13b, 55c; art. 62, ¶ 2, arts. 68, 76. See also HERSCH LAUTERPACHT, INTERNATIONAL LAW AND HUMAN RIGHTS 424-28 (1950).

22. Article 13b states that,

[The General Assembly shall initiate studies and make recommendations for the purpose of] . . . promoting international cooperation in the economic, social, cultural, educational, and health fields, and assisting in the realization of human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

U.N. CHARTER art. 13b.

23. U.N. Charter, 2nd preambular para.; see Humphrey, THE INTERNATIONAL PROTECTION OF HUMAN RIGHTS, *supra* note 9, at 41.

nations large and small. . . .²⁴ Thus the spirit of his words remained intact although the text of his proposal was changed.

The Rapporteur of Sub-Committee I on the preamble had the following comment on the second preambular paragraph, "that faith in fundamental human rights had actually never faded, but although it was one of the most important factors which had moved men and women in all lands to accept the sacrifices by which victory was achieved, it needed reaffirmation in the U.N. Charter."²⁵ The U.N. Charter's reaffirmation then became the Declaration's call to action.

In the Declaration's preamble, Field Marshal Smuts' proposal was renewed and integrated into the final version. Although some words were changed, in the text of the Declaration adopted on December 10, 1948, the gravaman of his proposal remained as the fifth preambular paragraph.²⁶ The final version deleted a second reference to human rights in the preamble, namely, ". . . by the establishment of conditions under which justice and respect for the obligations of international law and treaties and fundamental human right and freedoms can be maintained. . . ."²⁷

The Coordination Committee proposed to substitute the word "value" in the Smuts draft for "worth", indicating that "value" had an economic connotation that was inappropriate with reference to human beings.²⁸ It is fortunate that no action was taken on the draft amendment proposed by the Colombian delegation; because of its vague formulation it could have opened anew the Pandora's box. It read, ". . . to declare that the international recognition and protection of the essential rights of the individual is a necessary condition of peace, both within States and in their relations with each other."²⁹

IV. PROPOSALS FOR THE PREAMBULAR PARAGRAPHS OF THE UNIVERSAL DECLARATION; INFLUENCE BEYOND THE UNITED NATIONS CHARTER

Influences on the Declaration were not limited to the U.N. Charter

24. *Preamble to the Charter of the United Nations submitted by the South African Delegation*, UNCIO, Vol. III, p. 476, document 2, G/14 d(1) May 3, 1945.

25. Report of Rapporteur, Sub-Committee I/1/A (Farid Zeinoddine, Syria), UNCIO, Vol. VI, doc. 785 [1/1/28] dated 5 June 1945, p. 359.

26. Therefore, this proposal is referred to as "The Smuts Preamble." See RUTH B. RUSSEL, *A HISTORY OF THE UNITED NATIONS CHARTER* 912 (1958). See also Mr. Smuts' observations in the Steering Committee, UNCIO, Vol. V, Doc. 1213, ST/23, 28 June 1945, at 307.

27. Without the reference to human rights, this paragraph as revised became the third preambular paragraph in the final version.

28. UNCIO, Vol. V, Doc. 1213, ST/23 dated 28 June 1945, p. 307. This reading therefore superseded even the draft second preambular paragraph as approved by Committee I/1/A. See UNCIO, Vol. VI, doc. WD 62 L1/A/18 dated 31 May 1945, p. 694 and UNCIO, Vol. XVII, doc. WD 441 CO 205, dated 13 September 1945, p. 379.

29. UNCIO, Vol. III, doc. 26/14 (1) dated 6 May 1945, p. 587.

and its drafters. Fifty-six nations participated in the Declaration's drafting and coordination, and each nation contributed—although some nations took a lead role. The French government in its comments on the preambular paragraphs of the draft Declaration did the groundwork and paved the way for the adoption of the final text in December, 1948.³⁰ Preambular paragraph 1 uses the words “whereas ignorance and contempt for human rights are one of the root causes of human suffering. . . .”³¹ This was the only draft where a negative connotation comes first. In all the other drafts a positive statement preceded the clause on disregard and contempt for human rights.³²

The final draft of the first preambular paragraph was taken from the American proposal, which read: “Whereas recognition of the inherent dignity and the equal rights of all the persons is the foundation of freedom, peace and justice in the world.”³³ Not all of the proposals were included in the preamble, however. The proposal by the former Union of Soviet Socialist Republics did not land in the

30. *Commission on Human Rights, Third Session, Observations of Governments on the Draft International Declaration of Human Rights, The Draft International Covenant on Human Rights and Methods of Application, Communication received from the French Government*. U.N. Doc. E/CN.4/82/Add.8 (1948).

