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THE GENESIS OF THE DECLARATION: A FRESH EXAMINATION

Moderator

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Panelists

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Columbia Law School;

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INTRODUCTION

I would like to give a warm welcome to everyone here. My name is Martin Flaherty. I am a professor of law here at Fordham. I am also, along with Tracy Higgins, the Co-Director of the Joseph Crowley Program in International Human Rights.

Among the various things our program does is we try to place students with human rights NGOs¹ both here in New York and around the world. Another thing we do, which so far is unique in American legal education, is to accompany students with an NGO on a fact-finding mission to different places annually. Last year we inaugurated the process by going to Turkey with the Lawyers Committee for Human Rights. This coming spring we will be going to Hong Kong with the International

¹ Non-Government Organizations

Human Rights Committee of the City Bar, and we are looking very much forward to that expedition.

In that spirit, let me begin with a quote that is very well known, especially to the people here, but which has obviously stood the test of time:

“Where, after all, do universal human rights begin? In small places, close to home — so close and so small they cannot be seen on any maps of the world. Yet they *are* the world of the individual persons; the neighborhood he lives in; the school or college he attends; the factory, farm or office where he works. Such are the places where every man, woman and child seeks equal justice, equal opportunity, equal dignity without discrimination. Unless these rights have meaning there, they have little meaning anywhere.”²

Now, of course, those comments were written by Eleanor Roosevelt, and it is to her that we turn, and more generally to the genesis and origins of the Universal Declaration of Human Rights, which we are celebrating today.

To explore those themes we have what I think is a wonderful panel, and we are very fortunate that all of the panelists agreed to come today. I will introduce them all up front to keep the flow going, and I will introduce them in the order in which they are speaking.

Our first speaker will be Ambassador Richard Gardner, who is the Henry L. Moses Professor of Law and International Organization at Columbia Law School. Ambassador Gardner, as the two titles might indicate, has a distinguished career in both public service and in the academe. He has over the course of his career served as Ambassador to two countries, to Italy and to Spain. He is currently Of Counsel at Morgan, Lewis & Bockius. He is a distinguished professor at Columbia and the author of numerous articles.

He will be talking to us about a unique vantage point he had during the time when Eleanor Roosevelt was involved with the creation of the Universal Declaration. To borrow a phrase

² BLANCHE WIESEN COOK, ELEANOR ROOSEVELT 18 (1992).

from Dean Acheson,³ in many ways he was “present at the creation.”

Our next speaker will be Professor Blanche Wiesen Cook, who is Professor of History and Women’s Studies at John Jay College and the Graduate Center of the City University of New York. She is the author of several books. Most relevant here is her multi-volume biography of Eleanor Roosevelt, the first volume of which was both an award-winning and best-selling biography. I do not know which of those is more important. Probably the best-selling part. She is also at work on, I believe, the galleys of Volume Two, so Volume Two will be out imminently, we hope.

Professor Cook will also be talking about aspects of Eleanor Roosevelt’s involvement with the Universal Declaration, and also giving her thoughts about how Eleanor Roosevelt might survey the current human rights scene today.

And then finally, and in many ways a truly grand finale, will be Professor Oscar Schachter. Professor Oscar Schachter is the Hamilton Fish Professor of International Law and Diplomacy also at Columbia Law School. He is truly one of the giants and founders of international human rights law.

The phrase “present at the creation” more generally certainly applies to Professor Schachter. He has served with distinction in the academe, where he, among his many other publications and achievements, edits with Professors Henkin, Pugh, and Smit a leading casebook in international law. He has also served in the U.S. State Department, and during the time the Universal Declaration was drafted was Deputy Director of General Legal Services at the United Nations.

Without any more from me, I believe we will start with Ambassador Gardner.

³ Dean Gooderham Acheson (1893-1971). He was assistant secretary of state from 1941 to 1945 and undersecretary from 1945 to 1947. In 1949, Acheson became secretary of state under Harry S. Truman.

Richard N. Gardner
Columbia Law School;
former Ambassador to Italy and Spain

Ladies and gentlemen, it is a great honor to be the leadoff on this distinguished panel. I would just make one correction. I was not “present at the creation.” Oscar was. But I did have the privilege of getting to know Eleanor Roosevelt three years after the Universal Declaration was approved in Paris in 1948.¹

In 1951, I was a graduate student at Oxford and went to the U.N. General Assembly, which was being held in Paris. The head of the American Delegation took sick and Eleanor Roosevelt was put in charge. I was so impressed with the job she did that I asked her if I could interview her, and I did an article in *The New York Times Sunday Magazine*, which she seemed to like. She invited me up for a weekend a few months later to her little cottage at Hyde Park, called Val-Kill, as I recall.

I absorbed a lot of wisdom from that great lady. I recall one of the things she said to me. As we were walking around the property one day, she said, “Richard, never forget human rights are too important to be left to governments.” She pointed out the critical role that the non-governmental organizations played in putting human rights into the U.N. Charter and into the drafting of so many of the instruments which we take for granted today.

Blanche, who has written this wonderful book about Eleanor Roosevelt, will say a little bit about what she would be saying today. I will simply, just to be provocative, throw out one thought. Nobody knows, of course, what she would be saying today, but I suspect she would be, on the one hand, appalled by the continuing violation of human rights around the world in so many places.

¹ Universal Declaration of Human Rights, G.A. Res. 217, U.N. GAOR, 3d Sess., U.N. Doc. A/810 (1948). Eleanor Roosevelt was a driving force behind the Universal Declaration of Human Rights. Mrs. Roosevelt chaired the U.N. Human Rights Commission in its early years.

She also would be impressed at how the process she helped start has resulted in such an enormous body of human rights law, which is being applied in the court systems of so many countries, and we see this in the *Pinochet*² case right now. So she would be impressed by that. She might also be disturbed, at the same time, that the U.S. Government somehow finds it impossible to issue a clear statement from Washington about how we feel about holding Mr. Pinochet accountable.

My role here is to just reminisce a little bit about the genesis. That is the subject of our first panel, the genesis of all this, and Eleanor Roosevelt's role. Some of this will be familiar to you, but since I was so impressed by this great lady, permit me to just recall some little details which even the experts here might not have remembered.

On a gray afternoon in late December 1945, the members of the U.S. Delegation began arriving at a New York dockside to take the *Queen Mary* to the first session of the U.N. General Assembly in London. One by one, these famous delegates drew up in black limousines, with motorcycle escorts and sirens wailing, pausing as they emerged for popping flashbulbs before boarding the austere ocean liner, still in its wartime garb as a converted troop ship. Among the celebrities were Senator Tom Connally,³ Democrat of Texas, Chairman of the Foreign Relations Committee, Arthur Vandenberg⁴ of Michigan, the Committee's ranking Republican, one past and one future Secretary of State, Edward Stettinius⁵ and John Foster Dulles.⁶

² *Regina v. Bartle and the Commissioner of Police for the Metropolis and Others Ex Parte Pinochet*, 37 I.L.M. 1302 (United Kingdom House of Lords 1998).

³ Thomas Terry Connally (1877-1963) was a member of the Texas House of Representatives for two terms and in 1916 won election to the U.S. House of Representatives. In 1928, he went to the U.S. Senate.

⁴ Arthur Vandenberg (1884-1951) was a Michigan senator from 1928-1951, noted for his influence on foreign affairs. He served in San Francisco in 1945 as a U.S. delegate at the founding conference of the United Nations.

⁵ Edward Reilly Stettinius (1900-1949) was appointed undersecretary in 1943 and in 1944, he was appointed secretary of state. In April 1945, he headed the American delegation to the United Nations conference on International Organization where the original charter for the United Nations was developed. In June 1945 Stettinius resigned as secretary of state but continued for another year as a delegate to the U.N.

