

The UN Charter and Human Rights

In its preamble, the Charter of the United Nations declares, “We the peoples of the United Nations, determined ... to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, [and] in the equal rights of men and women...”

To reaffirm? An odd choice of words perhaps, as it suggests that at the time the Charter was drafted – in the spring of 1945 as war drew to a close in Europe – there was some pre-existing international agreement concerning human rights. In fact, none existed. In 1941, Prime Minister Churchill of the United Kingdom and US President Roosevelt had mutually agreed – in a document known as the Atlantic Charter – that among other objectives a post-war world should guarantee “freedom from fear and want”. It had not used the term “human rights”.

Moreover, prior to the UN Charter, there were very few international treaties that dealt with human rights issues – there was a convention in 1926 abolishing slavery, and one in 1930 outlawing forced labour, but really, not much else.

All the more remarkable, therefore, that not only did the UN Charter’s preamble refer to human rights, the promotion of these rights was expressly included as a key goal of the UN.

Article 1(3) of the Charter, declares as one of the purposes of the UN: “Article 1(3) To achieve international co-operation ... in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion”.

There are differing views on why the promotion of human rights was given this prominence in the UN Charter. Certainly, the wartime atrocities carried out by the Nazis were a factor. However, even before these were widely known, civil society groups – especially in the United States—had been campaigning to ensure the world organization that they hoped would be created when the war was won, would work to promote human rights.

Pamphlets and books were written demanding an “International Bill of Human Rights”. Several small but determined groups lobbied delegates at the San Francisco conference – in March 1945 where the UN Charter was agreed – they lobbied on the human rights issue. President Roosevelt had given prominence both before and during the war to the “four freedoms” – freedom of religion and speech, and freedom from fear and want. His administration was therefore receptive to this lobbying.

At the same time, those governments that worried about giving the UN a role in promoting human rights – and this included colonial powers allied to the US like the UK and France – they were reassured by the Charter’s insistence, in Article 2(7) that the UN could not intervene in matters “essentially within the domestic jurisdiction” of Member States, essentially within the domestic jurisdiction. In short, the understanding – broadly – was that the UN might “promote and encourage” but not take action vis-à-vis human rights matters in specific countries or territories.

However, there are three additional references to “human rights” in the UN Charter.

First, Article 13 (1) (b) grants to the UN General assembly the power to study and make recommendations to assist in realization of human rights and fundamental freedoms.

Second, Articles 55 and 56 reiterate that the UN shall promote “universal respect for an observance of human rights”, and that “All Members pledge to take joint and separate action in co-operation with the organization” for that purpose.

And third, Article 68 calls on one of the UN bodies – the Economic and Social Council – to establish a commission on human rights.

I encourage you to read these provisions carefully.

Taken together, these laid the foundation upon which an international law of human rights emerged, likely in ways not imagined by those drafting the UN Charter in 1945.

A commission on human rights had to be established, and once it met it faced an obvious question: what human rights was the UN to promote? The answer came in the form of the Universal Declaration of Human Rights in 1948, and a separate lecture discusses the importance of that document.

Further, the General Assembly's role and the obligation on Member States to co-operate with the UN – both jointly and separately – provided the basis for initiatives to draft new international treaties, and eventually to put in place procedures to actually monitor the degree to which UN Member States respected human rights. Now, this didn't happen quickly. As you'll see in further modules, it took many decades for the UN monitoring system to be established, and even today one could hardly call it robust and fully effective!

But the Charter laid the foundation so that today while there is much disagreement about whether rights are being violated in any given situation, and disagreement about what to do about it, only rarely, and frankly never seriously, do states challenge the idea that human rights are a legitimate concern of the UN.

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