31. U.N. Charter pmb., ¶ 3.

32. One of the noblest proposals for the first preambular paragraph came from the late Judge Sir Hersch Lauterpacht, who wrote, “Whereas the enthronement of the rights of man was proclaimed to be a major purpose of the struggle out of which the United Nations was born. . . .” *Human Rights Committee, “Human Rights, the Charter of the United Nations, and the International Bill of the Rights of Man”, Preliminary Report by Professor Hersch Lauterpacht*. U.N. Doc. E/CN.4/89, at 36 (1948). The Chinese amendment to the Drafting Committee's text was akin to the final reading of the second preambular paragraph. Compare the *Report of the Drafting Committee to the Commission on Human Rights*, at 5, U.N. Doc. E/CN.4/95, (1948) with *China: Amendments to the Draft International Declaration on Human Rights*, at 1, U.N. Doc. E/CN.4/102 (1948) (the final second preambular paragraph). The first draft preambular paragraph prepared by the United Kingdom reading, “Whereas it is the purpose of the United Nations to achieve international cooperation in promoting and encouraging respect for human rights and fundamental freedoms for all. . . .” became the basis for the final version of the sixth preambular paragraph of the Declaration. *United Kingdom: Draft Preamble to the International Declaration of Human Rights* U.N. Doc. E/CN.4/124 (1948). This was mainly due to the serious work of the Sub-Committee on the Preamble of the Universal Declaration on the amendments to draft preambular paragraphs 4 and 5. *Report of the Subcommittee consisting of the Representatives of Australia, China, Philippines, United Kingdom and United States of America on Paragraphs 4 and 5 of the Preamble on the Draft International Declaration of Human Rights*, U.N. Doc. E/CN.4/146 (1948). The American Federation of Labour submitted that “international cooperation can be effective for the peace of the world only when based on respect for the human person. *Suggestion for a Preamble to the Draft International Declaration on Human Rights (submitted by the American Federation of Labor)*, U.N. Doc. E/CN.4/129 (1948).

33. *United States of America: Proposed Alternative for the Preamble of the Draft International Declaration of Human Rights*, U.N. Doc. E/CN.4/119 (1948). See also the almost identical proposal of Lebanon, *Lebanon: Suggested Preamble for the Draft International Declaration of Human Rights*, U.N. Doc. E/CN.4/132 (1948). The final version was drafted by the Sub-Committee based on these ideas. See *Preamble*, U.N. Doc. E/CN.4/138 (1948).

preambular part of the Declaration. Rather, it became the so-called "non-discrimination clause" of Article 2, substituting the words "proclaimed by the Charter" for "set forth in this Declaration."³⁴

Apart from drafts prepared by members of the Commission on Human Rights, the United Nations Secretariat had an important input into the final product. The first director of the Division of Human Rights, the late professor John Humphrey, presented the final Secretariat draft to a drafting committee on June 9, 1948. The drafting committee was composed of representatives of the Commission on Human Rights from Australia, Chile, China, France, Lebanon, the United Kingdom, the USSR and chaired by Mrs. Roosevelt.³⁵ A short comparison between the Secretariat draft and the draft adopted by the General Assembly shows the excellent work that can be done by the United Nations in the field of human rights. If one compares the two preamble drafts in their entirety there is a striking similarity in words. In the final version a new fourth preambular paragraph was inserted, which reads, "whereas it is essential to promote the development of friendly relations between nations."³⁶