⁶ John Foster Dulles (1888-1959) was an American secretary of state from 1953-1959 in the cabinet of President Dwight D. Eisenhower.

With less fanfare, an extraordinary army of advisers to the delegation was also decanted at dockside the same afternoon: Ralph Bunche,⁷ Abe Fortas,⁸ Ben Cohen, Leo Pasvolsky,⁹ and Alger Hiss.¹⁰ Only the head of the delegation was missing: Secretary of State James Byrnes¹¹ would fly to join the delegation in London.

A few hours later, after the excitement of these early arrivals had subsided, a small car driven by a friend quietly dropped off another member of the delegation, a tall lady dressed conservatively in black. She walked alone to the ocean liner and slowly mounted the gangplank. When she was halfway up, someone noticed who the tall lady was: Eleanor Roosevelt, widow of the thirty-second President of the United States.

When earlier that month President Harry Truman had asked Mrs. Roosevelt to serve on the American delegation to this critical first organizing session of the U.N. General Assembly, her first reaction, in her own words, was: "Oh no, it would be impossible. How could I be a delegate to help organize the United Nations when I have no background or experience in international meetings?"¹²

⁷ Ralph Johnson Bunche was an American scholar and diplomat, known for his work in the United Nations and the first African American to win a Nobel Peace Prize. Bunche helped write the UN Charter, and in 1946 he became director of the trusteeship division of the UN. Bunche was awarded the 1950 Nobel Peace Prize after negotiating the armistice agreements that halted the 1948-1949 Arab-Israeli War.

⁸ Abe Fortas (1910-82) was an American jurist and appointed to the U.S. Supreme Court by President Lyndon B. Johnson in 1965.

⁹ Leo Pasvolsky, Russian-born, was in charge of international organization and security affairs within the Department of State.

¹⁰ Alger Hiss was a high official in the United States Department of State. He was secretary general of the conference that organized the United Nations in 1945. In 1950, Hiss was convicted of perjury for denying his involvement in a Soviet spy ring.

¹¹ James Byrnes represented South Carolina in the United States House of Representatives (1911-1925) and in the U.S. Senate (1931-1941). In 1941 he was appointed an associate justice of the Supreme Court of the United States but resigned to serve as head of federal agencies for economic stabilization (1942-1943) and economic mobilization (1943-1945) during World War II. Appointed secretary of state in 1945 by President Harry S. Truman, he represented the United States at the postwar peace talks. He was governor of South Carolina from 1951 to 1955.

¹² ELEANOR ROOSEVELT, *THE AUTOBIOGRAPHY OF ELEANOR ROOSEVELT* 299 (1961).

But President Truman insisted, and she reconsidered, seeing an opportunity to contribute to her late husband's main post-war goal, the establishment of a global organization to help maintain world peace.

That lonely walk up the gangplank of the *Queen Mary* was to transport Eleanor Roosevelt in a way she could scarcely imagine, into a New World of international diplomacy. After thirteen years in the White House, where her tireless work on behalf of victims of poverty and discrimination had been overshadowed by the towering figure of F.D.R., she was embarking on her own, on a new career which would one day earn her the undisputed title of "First Lady of the World."¹³

It would be scarcely necessary to recall the essential facts of Mrs. Roosevelt's odyssey were it not all but forgotten by most Americans under the age of sixty, let's say. Eleanor Roosevelt represented the United States at the U.N. from 1946 to 1952.

During those six years, the uneasy wartime alliance between the United States and the Soviet Union disintegrated into the open hostility of the Cold War. At the very heart of the confrontation between East and West lay the issue of human rights. Incredibly, it was to President Roosevelt's widow that the task fell of being the West's principal spokesperson in the United Nation in defense of the right of the individual against the powers of the state. This weighty responsibility befell Mrs. Roosevelt at the President's death when she was sixty-one years old, had never held public office, and endured ridicule and malign from both right and left for her personal manner and political beliefs.

Mrs. Roosevelt's first days on the *Queen Mary* were not auspicious. The famous men on the delegation were polite but condescending, and made it clear that as far as serious business was concerned, she was so much surplus baggage. It was only well into the voyage that she learned from Senator Vandenberg that she had been assigned to the Third Committee of the General Assembly, the one dealing with social, cultural, and hu-

¹³ Eleanor Roosevelt's years as the most influential First Lady ended with the death of her husband, but her own story continued for nearly two more decades. Vigorously promoting humanitarian causes, she earned the title—in the words of President Harry S. Truman - "First Lady of the World."

manitarian matters. She understood only too well what was going on.

As she later wrote in her autobiography: "I could just see the gentlemen of our delegation saying, "Oh no! We can't put Mrs. Roosevelt on the political committee. What would she do on the Budget Committee? Does she know anything about legal questions? Ah, here's a safe spot for her—Committee Three. She can't do much harm there."¹⁴ That was her own evaluation of what had gone on.

But, ladies and gentlemen, a funny thing happened when they got to the U.N. forum. Unforeseen by all, it was in Mrs. Roosevelt's Third Committee that simmering Cold War tensions were first to erupt, capturing world attention and thrusting her into the spotlight.

Several months later, Mrs. Roosevelt, having met the challenge of standing up to the Russians in the Third Committee, was asked to serve on a Preparatory Commission to establish a Permanent U.N. Commission on Human Rights. In January 1947, after the Permanent Commission had been established, Mrs. Roosevelt was elected its Chairman. The lady, who only months before had complained that she had no background or experience in international meetings, found herself responsible for drafting an International Bill of Human Rights along with such formidable figures as René Cassin of France,¹⁵ Charles Malik of Lebanon,¹⁶ P.C. Chang of China,¹⁷ Carlos Romulo of

¹⁴ ROOSEVELT, *supra* note 12, at 303.

¹⁵ René Cassin (1887-1976) of France was an expert in international law, and specifically human rights. He was a member of the French delegation to the League of Nations from 1921 to 1938, served in the Cabinet of the Free French government-in-exile during World War II, joined the French Constitution Counsel in 1960, and became a member in 1959 and president in 1965 of the European Court of Human Rights. Cassin was selected to draft of the Universal Declaration. He received the 1968 Nobel Peace Prize for his role in the Declaration of Human Rights.

¹⁶ Charles Malik of Lebanon played a vital role in the Universal Declaration. Malik's fellow delegates credited him as the force behind the document's arrangement. He was praised by U.S. State Department aids to Eleanor Roosevelt for being jointly responsible, along with Mrs. Roosevelt, for the document's adoption.

¹⁷ Dr. P.C. Chang of China represented the Asian perspective in the senior ranks of the Commission on Human Rights, where he served as Vice-Chairman. Chang's presence on the Commission on Human Rights was significant because he was able to relate Chinese conceptions of human rights to the other delegates. He

the Philippines,¹⁸ and Alexander Borisov and Alexis Pavlov¹⁹ of the Soviet Union.

The seeds of international involvement in human rights had been laid by F.D.R. himself in his "Four Freedoms" speech to the Congress on January 6, 1941.²⁰ There he had said that the post-war world order must be based on four essential freedoms "freedom of speech and expression, freedom of religion, freedom from want, and freedom from fear—*everywhere in the world.*"²¹ I stress that "everywhere in the world," because this concept of the universal interest of nations in protecting these freedoms everywhere in the world is something perhaps we have forgotten.

The Charter of the U.N., in contrast to the lead Covenant, made human rights a basic objective and a universal obligation, as you all know, in Articles 55²² and 56.²³

Well, this was all very well, but how was the Human Rights Commission to proceed? Many nations wanted the Commission

employed aspects of Confucian doctrine to reach compromise between conflicting ideological factions.

¹⁸ Carlos Pena Romulo (1899-1985) was a Philippine diplomat who participated in the founding of the United Nations, serving as permanent Philippines representative to the U.N. and as president of the UN General Assembly from 1949-50.