The second preambular paragraph adopted by the General Assembly specified the words "fundamental freedoms" of the Secretariat draft, and reiterated the four freedoms of the Atlantic Charter.³⁷ That the "fundamental freedoms" were included is significant because their inclusion demonstrates the inclusive nature of the Declaration. Originally signed by Winston Churchill and President Franklin Roosevelt, the four freedoms were reiterated by the twenty-six nations that signed the Declaration of the United Nations on January 1, 1942.³⁸

Additionally, the last preambular paragraph appeared in the drafts submitted by such diverse nations as the United Kingdom and Lebanon, in the final Secretariat draft and in the version adopted by the Third Committee in the General Assembly.³⁹ The drafting Sub-

34. *Union of Socialist Soviet Republics: Draft Preamble to the International Declaration of Human Rights*, U.N. Doc. E/CN.4/139 (1948).

35. See Humphrey, *THE INTERNATIONAL PROTECTION OF HUMAN RIGHTS*, *supra* note 9, at 48. See also, HUM. RTS. BULL., (U.N. Ctr. for Hum. Rts.), 1986, at 18-26 (an erudite article by Charles Malik on the drafting of the Universal Declaration of Human Rights in a publication issued by the United Nations Centre for Human Rights). The Secretariat draft is contained in *Draft Report of the Commission on Human Rights to the Economic and Social Council*, U.N. Doc. E/CN.4/148/Add.1 (1948).

36. The clause "development of friendly relations among the nations" appeared in the second preambular paragraph of the USSR draft, *supra* note 34.

37. The four freedoms were also contained in the third preambular paragraph of the draft submitted by the American Federation of Labor, *supra* note 32

38. See *supra* note 9 and accompanying text.

39. See United Kingdom Draft, *supra* note 32; Lebanon's Suggestion, *supra* note 33; *Final Secretariat Draft in Annex A; Draft Declaration of Human Rights (Annex to the Draft Report of the Commission of Human Rights to the General Assembly and Secretary Counsel)*, U.N. Doc. E/CN.4/148/Add.1 (1948); *Draft International Declaration of Human Rights, Report of the Third Committee*, U.N. Doc. A/777 (1948).

Committee on the preamble left several alternatives, proposing, "Whereas a definition (common understanding) of these rights and freedoms is necessary (of the greatest importance) for the fulfillment of this pledge."⁴⁰ This consideration of diverse draft submission further indicates the democratic nature of the drafting process.

The operative clause of the preamble *expressis verbis* states that every individual and every organ in society "shall strive by teaching and education to promote respect for these rights and freedoms."⁴¹ The proclamation that the Universal Declaration is a common standard of achievement for all peoples and nations also bears witness of the democratic nature of the Universal Declaration. By comparison to another evolving democratic system, the philosophy of the Universal Declaration is inimical to the "separate but equal" doctrine that was shattered by operation of democracy in the United States. In retrospect one may be proud that the United Nations Human Rights Programme in fifty years did so much to achieve this common standard, given the incredible divergence of viewpoints regarding human rights worldwide. Indeed, despite the progress the Declaration has compelled, there still are very challenging tasks ahead. Paraphrasing the wise words of Mrs. Roosevelt, we should never overestimate the efforts of the forces of reaction.⁴²

V. THE IMPACT OF THE PREAMBLE OF THE UNIVERSAL DECLARATION ON THE UNITED NATIONS HUMAN RIGHTS PROGRAMME

This article is not the appropriate place to dwell on all aspects of the impact of the preamble on the United Nations Human Rights Programme.⁴³ I would nevertheless like to offer some trends and developments in international law that have been directly inspired and influenced by the Declaration.

First and foremost, the International Covenants on Economic, Social and Cultural Rights, and on Civil and Political Rights, adopted in 1966 and in force since 1976, breathed the spirit of the Universal

40. *Report of the Drafting Sub-Committee on the 6th Paragraph of the Preamble of the Draft Declaration on Human Rights*, U.N. Doc. E/CN.4/152 (1948).

41. Universal Declaration, *supra* note 3, at pmbl.

42. The American draft referred to "the obligation" of the United Nations to promote universal respect for human rights and fundamental freedoms, a clause that does not appear in any of the other drafts, nor in the final text. *United States of America: Proposed Alternative for the Preamble of the Draft International Declaration on Human Rights*, U.N. Doc. E/CN.4/119 (1948). The final text of the operative clause was inspired by a Philippine amendment. See *Philippine Amendment to Operative Clause of Preamble*, U.N. Doc. E/CN.4/143 (1948).

43. A very useful survey may be found in the publication *United Nations Action in the Field of Human Rights*, ST/HR/2Rev.4, (Centre for Human Rights Geneva), Sales No. E.94.XIV.II. See also, the United Nations High Commissioner for Human Rights website, at <http://www.unhchr.ch>

Declaration.⁴⁴ They also recognize directly in their preambular paragraphs the pivotal role the Universal Declaration plays as a bridge between the human rights provisions of the U.N. Charter and the provisions in the two Covenants.⁴⁵ The Universal Declaration is even of more paramount importance in those countries not yet party to the Covenants.

The importance of the Declaration to those countries not party to the Covenants is due to the influence it has had with related international instruments that have broader acceptance than the two Covenants. Influence of the second preambular paragraph may be found in the Convention on the Prevention and Punishment of the Crime of Genocide,⁴⁶ which was adopted by the General Assembly one day before the Universal Declaration. The Draft Convention on the Elimination of all Forms of Religious Intolerance⁴⁷ submitted to the General Assembly in 1967 led to the adoption of a Declaration on the Elimination of All forms of Intolerance and of Discrimination Based on Religion or Belief.⁴⁸ The influence of the Declaration is thus expanded by its inclusion into instruments beyond the Covenants. Indeed, each

44. International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 3 (entered into force Jan. 3, 1976) [hereinafter ICESCR]; International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171 (entered into force Mar. 23, 1976) [hereinafter ICCPR].

45. The Preamble to the ICESCR recognizes, in paragraph three, "that in accordance with the Universal Declaration of Human Rights, the ideal of human beings 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." ICESCR, *supra* note 44, at pmb. The fourth paragraph then considers "the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of human rights and freedoms." *Id.* at pmb., ¶ 4. Similarly, the Preamble to the ICCPR recognizes, in paragraph three, "that in accordance with the Universal Declaration of Human Rights, the ideal of human beings 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." ICCPR, *supra* note 44, at pmb. The fourth paragraph then considers "the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of human rights and freedoms." *Id.* at pmb., ¶ 4.

46. Convention on the Prevention and Punishment of the Crime of Genocide, Dec. 9, 1948, 78 U.N.T.S. 277 (entered into force Jan. 12, 1951). *See also* the second and seventh preambular paragraph of the Rome Statute of the International Criminal Court, 37 I.L.M. 1002 (1998).

47. *See Discussions of Draft Declaration on the Elimination of all Forms of Religious Intolerance*, U.N. ESCOR 39th Sess., Supp. No. 8, U.N. Doc. E/4024, E/CN.4/891 (1965); *Draft Declaration on the Elimination of all Forms of Religious Intolerance: Report of the Secretary General [replies received from governments]*, U.N. Doc. A/9134 (1973).

48. Declaration on the Elimination of All forms of Intolerance and of Discrimination Based on Religion or Belief, Nov. 25, 1981, G.A. Res. 36/55, 36 GAOR Supp. No. 51, at 171, U.N. Doc. A/36/51 (1982). This Declaration states in the second paragraph of its preamble that "the Universal Declaration of Human Rights and the International Covenant on Human Rights proclaim the principles of non-discrimination and equality before the law and the right to freedom of thought, conscience, religion and belief. . . ." *Id.* at pmb., ¶ 2.

preambular paragraph is represented in some way in a great number of international human rights instruments. Considering that Article 1 of the International Convention on the Suppression and Punishment of the Crime of Apartheid defines apartheid as a crime against humanity,⁴⁹ one could validly see the influence of the second preambular paragraph.

As far as the third preambular paragraph is concerned we could refer to the 1956 Supplementary Convention on the Abolition of Slavery the Slave Trade and Institutions and Practices Similar to Slavery,⁵⁰ and to the work being undertaken by a working group of the Sub Commission on Promotion and Protection of Human Rights on Contemporary Forms of Slavery.⁵¹ The International Convention Against the Use of Mercenaries,⁵² adopted by the General Assembly, could be considered an important step in persuading mankind not to resort to rebellion against tyranny and oppression, a central tenet of the third preambular paragraph.