¹⁹ Pavlov was an outspoken Soviet delegate. According to F.D.R. he was an orator of great power who made repeated efforts to stall and drag out the process of drafting an International Bill of Human Rights.

²⁰ Annual Message to Congress by Franklin D. Roosevelt, Jan. 6, 1941, 11 PUBLIC AIMS OF THE UNITED NATIONS 663-78 (1943). On January 6, 1941 Franklin D. Roosevelt, in his annual message to the Congress of the United States made his "Four Freedoms" speech. In his address Roosevelt foresaw a postwar world in which four freedoms would be guaranteed: freedom of speech and expression, freedom of worship, freedom from want, and freedom from fear. *See id.*

²¹ *Id.*

²² U.N. CHARTER, art. 55. Article 55 states:

With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based for respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote:

higher standards of living, full employment, and conditions of economic and social progress and development;

solutions of international economic, social, health, and related problems; and international cultural and educational cooperation and

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

Id.

to begin by drafting a Covenant on Human Rights, a treaty document legally binding on governments.

Ever the pragmatist, Mrs. Roosevelt argued that a Declaration of Human Rights should come first, a non-binding set of principles that could be promulgated quickly, without waiting for the difficult process of treaty drafting and ratification, because she feared that the U.S. Senate would balk at a treaty with formal legal commitments on how the United States should treat its own citizens. And, in the light of the later history of Senate intransigence on the Genocide Convention²⁴ and other human rights instruments, how right she was.

"The world is waiting for the Human Rights Commission to do something," Mrs. Roosevelt pleaded. Thus, declaration first, treaties afterward.

Mrs. Roosevelt finally won that argument, but it was only the beginning of her difficulties. The group that assembled to draft the Universal Declaration of Human Rights, as it came to be called, represented widely diverse cultural, philosophical, religious, and political traditions. The Chinese wanted to base the Declaration on the philosophy of Confucius, the Catholics on the teachings of St. Thomas Aquinas, the liberals on those of Locke and Jefferson, and the Communists on the doctrines of Karl Marx.

In drafting sessions at her home in Washington Square and in subsequent meetings in New York, Geneva, and Paris, Mrs. Roosevelt insisted that the Declaration must be acceptable to all religions, cultures, and ideologies. She also pleaded with the lawyers that the document must be readily understood by the common people of the world.

Well, not surprisingly, Eleanor Roosevelt soon found herself embroiled in more confrontations with the Russians. It was clear they meant something quite different by the terms "freedom" and "democracy." They wanted a provision after each article saying it was up to the state to determine whether or not a

²³ U.N. CHARTER, art. 56. Article 56 states: All members pledge themselves to take joint and separate action in cooperation with the Organization for the achievement of the purposes set forth in Article 55.

²⁴ United Nations Convention on the preservation and Punishment of the Crime of Genocide, Dec. 9, 1948, G.A. Res. 260(III)A, entry into force: 12 January 1951, in accordance with article XIII.

specific right was being observed, and they pushed for the inclusion of economic and social rights, rights to employment, education, health care, which they said were no less important than the political rights guaranteed in the U.S. Constitution.

After some discussion, Mrs. Roosevelt persuaded a reluctant State Department to accept this latter Soviet proposal. People forget the debate that was going on in the U.S. Government on that question. She argued: "Had not Franklin Roosevelt, after all, once said that 'necessitous men are not free men?' Had he not framed the post-war goal of freedom from want everywhere in the world?"

Despite this move to meet them partway, the Russians were now stonewalling. They had apparently decided that a Universal Declaration would not be to their liking and could be a post-war embarrassment. How right they were! They made long, vitriolic harangues on racial discrimination and unemployment in the United States.

But Mrs. Roosevelt was not to be pushed around. When a Russian delegate returned to the theme of the plight of African-Americans, Mrs. Roosevelt proposed that the Russians could send a team to observe racial problems in the United States if the United States could do the same in the Soviet Union. That effectively cut short the Soviet attack.

"The Russians seem to have met their match in Mrs. Roosevelt," *The New York Times* observed. One State Department advisor marveled, "Never have I seen naivete and cunning so gracefully blended."

Now Mrs. Roosevelt, determined to press the Declaration to completion, drove her U.N. colleagues mercilessly. There were twelve, fourteen, sixteen-hour days, and some delegates may have secretly whispered the famous prayer ascribed to F.D.R.: "Oh Lord, make Eleanor tired." The delegate from Panama begged Mrs. Roosevelt to remember that U.N. delegates have human rights too.

By the summer of 1948, the Universal Declaration had finally taken shape. Framed as Mrs. Roosevelt wanted, in simple and eloquent prose, it drew heavily on the American Bill of Rights,²⁵ the British Magna Carta,²⁶ and the French Declara-

²⁵ United States Bill of Rights, U.S. CONST. Amend. §1- §10.

tion of the Rights of Man.²⁷ I will leave it to others to go into the details and evaluate it today.

But would the General Assembly approve the Declaration? When it convened in Paris in the fall of 1948, the East/West confrontation had reached a new level of intensity. The Soviets were blockading Berlin, Communist parties were in open, and frequently violent, opposition in France and Italy, Communist trade unions led a wave of strikes throughout Western Europe. Speaking in French at the Sorbonne, Mrs. Roosevelt told a crowd of 2,500 that the Russians' failure to respect human rights was now a major obstacle to world peace.

At the insistence of the Soviets and with the support of other nations, the Third Committee of the General Assembly²⁸ decided to debate and vote on the whole Declaration, article by article and line by line, "exactly as though," Mrs. Roosevelt complained, "it was all an entirely new idea and nobody had ever looked at it before." This required eighty-five meetings until, finally, the Committee approved the Declaration and forwarded it to the Assembly Plenary.

On December 10, 1948, at 3:00 in the morning, the General Assembly finally approved the Universal Declaration by a vote of forty-eight in favor, none against, and eight abstentions, the Soviet Union and its satellites, Saudi Arabia, and South Africa. The delegates rose to give Mrs. Roosevelt a standing ovation. Charles Malik, a great figure from Lebanon, observed: "I do not see how without her presence we could have accomplished what we actually did accomplish."

Although Mrs. Roosevelt was proud of her role in shaping the Universal Declaration, she was always a realist. She knew its words were not self-enforcing. The real challenge, she liked to tell U.N. delegates in later years, was one of "actually living and working in our countries for freedom and justice for each human being." That is a challenge she readily accepted, and her example is one that inspires us today.

²⁶ United Kingdom, MAGNA CARTA, June 15, 1215.

²⁷ France, DECLARATION OF THE RIGHTS OF MAN, National Assembly of France, August 26, 1789.

²⁸ U.N. GAOR 3d Comm.

Blanche Wiesen Cook

Biographer of Eleanor Roosevelt; University Distinguished Professor, John Jay College and the Graduate Center, CUNY

I would just like to go back a little bit further with Eleanor Roosevelt to put her in a context of her own work, because this notion that Eleanor Roosevelt was naive and ignorant of international relations is just wrong.

The first volume took me ten years and this volume has taken me eight years. I started writing this book, *The Biography of Eleanor Roosevelt*,¹ thinking it would take me two years, after I finished a book called *The Declassified Eisenhower*.² That book, published by Doubleday in 1981, took me ten years. It took me so long because everything I wanted to know about Eisenhower was classified. In the course of getting thousands of documents declassified, I became very involved with the Fund for Open Information and Accountability (FOIA), where I met some of you.

When I finished that book, I wrote in my journal, "I have now spent most of my vital youth with one dead general." It has had a great impact on my life and on my activities.

The U.S. State Department reclassified almost every one of the documents that I got declassified on places like Guatemala and Iran. So I have been very interested in such documents and the issue of secrecy.