The fourth preambular paragraph on the need to promote the development of friendly relations between nations as a means to protect and promote human rights was incorporated by the international community into the Declaration of Principles on Friendly Relations and Cooperation Among States on October 24, 1970. Its incorporation

49. "The States Parties to the Present Convention declare that apartheid is a crime against humanity . . ." International Convention on the Suppression and Punishment of the Crime of Apartheid, adopted Nov. 30, 1973, 1015 U.N.T.S. 244, at art. 1 (entered into force July 18, 1976). The Convention also considers in its second Preambular paragraph "the Universal Declaration of Human Rights, which states that all persons are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set forth in the Declaration, without distinction of any kind, such as race, color or national origin. . . ." *Id.* at pmb., ¶ 2.

50. "Considering that the Universal Declaration of Human Rights, proclaimed by the General Assembly of the United Nations as a common standard of achievement for all peoples and all nations, states that no one shall be held in slavery or servitude and that slavery and the slave trade shall be prohibited in all their forms. . . ." Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, Sept. 7, 1956, 266 U.N.T.S. 3, at pmb., ¶ 3 (entered into force Apr. 30, 1957) (entered into force for the U.S. Dec. 6, 1967).

51. See *Report of the Working Group to the 45th Session of the Sub-Commission on Promotion and Protection of Human Rights*, U.N. Doc. E/CN.4/Sub.2/1993/45, at sec. I(A)(I) (1993) (The Report on the Working Group on Contemporary Forms of Slavery is reprinted at *University of Minnesota Human Rights Library Web Page* at <<http://www1.umn.edu/humanrts/demo/1993min.html>>. Note that the 1999 session of ECOSOC, at the recommendation of the Commission on Human Rights, the title The Sub-Commission on Prevention of Discrimination and Protection of Minorities was changed to The Sub-Commission on the Promotion and Protection of Human Rights. For resolutions, reports, decisions & chairperson's statements of the Sub-commission on the Promotion and Protection of Human Rights, please visit the United Nations High Commissioner for Human Rights' document web page at <<http://www.unhcr.ch/huridocs.nsf/FramePage/External?OpenDocument>> (visited July 6, 2000).

52. *International Convention Against Recruitment, Use, Financing and Training of Mercenaries*, G.A. Res. 44/34, Annex (1989).

marked the twenty-fifth anniversary of the United Nations.⁵³

The second preambular paragraph of the U.N. Charter became the first part of the fifth preambular paragraph in the Declaration, as discussed earlier. These paragraphs can be said to have catapulted human rights work on the prohibition of discrimination. For example, the International Convention on the Elimination of All Forms of Racial Discrimination of 1965⁵⁴ and the Convention on the Elimination of All Forms of Racial Discrimination Against Women⁵⁵ adopted by the General Assembly on December 18, 1979 both emphasize the crucial importance of the dignity and worth of the human person. The Declaration on Social Progress and Development adopted in 1969⁵⁶ and the Universal Declaration on the Eradication of Hunger and Malnutrition in 1974⁵⁷ are additional examples of expanding the ideas contained in the latter part of the fifth preambular paragraph.

The sixth preambular paragraph breathes very much the same spirit as its predecessor, going a step further to call for cooperation to achieve universal respect for and observance of human rights and fundamental freedoms. This pledge constitutes a *conditio sine qua non* for an effective promotion of universal respect for the observation of human rights and fundamental freedoms. Cooperation became one of the cardinal principles of inter-governmental relations in the second quarter of the United Nations' existence as underscored by the 1970 Declaration of Friendly Relations and Cooperation Among States.⁵⁸

Another pertinent example of the Declaration's influence is the Final Act of the Helsinki Conference.⁵⁹ The last paragraph of Section VII of the Respect for Human Rights and Fundamental Freedoms, including the Freedom of Thought, Conscience, Religion or Belief, appeals to the participating States to act in conformity with the

53. G.A. Res. 2625(XXV) (1970). See G. Arangio-Ruiz, *The Normative Role of the General Assembly of the United Nations and the Declaration of Principles on Friendly Relations*, in COLLECTED COURSES, HAGUE ACADEMY OF INTERNATIONAL LAW 134-II, 419-742 (1972).