One of the things that amazed me when I agreed to do this book on Eleanor Roosevelt was how little we actually know about Eleanor Roosevelt. Moreover, I am really a military historian. For thirty years I have taught right across the street at John Jay College of Criminal Justice. We have a wonderful program where most of my students are police officers. I teach military history mostly to cops and veterans.

¹ BLANCHE WIESEN COOK, *ELEANOR ROOSEVELT, VOLUME ONE, 1884-1933* (1992).

² BLANCHE WIESEN COOK, *THE DECLASSIFIED EISENHOWER* (1981).

When I set out to learn more about Eleanor Roosevelt, I discovered folks had not really looked at her own words or her own political work, which began in the 1920s. One of the most interesting things about her is her huge FBI file.

This is one of the things that we did at FOIA. We initiated a case called *The American Friends Service Committee et al. v. Webster*,³ and we prevented the FBI from destroying all the FBI files on different people.

Eleanor Roosevelt has one of the single largest FBI files John Edgar Hoover ever compiled. It goes on for thousands of pages. Somebody told me I was wrong, Eleanor Roosevelt did not have the largest single individual file, Elizabeth Gurley Flynn⁴ has 60,000 pages. Well, Elizabeth Gurley Flynn, and Anna Louise Strong do have even larger files.

But Eleanor Roosevelt has a large file. It begins in 1924, when she worked with Esther Lape.⁵ If there is anybody looking for a biography topic, nobody has ever written about Esther Lape. Esther Lape and Elizabeth Read,⁶ an international lawyer who wrote a classic book on international law in the 1920s, were Eleanor Roosevelt's best friends at the time. They started an organization with Edward Bok⁷ called The American Foundation. The first effort of this organization, which is a very interesting one, was to get the United States into the World Court.

The first document in her FBI file describes: "Two NY matrons and one spinster" at work to get the United States into

³ American Friends Service Committee et al. v. Webster, 494 F.Supp. 803 (D.C., 1980).

⁴ Elizabeth Gurley Flynn was a pro labor political activist of the late 1910's until the mid sixties. She was closely affiliated with the communist labor organization Industrial Workers of the World (IWW).

⁵ See Cook, *supra* note 1, at 293. Esther Lape was a journalist, researcher and publicist who was "among the first generation of college-educated women, independent and hardworking, who kept the flame of feminism alive." *Id.*

⁶ *Id.* at 292. Elizabeth Read was a scholar and attorney who became one of Eleanor Roosevelt's closet friends. "Eleanor Roosevelt developed her own political vision and style, but he always credited her early work with Elizabeth Read as essential to every new step she took in activist politics during the 1920's." *Id.*

⁷ *Id.* at 342. Edward Bok was the former publisher and editor of the *Ladies' Home Journal*, who awarded The Bok Peace Award worth \$50,000 to Esther Lape for her publication *Ways to Peace*. "The winning plan stimulated Bok, Esther Lape, Eleanor Roosevelt, and their allies to promote U.S. entrance to the World Court." *Id.* at 344.

this un-American organization, the World Court.⁸ I described this situation in Volume One and the Senate hearings regarding the world court and the “Red Scare”⁹ of the 1920s.

In the 1930s, Eleanor Roosevelt really was in great disagreement with F.D.R. over international relations. Some of you who know F.D.R. biographies know that he made a deal in 1932 with William Randolph Hearst, and that deal was to stop sounding like an internationalist. Actually, F.D.R. kept that deal. I spend some time in Volume Two on several really quite terrible moments in U.S. diplomatic history.

One was June 1933, when F.D.R. crashed the London Economic Conference.¹⁰ Sixty-six nations met in London at the height of the world depression, with some chance to set up really international economic agreements. But nothing was allowed to happen. F.D.R. helped to destroy this conference and the issues do not come up again until after World War II at the Bretton Woods Conference.¹¹

Eleanor Roosevelt was very rude to F.D.R. the night he torpedoed the conference. It is a very dramatic moment because she had really fussed and arranged this great homecoming celebration at Campobello.¹² But then, he did this terrible thing and Eleanor Roosevelt, a fervent internationalist, was really appalled.

The New York Times headline the next week said: Hitler Agreed, “Economic Nationalism” was to triumph and it was all over. It was the last chance for collective discussions about the international economy until after World War II.

Then, there is 1935. In 1935, the World Court comes up again in the Senate. Eleanor Roosevelt takes to the air and writes a column. One of the things that amazes me about Elea-

⁸ See Cook, *supra* note 1 at 345.

⁹ The Red Scare of the 1920's was associated with a fear of communist infiltration into the American workplace. The term Red Scare comes from the red army or Bolsheviks.

¹⁰ London Economic Conference 1933.

¹¹ Bretton Woods is the common name for the 1944 conference held in Bretton Woods, New Hampshire. This conference lead to the creation of the International Monetary Fund and the World Bank.

¹² Campobello Island is a place where former President Franklin Delano Roosevelt had a summer residence. It is located in Passamaquoddy, New Brunswick Canada, close to the town of Lubec, Maine.

nor Roosevelt is that she always said to her friends, "If you have to compromise, be sure to compromise up."

One of the things that she does immediately after the election was to give up her weekly radio broadcasts. But she hated to be silent and within months agreed to a new series of radio broadcasts – weekly commercially sponsored broadcasts.

She writes to a friend at one point that she had to give up the possibility of a contract with a cigarette company. People felt that was really too tacky. She also had regular columns in various magazines and her daily "My Day" column, which began in 1936.

Eleanor Roosevelt actually publicly disagreed, in print and on the air, with her husband's policies. Very often, she promotes policies that he is sort of wavering on. He says, "Well, if you can get a groundswell of support for that, I will do it." That was really her task. They had an incredible political marriage, even when they disagreed profoundly.

In 1935, she is very angry; she is plunged in gloom. One of the things I have discovered is "gloom" is really the word of the 1930s. Everybody was always being plunged in gloom. It is a little bit like the 1990s.

In 1935, she really wants him to take a stand on the World Court. This is the last chance for the United States to get into the World Court. F.D.R. does not utter one public word to support it. She is very angry. She goes on the air twice and writes four or five columns. But it fails to pass the Senate by seven votes. Collective security, the world court, and the league of nations are all doomed.

Then comes the Spanish Civil War. This is truly a very bitter disagreement, because F.D.R.'s policy on Spain was an absolute blockade against the Republicans, where, well, you have to read my book for the bitter details.

In 1938, Eleanor Roosevelt wrote, *This Troubled World*,¹³ which is a point-by-point criticism of her husband's isolationist policy, and a point-by-point call for collective security. This is really the context, the matrix that exists for Eleanor Roosevelt's crusade for human rights after the war.

¹³ ELEANOR ROOSEVELT, *THIS TROUBLED WORLD* (1938).

Eleanor Roosevelt was definite, passionate, and consistent about collective security and international issues; and she spoke many languages, so wherever she went she talked with the people. Nevertheless, many continued to insist that Eleanor Roosevelt was not only naïve, but ignorant about political issues.¹⁴ In fact, I had lunch with a very esteemed historian, a great historian, and he said to me, “Blanche, you don’t really think Eleanor Roosevelt was really very smart, do you?” Well, I do actually. There is a little bit of lingering contempt for women that we are battling, and it impacts on every issue today. Frankly, this is a very bitter time to be celebrating the 50th anniversary of the Declaration of Human Rights.

First of all, Eleanor Roosevelt really agreed with the Declaration in both parts, and offered to resign when the United States said it wanted no part of the economic and social rights. She wrote a letter to Truman saying, “You cannot talk human rights to people who are hungry. If we cannot support the economic and social covenant, I will resign.”¹⁵ Truman said, “No, no, I do not want you to do that.”