54. International Convention on the Elimination of All Forms of Racial Discrimination, Dec. 21, 1965, 660 U.N.T.S. 195 (entered into force Jan. 4, 1969).

55. *Convention on the Elimination of All Forms of Discrimination Against Women*, Dec. 18, 1979, G.A. Res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46 (1980).

56. *Declaration on Social Progress and Development*, G.A. Res. 2542 (XXIV) (1969).

57. "The grave food crisis that is afflicting the peoples of the developing countries where most of the world's hungry and ill-nourished live . . . actually jeopardizes the most fundamental principles and values associated with the right to life and human dignity as enshrined in the Universal Declaration of Human Rights. . . ." *Universal Declaration on the Eradication of Malnutrition and Hunger*, Nov. 16, 1974, G.A. Res. 3180 (XXVIII), at pmb., ¶ 1 (1974); endorsed by G.A. Res. 3348 (XXIX) (1974).

58. See *supra* note 53 and accompanying text.

59. Conference on Security and Cooperation in Europe: Final Act, 1975, 14 I.L.M. 1292 [hereinafter Helsinki Conference].

principles of the U.N. Charter and the Universal Declaration.⁶⁰ Even more explicit is section IX on Co-operation among States to strive for, *inter alia*, international peace, security and justice.⁶¹

VI. THE IMPACT OF THE PREAMBLE BEYOND THE UNITED NATIONS

The ideals expressed in the Universal Declaration are not apparent solely in United Nations-sponsored multilateral instruments. They have had a profound impact on regional organizations as well. The American Declaration on the Rights and Duties of Man, adopted by the Ninth International Conference of American States in Bogota in May 1948,⁶² although preceding the Universal Declaration, in its preamble thoroughly reflects the ideas and principles of the Declaration.⁶³

Since the Declaration was adopted, many regional instruments rely specifically on the preamble's words for direction. For example, the American Convention on Human Rights adopted on May 22, 1969,⁶⁴

60. The final paragraph of Section VII of the Helsinki Conference reads, in pertinent part, "[i]n the field of human rights and fundamental freedoms, the participating States will act in conformity with the purposes and principles of the Charter of the United Nations and with the Universal Declaration of Human Rights." *Id.* § VII.

61. Paragraph two of Section IX of the Helsinki Conference reads, in pertinent part, "[The participating States] will endeavor, in developing their co-operation as equals, to promote mutual understanding and confidence, friendly and good-neighborly relations among themselves, international peace, security and justice." *Id.* § IX.

62. American Declaration of Rights and Duties of Man, May 2, 1948f, Res. XXX. Final Act, Ninth Int'l Conference of American States, Bogotá, Colombia, March 30-May 2, 1948, at 38, OAS Off. Rec. OEA/Ser.L/v/II.23/Doc.21/Rev.6; reprinted in 43 AM. J. INT'L L. SUPP. 127 (1948). See also, *United Nations: Human Rights: A Compilation of International Instruments, v. II, Regional Instruments*, at 5-13, U.N. Doc. ST/HR/Rev.5 (Vol. II), 1997.

63. See H. Gros Espiell, *Le Système Interaméricain comme Régime régional de Protection Internationale des Droits de l'Homme*, COLLECTED COURSES, HAGUE ACADEMY OF INTERNATIONAL LAW 145, 1-56 (1975-II).

64. American Convention on Human Rights: "Pact of San Jose, Costa Rica," Nov. 22, 1969, 1144 U.N.T.S. 123. The third, fourth and fifth preambular paragraphs state as follows:

"Recognizing that the essential rights of man are not derived from one's being a national of a certain state, but are based upon attributes of the human personality, and that they therefore justify international protection in the form of a convention reinforcing or complementing the protection provided by the domestic law of the American states,
Considering that these principles have been set forth in the Charter of the Organization of American States, in the American Declaration of the Rights and Duties of Man, and in the Universal Declaration of Human Rights, and that they have been reaffirmed and refined in other international instruments, worldwide as well as regional in scope,
Reiterating that, in accordance with the Universal Declaration of Human Rights, the ideal of free men enjoying freedom from fear and want can be achieved only if conditions are created whereby everyone may enjoy his economic and social rights, as well as his civil and political rights. . . ."