I was very happy when I walked in to see that you had given us copies of the Declaration of Human Rights, because it really is a wonderful document. It really is the challenge for the 21st century. If one factors in that it says everybody, everyone, has not only all of the political rights and civil rights that we are fighting for, but also the right to disagree, the right to read and to speak and to publish,¹⁶ freedom of worship,¹⁷ freedom well, look at the Declaration. It is incredible. But then it says the right to education,¹⁸ the right to a home,¹⁹ the right to work.²⁰

I teach at John Jay and, as I said, many of my students are in the criminal justice system. I taught for many years at the

¹⁴ See Cook, *supra* note 1, at 3.

¹⁵ Blanche Wiesen Cook, *Eleanor Roosevelt and Human Rights: The Battle for Peace and Planetary Decency*, in *WOMEN AND AMERICAN FOREIGN POLICY* 113 (Edward Crapol ed., 1987).

¹⁶ Universal Declaration of Human Rights, G.A. Res. 217, U.N. GAOR, 3d Sess., U.N. Doc. A/818, Art. 19 (1948) [hereinafter Universal Declaration].

¹⁷ Universal Declaration, Art. 18.

¹⁸ Universal Declaration, Art. 26(1).

¹⁹ Universal Declaration, Art. 17(1).

²⁰ Universal Declaration, Art. 23(1).

prison on Rikers.²¹ We had a wonderful program at Rikers Island where we taught prisoners. One of the most bitter things that is going on in this country is that all of our prison programs for college credit have been canceled.

Perhaps you have read about some of the terrible things going on in prisons. There is a prison upstate where somebody has decided to build a high cement wall so that prisoners cannot look at trees. There is something really wrong here along our bumpy road towards human rights.

We do not talk in the United States about torture in prison. But last night I was on a panel with women from all over the world, women from Egypt and the Sudan, Africa, Guinea-Bissau, and from other places in the United States such as Michigan. There are people tortured and raped in prisons all over the world and in the United States. We do not talk about it. We do not talk about domestic violence, which sounds so domesticated, as torture, but we have begun to notice domestic violence. These are all things really covered in the Declaration of Human Rights.²²

So let me say one thing about that. The United States really had no interest in ratifying the Declaration of Human Rights until very recently. It was really not until Jimmy Carter, in 1977, noticed that the Declaration of Human Rights was still not ratified by the United States, I mean the covenant which makes the treaty binding, which is the point, after all. It was Jimmy Carter who brought the issue to the Senate in 1977.²³

We did actually ratify one covenant but not the whole Declaration, just the first part, the civil and political part. We have not even had a national conversation about the economic and social covenant. Incidentally, ratification occurred in 1992 on George Bush's watch, which is very interesting, given the hatred for the United Nations and everything about the United Nations among his Republican associates.

²¹ Rikers Island houses a complex of several New York City Jails. Currently, three quarters of inmates in the New York City Correctional system are housed at Rikers Island.

²² Universal Declaration, Art. 23.

²³ Congressional Record House Speech on Human Rights by Jimmy Carter, with an introduction by Rev. Theodore M. Hesburgh, C.S.C., 1071-73, October 10, 1976.

I was invited to the first presentation of the United States' human rights report, which, since we are now a party to the Covenant, we were obliged to present at the Human Rights Committee at the U.N. Ironically, the Chair that year, 1995, was a woman from Chile, an attorney who had spent the junta years in Paris and who was rather appalled by some of the things going on in the United States, especially by the fact that we execute children, which is illegal in many countries.

Eleanor Roosevelt would be very pleased by what has happened with Pinochet, but I think she would be very displeased with other issues. Although I agree with Professor Gardner, one can never imagine what a dead person would think about anything - when the United States wanted to pull out of UNICEF²⁴ in 1953, Eleanor Roosevelt protested. I think she would protest our failure to pay UN dues and our general contempt for the UN humanitarian agencies. It was her commitment to real human rights and to the UN that made her so dangerous. Indeed that's why Eisenhower wrote to a friend "I am going to fire that woman and save the world from Eleanor Roosevelt."²⁵

For about seven years I served on the State Department Historical Advisory Committee. I was really upset that not one single human rights record was printed in the FRUS series. I mean, if you ever worked for the State Department, you know how much paper the State Department generates. It just comes in mountains every week.

I said to Bill Slaney, the head of the Historical Office, "Where are the human rights papers? Where are Eleanor Roosevelt's papers? She had all these advisors. Where is that record? Why isn't it in *FRUS*, the *Foreign Relations of the U.S. Series*?" He said, "Oh, we've never even looked at the human rights record." I said, "Well, let's go look at it."

We went looking for it, and there were 198 boxes of Eleanor Roosevelt's correspondence with the State Department for the period from 1946 to 1953. So we got it declassified. I sat there with an archivist who stamped the pages "declassified" as we turned the pages. So now, if you have students who want to

²⁴ United Nations Children's Fund

²⁵ THE DIARY OF JAMES HAGERTY 6 (Robert Ferrell ed., 1983).

study the human rights record, they can. But it is still not published in the *Foreign Relations of the U.S. Series*. For the 50th anniversary celebration, I hope we will get a retrospective volume.

But it is very interesting to read her correspondence. It is very interesting to see what she really thought. We know what she thought when the United States tried to pull out of UNICEF. She really organized a campaign to save the Children's Fund. She wrote: How can we not be leaders on this issue when there are fifty million children around the world, many of them suffering and starving and dying of perfectly needless causes and curable diseases, like measles and dehydration? And of course, that is still true. If you work at the U.N., if you work at UNICEF, or UNESCO²⁶ or FAO,²⁷ it is so obvious the wonderful work that is being done.

There is something really disgusting, I think, frankly, about the fact that this country has not paid its U.N. dues for eleven years. As a result the budget for the UN high commission for refugees has been reduced by 40% in this tragic time. And UNESCO and FAO remain so embattled. When the US pulled out of FAO, that wonderful member of Congress, Millicent Fenwick, who Bush had appointed to chair FAO, quit in a great huff and made great to-do, but it only got about an inch of US press. Although it got a great deal of press in Rome and around the world.

When you talk to U.S. representatives, they say, "Well, the U.N. is such a wasteful organization, it has such a bloated budget." Well, the budget of the entire United Nations and all of its agencies is \$11 billion. If you compare that \$11 billion to the \$300 billion military/industrial complex budget, or to the billions of dollars we are wasting on the prison/industrial complex while downsizing CUNY²⁸ and SUNY,²⁹ you see how exaggerated that accusation really is. In fact, the numbers for the investments in prisons have gone up 160 percent in the last five years, while the money for CUNY and SUNY for public educa-

²⁶ United Nations Educational, Scientific, and Cultural Organization.

²⁷ Food and Agriculture Organization.

²⁸ CUNY refers to the City University of New York.

²⁹ SUNY refers to the state university system for the State of New York.

tion for poor and working people has gone down exactly that amount.

There is something really wrong here as we celebrate the fiftieth anniversary of the Declaration of Human Rights. I think Eleanor Roosevelt really would be appalled, especially about our regression on issues of race and education and justice. Eleanor Roosevelt said in 1934: We need to consider justice and equity on issues of race, ethnicity and creed; “we go ahead together or we go down together.” That was a theme that she emphasized throughout her life.

She particularly focused on housing – and one of the things that fascinates me as a biographer is that Eleanor Roosevelt, who was orphaned at the age of ten and had no home of her own, insisted on affordable and decent housing for everyone. I think people do not realize how really tragic her early life was. Her father died at the age of thirty-four of alcoholism. Imagine how much you have to drink to die at thirty-four. Her mother died two years before that. So she lived in other people’s homes, in relatives’ homes, her grandmothers’, her aunts’ and then she lived, as we all know, in her mother-in-law’s homes and various public institutions, like the White House. Ultimately Eleanor Roosevelt concluded, every American needed a home of her own.