Id.

refers in its preambular paragraphs twice to the Universal Declaration. It is beyond any doubt that this Convention was adopted to cover the American region; however, although regional in application, the Convention is universal in its setting.⁶⁵

The Declaration's influence is not limited to the Western regions most active in the promotion of human rights today. The Banjul Charter on Human and Peoples' Rights⁶⁶ demonstrates the African peoples' recognition of the Declaration's importance. In the Banjul Charter's third preambular paragraph, due regard is given to the United Nations Charter and the Universal Declaration of Human Rights with an aim to enhance international cooperation.⁶⁷ The Protocol to establish an African Court on Human Rights⁶⁸ is a further proof of this trend. Finally, The Arab Charter on Human Rights approved by the League of Arab States on September 15, 1994,⁶⁹ reaffirms in its penultimate paragraph, *inter alia*, the principles of the United Nations' Charter and the Universal Declaration. And the Kuala Lumpur Declaration on Human Rights⁷⁰ approved by the Second Plenary Session of the 14th General Assembly of the ASEAN Inter-Parliamentary Organization in October 1993, states that "the peoples of ASEAN reaffirm the observance of the United Nations Universal Declaration of Human Rights Charter."⁷¹

Since the adoption of the Universal Declaration, the decolonization process gave birth to a great number of new independent countries.

65. See, e.g. Th. Burgenthal, *The Revised OAS Charter and the Protection of Human Rights*, 69 AM. J. INT'L L. 828-36 (1975).

66. Organization of African Unity, Banjul Charter on Human and Peoples' Rights, Jan. 19, 1981, O.A.U. Doc. CAB.LEG/67/3/rev.5 (entered into force Oct. 27, 1986), reprinted in 21 I.L.M. 59 (1981).

67. The second and third preambular paragraphs of the Banjul Charter state:

Considering the Charter of the Organization of African Unity, which stipulates that freedom, equality, justice and dignity are essential objectives for the achievement of the legitimate aspirations of the African peoples; **Reaffirming** the pledge they solemnly made in Article 2 of the said Charter to eradicate all forms of colonialism from Africa, to coordinate and intensify their cooperation and efforts to achieve a better life for the peoples of Africa and to promote international cooperation having due regard to the Charter of the United Nations and the Universal Declaration of Human Rights.

Banjul Charter, *supra* note 70, at pmb., ¶¶ 2-3.

68. Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights, Dec. 12-13, 1997, O.A.U. LEG/EXP/AFCHPR/PROT(iii), reprinted in 9 AFR. J. INT'L & COMP. L. 953 (1997).

69. Reprinted in INTERNATIONAL HUMAN RIGHTS LAW AND PRACTICE: CASES, TREATIES, AND MATERIALS (Francisco Forrest Martin et. al., eds. 1997).

70. Human Rights Declaration by the ASEAN Inter-Parliamentary Organization (AIPO), 14th AIPO General Assembly, Kuala Lumpur, reprinted in Aurther M. Weisburd, *The Effect of Treaties and Other International Acts on the Customary Law of Human Rights*, 25 GA. J. INT'L & COMP. L. 99, 142 (1995-96) [hereinafter Kuala Lumpur Declaration]. See also Working Group for an ASEAN Human Rights Mechanism <<http://www.rgmechanism.com/aipo.html>> (visited May 3, 2000).

71. See Kuala Lumpur Declaration, *supra* note 70, at pmb., ¶ 7.

This process was accelerated by the adoption of the Declaration on the Granting of Independence to Colonial Countries and Peoples in 1960.⁷² These new governments were eager to adhere, in their constitutions, to the lofty principles enshrined in the preamble of the Universal Declaration. In their comments on the draft International Declaration of Human Rights, many governments indicated that they considered themselves bound by the principles enunciated in the preamble and they were ready to adopt them in their respective national legislation.⁷³ Thus, those laws that affect humans most directly are influenced by the Declaration and the education called for in its preamble.