One of the great joys of doing research for Volume Two was to go and look at what for Eleanor Roosevelt was model community building in a place called Arthurdale, West Virginia, a mining community that every biographer and every historian has ridiculed. This is an incredible community that was devastated, that was the poorest place in America in the 1930s. Eleanor Roosevelt said, “What we need here is decent housing with indoor plumbing.” People were horrified. This is 1934. Eighty percent of American housing in rural areas of course had no indoor plumbing. And even Harold Ickes, FDR’s Secretary of the Interior, said “That’s ridiculous. If Eleanor Roosevelt has her way, how will we be able to tell the rich from the poor?” Eleanor Roosevelt said, “Well, in matters of such simple dignity and decency, we should not have to tell the rich from the poor.”

Those houses are really lovely. Each one is on two-to-five acres with indoor plumbing. And because it is very cold in the mountains of West Virginia, every room has heat. These are model homes for a sustainable community, and represent still a

challenge for the future. As Eleanor Roosevelt said in 1934: This is what housing should look like in America.

Since I am talking to lawyers, I came with an agenda. You are the people who make so much happen. And, since you are the activist lawyers who care about civil rights and human rights, I want to focus on three longstanding human rights cases right here in this country.

Why is Leonard Peltier³⁰ still in prison?

Why is Mumia-Abu Jamil³¹ denied a fair trial after twenty years on death row? A black journalist who was talking about police brutality? Don't we know enough about Cohintelpro³² to demand at least a fair trial for Mumia-Abu Jamil?

And finally, Lori Berenson.³³ Why is Lori Berenson in a Peruvian prison now three years, where, until about a month ago when the OAS finally protested, she was 12,700 feet above sea level in a tiny little cell twenty-three hours a day without windows? How terrible! This is torture. How can we get Lori Berenson out of Peru?

³⁰ In 1975 a violent confrontation between American Indian Movement members and local Sioux against law enforcement officers on an Oglala Reservation left two government agents dead. Although two other AIM members were acquitted in a separate trial, Leonard Peltier was convicted for murdering the agents and sentenced to two consecutive life sentences.

³¹ Mumia Abu-Jamal, a former reporter for a public radio station, was sentenced to death in Pennsylvania for killing a police officer in 1981.

³² Cohintelpro is the FBI's counterintelligence program.

³³ Lori Berenson was convicted of high treason and other crimes by a Peruvian military tribunal in 1995 for her alleged participation in a rebel plot to seize control of the Peruvian parliament.

Oscar Schachter
Columbia Law School

I was asked to speak about the genesis of the Universal Declaration, particularly its international context. As one who was present at the creation (there are not many of us left) I feel an obligation to set the record straight. At the same time, I am aware of the tricks that memory plays. Moreover, as Lewis Namier, a great historian, once observed “historians imagine the past but remember the future.” Professor Blanche Wiesen Cook took us into the future; I will try to stick to the past.

I came to the United Nations as a legal adviser in April 1946. The UN was in the Bronx at the Hunter College Campus (now Lehman College). It was about the same time that Eleanor Roosevelt came to the UN as “chairman” of a Nuclear Committee,¹ set up to draft an International Bill of Rights (Women were then “chairmen”).

Human rights at that time, in April and May of 1946, was not the most prominent feature of the United Nations. It was overshadowed by the more dramatic political events; Soviet invasion of Iran, Civil War in Greece, and most of all, the threat of the atom bomb. The Baruch Plan² had just been introduced and it dominated the news of the UN.

The Assistant Secretary General in charge of human rights was a Frenchman, Henri Laugier,³ an eloquent and witty, a

¹ Based on the recommendations of a “nuclear commission” chaired by Eleanor Roosevelt, the UN’s Economic and Social Council established the official UN Commission on Human Rights in June 1946. The council selected eighteen members for the Commission. U.S. Delegate Eleanor Roosevelt was elected Chairperson, China’s P.C. Chang and France’s Rene Cassin were elected as Vice-Chairmen and Lebanon’s Charles Malik as Rapporteur. The UN’s Human Rights Division prepared a 408-page documented outline to help the Commission with its work. The main task of the Commission was to define which rights should be enumerated, and to determine the nature of the document they were to prepare.

² The Baruch Plan for International Control of Nuclear Weapons was the first nuclear power policy proposed by the United States. It was considered by the UN Security Council and the council’s Atomic Energy Commission in 1946 and ultimately vetoed by the USSR.

³ Henri Laugier was appointed to the United Nations in 1946 as Assistant Secretary General, Social Affairs.

physiologist who had been the President of the International League for Human Rights. In the beginning he, almost alone in the U.N. Secretariat, placed emphasis on human rights.

In the fall of 1946, he appointed John Humphrey, a professor of Roman law at McGill University, as the director of the Human Rights Division. Humphrey, a bilingual Canadian who had studied in Paris, has described his surprise at the appointment and his lack of experience in international institutions. One of his first tasks was to provide the nuclear committee with a compilation of texts and drafts setting forth human rights - a work prepared by experts in the Human Rights Division. That Division had recruited several renowned European legal scholars (nearly all victims of Nazi and Fascist oppression).

The nuclear committee, chaired by Mrs. Roosevelt, had eighteen members nominated by the member states that had been elected by the Economic and Social Council. The five permanent members of the Security Council were (of course) on that committee. The others were broadly representative of the different geographical areas (though it must be remembered that the UN then had only 51 members and that a large part of the world was under colonial rule.) Charles Malik, the Lebanese Ambassador mentioned by Dick Gardner, was a forceful figure who played a leading role in that committee and later in the drafting of the two Covenants on Human Rights. A Chilean Ambassador, Santa Cruz, and a Chinese, P.C. Chang, were other non-Europeans who were active in the commission.

Curiously the drafting committee set up by the commission included no European. This upset the French but that was later remedied by the appointment of Rene Cassin, a French law professor, as rapporteur of the Commission in the final drafting of the Universal Declaration before it was submitted to the Economic and Social Council.

Let me back up a little on the history of human rights in the UN. The United States, in its first draft of the Charter submitted to the Dumbarton Oaks Conference,⁴ set the stage by providing for human rights as a principal aim of the UN, though not as a legal obligation.

⁴ The Dumbarton Oaks Conversations, held in 1944, were milestone conferences leading up to the foundation of the United Nations.

As the draft Charter moved from Dumbarton Oaks onto the San Francisco conference, the Latin American group, at that time the largest group of member states in the United Nations, called for a treaty on human rights, or alternatively for human rights to be enumerated in detail in the Charter itself as legal obligations. However, the major powers, including the Soviet Union supported the U.S. proposal to treat respect for human rights as a "purpose" in the context of social welfare objectives such as full employment, higher standards of living, health. (This became article 55 of the Charter). At the San Francisco conference, a provision was included (on the initiative of Australia) under which members pledged to take action to achieve the Charter purposes of an economic and social character, including respect for human rights.⁵ This has been seen by some commentators as a significant element in according legal effect to human rights. However, the Latin American proposal for enumerating human rights in the Charter was rejected.

Human rights, it must be said, was not given much attention in the San Francisco Conference. Most of the interest centered on peace and security, especially on the veto in the Security Council and related matters. Some NGOs concerned with human rights did exert pressure on the U.S. delegation and succeeded in getting a Human Rights Commission under the Economic and Social Council (the only such commission expressly mentioned in the Charter).

At the end of the San Francisco Conference, in the final speech, President Truman said that the world expects an International Bill of Human Rights. The notion of a "bill" had been brought up in the discussions, the term "bill" presumably coming from the 1688 English Bill of Rights⁶ and the American Constitution. The French preferred the term Declaration⁷ as they and most of the Europeans were influenced by the Declara-

⁵ See U.N. CHARTER, art. 56. "All Members pledge themselves to take joint and separate action in cooperation with the Organization for the achievement of the purposes set forth in article 55."

⁶ See THE BILL OF RIGHTS (1688)(Eng.) 1 Will & Mar. sess.c.2 sec. 1., reprinted in 10 HALSBURY'S STATUTE OF ENGLAND AND WALES 44 (4th ed. 1985).

⁷ France, DECLARATION OF THE RIGHTS OF MAN, National Assembly of France, August 26, 1789. See Stephen Marks, *From the Single Confused Page to the Decalogue for Five Billion Persons: The Roots of the Universal Declaration of Human Rights in the French Revolution*, 20 HUM. RTS. Q., No. 3, Aug. 1998.

tions of the Rights of Man and the Citizen of 1789⁸ and 1793.⁹ Hence two parallel terms: Bill and Declaration were used in the immediate post-Charter period in the discussions at San Francisco and subsequently in the UN.

The British, surprisingly, had proposed a treaty, a draft convention, based largely on Hersch Lauterpacht's¹⁰ draft which was one of the many drafts that had emerged in the 1940s prior to the UN Charter.

When the Human Rights Division, in late 1946, made its compilation of human rights proposals, they were able to include about twenty-five or thirty drafts by various groups in the U.S. and Europe and Latin-America. Interestingly, the American Bar Association, which later strongly opposed the human rights instruments, did propose a draft, as did the American Law Institute, along with a number of American non-governmental organizations. In Europe, some "declarations of rights" were drafted by French organizations. In addition the Institut de Droit International¹¹ had drafted a declaration that had support in the international law community.

Although economic and social rights are often described as "second generation" rights, they were included in most of the proposed texts. For example, the Commission to Study the Organization of Peace (a private U.S. group), in which Professor

⁸ The Declaration was composed during the French Revolution. It was a revolutionary manifesto adopted on August 27, 1789, by the national Assembly of France and attached as a preamble to the New Constitution of 1791. The Declaration enumerated a number of rights with which "all men" were held to be endowed and that were described as inalienable.

⁹ La Constitution de 1793. Short-lived Jacobin Constitution.

¹⁰ Sir Hersch Lauterpacht (1897-1960) was a lawyer, legal scholar, Professor of International Law at Cambridge University and justice on the International Court of Justice. In England, he edited Oppenheim's leading treatise on international law. For forty years, he edited the International Law Reports, and for ten years, the British Yearbook on International Law. From 1955 until his death, he was a Judge of the International Court of Justice at The Hague, and in the 1950's he was knighted by the Queen.

¹¹ Institute of International Law (In French called *Institut de Droit International*), is a non-governmental society of international law specialists devoted to the development of international law, founded in 1873. The institute aims at clarifying general principles in international law and promoting codification of the law. Its membership, restricted to 132, is elected by vote of the members, specialists in the theory or practice of international law. Institute proceedings are conducted in French and English. The institute's proceedings are published in the *Annuaire de l'Institut de droit international*, the institute's yearbook.

Sohn was active, included economic and social rights in its draft Bill of Rights. This was not surprising. Memories of the great depression and the New Deal were still fresh. Roosevelt's "freedom from want" was an indication of that. The Socialist movements of Europe, Marxist or Christian, which were dominant in most of the European countries had put emphasis on social and economic needs. The United States position was still influenced by the New Deal of the thirties. Hence, even the ABA draft included some economic and social rights.

The Soviet Union, which had objections to provisions in the draft declaration which detracted from state power, strongly favored the economic and social provisions. In fact, they had proposed that the Charter itself include a provision recognizing the right to work and the right to education, the two rights that they stressed.

Let me come back to the UN proceedings in 1947. What happened was that fairly early in 1947, the Human Rights Commission, and then the General Assembly, agreed to what somebody called a "triptych;" that is, a trio of instruments - namely a non-binding Declaration to be adopted by the General Assembly under its recommendatory authority; to be followed by what was first called a Bill of Rights, later a Covenant (subsequently split into two covenants;) and a third item of the "triptych" called "Methods of Implementation." This third part was supposed to establish a mechanism to deal with implementation. In fact, that part was included to a limited degree in the Covenants and the optional protocol to the Civil and Political Covenant.

The drafting of the Universal Declaration which began in 1946, went on through 1947. It began with a drafting committee, whose draft then passed to the Human Rights commission, from there to the Economic and Social Council, after that to the Third Committee of the General Assembly and finally to the plenary of the General Assembly, which adopted the text in 1948 at its Third Session held in Paris. Forty-eight states voted in favor, none against and eight abstained (six members of the Soviet bloc, plus Saudi Arabia and South Africa).

Let me say a few words about the intellectual and political background. First, it is pretty clear that the philosophic perspective of the drafting bodies was in the natural law orienta-

tion. Nobody even suggested that the Declaration of Human Rights or the other instruments should be based on existing positive law. In fact, no one requested that the Commission survey existing law in the member states. The majority considered that the human rights declared in the texts expressed standards derived broadly from the natural rights of the human person. Probably most delegates were mainly influenced by the French Declaration of the Rights of Man and of the Citizen. There were of course other influences, notably those of the socialist countries, in respect of economic and social rights. For example, the German Weimar Constitution, had contained a fairly detailed list of social and economic rights as did the Spanish Constitution of 1931. The Universal Declaration followed their example in regard to the rights to work, health care, and a decent standard of living. The six communist countries were especially vociferous in their support of economic and social rights while critical of the provisions in civil and political rights.

The discussions on the draft Declaration were increasingly affected by new political tensions. The Cold War was beginning. Comments by the Soviet delegation took on a sharper tone. Nonetheless, the drafting of the Universal Declaration was in itself, an important influence in raising the awareness of people to the broad expanse of human rights. About one hundred and seventy amendments to the draft Declaration were considered in the General Assembly, in itself an indication of the wide range of interest. As Professor Gardner pointed out, the prominence of Mrs. Roosevelt was significant in getting world-wide attention. Not that she was free from criticism. She was even attacked by high-minded lawyers, most notably Sir Hersch Lauterpacht, (perhaps the most distinguished international lawyer in the English-speaking world,) who criticized her position that the Declaration should not be binding. In his elegant language, he pointed to the "incongruity" between proclaiming the universal character of human rights and rejecting a legal duty to give effect to them. In effect, he expressed the common lawyer's creed that there are no genuine rights without remedies.

What actually happened was that the non-binding Declaration took on a jural life of its own. It was for example, included in many constitutions, although one must add, that constitu-

tional rights were not always given effect. Still many of its provisions were included in legislation and given effect by courts.

Overall, there is no doubt that the Universal Declaration become the yardstick of human rights and an influence in the political lives of many countries. Some of its provisions have been regarded as customary international law binding on all states. More important perhaps is that the Declaration has often become a rallying instrument for political movements that have resulted in toppling or reforming governments, as it did in Eastern Europe, and in other authoritarian states. True, there is still a large gap between the Declaration's "rights" and their implementation - especially in regard to economic and social rights as well as the political rights of refugees and minorities. When there are eighteen million unemployed in Europe and countless millions elsewhere, what does the right to work mean? Or when millions of refugees are denied elementary civil rights, can we justifiably speak of "customary" law in that respect?