VII. CONCLUDING REMARKS

If the Declaration is now part of positive international law and therefore binding on all States, it is not because the Declaration was adopted by the United Nations General Assembly, but because of the emergence of a consensus evidenced by the practice of States that the Declaration is now binding as a part of international law whatever the intentions of the authors may have been in 1948.⁷⁴

In 1968 we celebrated the twentieth anniversary of the Universal Declaration with the Teheran Proclamation on Human Rights.⁷⁵ In 1993, The Vienna World Conference on Human Rights adopted a Declaration,⁷⁶ which emphasized that the Universal Declaration constitutes a common standard of achievement for all peoples and all nations, and a source of inspiration for advancing the Human Rights Programme of the United Nations.⁷⁷

72. Declaration on the Granting of Independence to Colonial Countries and Peoples, G.A.Res. 1514 (XV) (1960). Operative paragraph 7 of this document states that "[a]ll States shall observe faithfully and strictly the provisions of the Charter of the United Nations, [and] the Universal Declaration of Human Rights, on the basis of equality, non-interference in the internal affairs of all States, and respect for the sovereign rights of all peoples and their territorial integrity." *Id.* at decl. 7.

73. See, e.g. *Collation of the Comments of the Governments of Canada, Netherlands, Australia, United States, Mexico, Brazil, United Kingdom, South Africa, Egypt and Norway*, U.N. Doc. E/CN.4/85 (1948); *Comments from Governments on the Draft Declaration on Human Rights, Draft International Covenant on Human Rights and the Question of Implementation*, U.N. Doc. E/CN.4/82, Add.1-12 (1948) (individual comments from governments).

74. Cf. Juan Carrillo Salcedo, *Human Rights, Universal Declaration (1948)*, in *ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW II*, 922-925 (R. Bernhardt ed. 1995).

75. Teheran Proclamation on Human Rights in the Final Act of the International Conference on Human Rights, U.N. Doc. No. A/conf.32/41, U.N. Sales No. E.68.XIV.2 (1968).

76. World Conference on Human Rights, Vienna Declaration and Programme of Action, U.N. Doc. A/Conf.157/23 (1993). See also *United Nations High Commissioner for Human Rights Home Page* (visited May 3, 2000) <<http://www.unhchr.ch/huridocda.nsf/>>.

77. For information regarding the United Nations Human Rights Program, see generally *United Nations High Commissioner for Human Rights Home Page* (visited May 3, 2000) <<http://www.unhchr.ch/>>.

In 1998, we celebrated the 50th anniversary of the Universal Declaration with a wide variety of educational activities. As academics we should be guided by the provisions of the Universal Declaration, including its preamble, as a beacon of light shining over our educational path; providing a better understanding of the whole human rights panacea for future generations in the twenty-first century.

The United Nations issued a teaching booklet "ABC, Teaching Human Rights"⁷⁸ aimed at the roots of our educational system namely providing practical activities for primary and secondary schools. The United Nations Decade for Human Rights Education⁷⁹ proclaimed for the period 1995-2004 not only provides for primary and secondary school activities, but makes also room for "teaching the teacher" activities.⁸⁰

It is my firm belief that the jurisprudence of international tribunals can be a valid teaching tool in this respect and I hope to submit an article with some proposals in this regard in the near future to this Journal.⁸¹

78. A full text of the teaching booklet may be found on the *United Nations High Commissioner for Human Rights Home Page* (visited May 3, 2000) <<http://www.unhchr.ch/html/menu6/2/abc.htm>>.

79. U.N. Decade for Human Rights Education, G.A. Res. 1994/184, U.N. Doc. A/49/610/Add.2 (1995).

80. The Declaration "[u]rges governmental and non-governmental educational agencies to intensify their efforts to establish and implement programmes of human rights education, as recommended in the Plan of Action, in particular by preparing and implementing national plans for human rights education. . . ." *Id.* at art. 6.

81. JOHANNES VAN AGGELEN, *TEACHING HUMAN RIGHTS THROUGH THE JURISPRUDENCE OF INTERNATIONAL TRIBUNALS, A GUIDE FOR THE UNITED NATIONS DECADE FOR HUMAN RIGHTS EDUCATION* (forthcoming).