The Declaration is justly celebrated for its universality - for its ringing declaration that all human beings are born free and equal in dignity and rights. In the drafting period, some governments considered that this required a religious or metaphysical foundation but it quickly became apparent that no such formulation would be generally accepted. The ideal of universality - of the equality of all human beings needed no foundation; it itself was accepted as the foundation of freedom, justice and peace in the world. Of course, in a diverse world, universality and equality are not enough to meet actual human needs. It did not take long before the international community turned to the rights of particular groups, beginning with women, then the rights of the child, of refugees, of indigenous peoples, of the aged, the handicapped, and prisoners. We now see more clearly that the basic conception of equality of all human beings must be understood and applied in different ways to serve different needs and conditions. The Universal Declaration remains first and foremost the beacon of the rights movement. While it is still far from realization it sends a challenge to people everywhere to give it effect in an increasingly complex and incorrigibly pluralist world.

QUESTIONS AND COMMENTS

PROF. FLAHERTY: I invite questions from the floor for our panelists.

Q: I wish to thank Professor Cook for bringing out the very important fact that the Universal Declaration is an instrument that does not meet with political providence in the developed world. I will be speaking later today about the experience in the Middle East over the last fifty years since the Declaration.

It is customary for us all to cite violations and noncompliance in third-world countries, such as the Middle East, but it is very important to note, as Professor Cook correctly did, that there is not a single nation on earth that is in full compliance with the articles of the Declaration, and that it is the duty of human rights activists in the developed world to see to it that better, and eventually full, compliance with the Declaration in the West is the thing to do in order to inspire better compliance in the rest of the world.

PROF. COOK:

I just wonder if I could comment on that, since I do not think that I merely imagined the past, but I am committed to the future.

One of the things about Eleanor Roosevelt is she really understood that politics was not an isolated, individualist adventure. She really believed that what we needed was grassroots movements. We needed our gangs. We needed to create powerful communities of people who cared about these issues.

One of the sad things that is going on right now in this country is that folks really do not care. There is this explosion of carelessness, as one wanders through the streets of the great cities of this country. People will tell you in Washington the numbers, seven million homeless Americans. Who cares?

This is really our challenge. This is why I agreed to get up in the morning so early to come to talk to attorneys, because you are the people who are out there doing it and you care. I think this is the great challenge. It is a worldwide challenge.

Jimmy Carter was on the air the other night. He said there are one hundred and eleven wars going on. One hundred and eleven wars going on around this planet. The Cold War is over, we like to say that, but there has been no peace and there are no victories. There is this explosion, and words like "genocide" are back again and words like "ethnic cleansing" are back again.

You know, Hitler's great genius was that he selected one group. Well, several groups, a whole bunch. His expression was "lives that are not worth living." It was into that category, lives that are not worth living, that he put Jews, gypsies, beggars, gay people, and he put into that group single infertile women. Historians when they list all the folks, you know, communists, unionists, Jews, gays, gypsies, so on, they never put in single infertile women. Who were they? They were the great social workers and crusaders, the Jane Addams¹ and Lillian Walds.² Hitler really despised them. There is a wonderful connecting link between them and Eleanor Roosevelt, which is why we know so much about them.

But this is what is going on in the world today, and we see it in the fundamentalism's that have exploded all over. In this country we are lynching. I mean, we have experienced lynching in our own time, in the last year. Who is it okay to despise?

I was told that somebody here thought I was only going to talk about lesbianism, because that is what I do. I was really revolted because most people who know what I do and who know what I write and know what I stand for know that is not what I do.

But who is it okay to despise? We are having a war, as we sit here, against consensual sex. We are having a war against women. Women at Beijing, one-hundred and eighty nations sent almost 100,000 women to claim some power. That is really the challenge.

¹ Jane Addams was one of the first people in America who sought to improve the lives of the poor. In Chicago she founded a settlement house called Hull House. Her work toward social improvements in Chicago, coupled with the work of other reformers, marked the beginning of the Progressive movement in America.

² Lillian Wald was an American nurse and social worker. In 1893 she founded the Henry Street Settlement for social work, which later included a public-health nursing center. She also promoted the establishment of the U.S. Children's Bureau in 1912.

I loved what Professor Schachter just said. The Declaration of Human Rights is vital. We have just begun. We have just begun to fight for the future. That is what this Declaration stands for. Thank you.

Q: I just wonder if the panelists could talk a little bit about what the people who drafted this Declaration thought they were doing when they did it. I mean, did they think they were drafting something for the shelf, because that is sort of what they did?

Is there any strategy, was there a strategy, or is there anybody developing a strategy to make this an idea that catches on? In the last fifty years, a hundred ideas, a thousand ideas, have developed and caught on, and this one has not. Politically it is totally marginal. I mean, there is no politician standing up and making a part of his or her platform the elements of this Declaration.

PROF. COOK:

Eleanor Roosevelt called it "the Magna Carta for the world." This is our chance to bring a New Deal to the world. That is what she thought it was going to do. It was going to be a beacon, like the Declaration of Independence, like the Declaration of Rights of Man. That is why 'everyone' and 'everybody' is the language, not just 'men.' She was very specific about that. It was going to be a beacon.

You know, in some ways she was a bad girl and in some ways she was a good girl. She agreed when the State Department said, "You make sure you split up the covenants." She gave a very passionate speech about why it was important to split up the covenants. But if you read the speech carefully, she says, "My government will not approve the Declaration if the economic and social rights are included. The only way we will get any approval is to split up the covenants." She understood the limitations.

You know, Bricker was running the Senate Foreign Relations Committee, for those of you who remember the Bricker

Amendment.³ The United States was once again plunged into an isolationist mode as one went from 1948 to 1953, and then after 1953 when we knew what was going on. The Cold War was at its height. The United States supported the Declaration only so long as the Soviets opposed it. And we wanted nothing binding.

But that is why it is up to you. You attorneys have got to begin to demand this belongs on the agenda, just as the United States belongs as a dues-paying member at the U.N. You know, Bonn has offered the U.N. free space, now that Bonn is empty as a former capital, so one faces the 21st century with the U.N. in Germany. Do we want that? I do not know. It is sort of ironic.

PROF. SCHACHTER:

Let me put in a mild dissent to this. The United States proposed the economic and social rights at the beginning. They continued to support that all through. They welcomed the Soviet support of the economic and social rights. I am talking now about the period of the Declaration.

It is true that afterwards, starting in 1948 and 1949, the Bricker Amendment group, the Bar Association, attacked the Declaration. The issues that were of concern to the United States at that time were, probably foremost from that point of view, immigration. There was a great fear of immigration, the Bricker Amendment in large part. The fact that the United States at that time was in gross violation of the provision on race discrimination was not even noticed. They were a bit attacked on that.

But that is one of the remarkable things about this, that you do have a kind of insensitivity to their own faults. The Western European countries were all colonialist countries. The French realized that they had a problem with regard to self-determination and race discrimination, since it prevailed in those countries. But whether one considers taking the view that the glass is half full or half empty, most of these countries who supported it were conscious, or somewhat conscious, of

³ S.J.Res. 1, 83d Cong., 1st Sess. (1953). The Bricker Amendment of 1953 was a proposal of an amendment to the Constitution of the United States which would have made all treaties non-self-executing. The proposal was not adopted.

their own dereliction. This had particularly to do with race and with colonialism. The Declaration could not for that reason include a provision on self-determination, which subsequently became the very first provision of the Covenant.

The issue of enforcement was not as prominent as one might think, because the assumption was that this will be done step by step. Lauterpacht's attack on it was not generally followed, although some of the non-governmental organizations took it up.

I think it is a more balanced picture than is given. I would emphasize that most of the text that had gone into this was prepared by American organizations. All of them, including economic and social rights, rights to work and the rest of it. So the New Deal and the Depression period remain significant.

I forgot to mention that the International Labor Organization (ILO),⁴ which at that time was very much supported by the United States, also contained provisions on these points, which later was influential. So it was more complicated and more mixed than indicated, I think.

PROF. GARDNER:

I would like to just say a word in support of what Oscar, who has been my mentor for so many years, has just said.

We must not give way to just overriding pessimism. I think the question "what did these people think they were achieving?" is not at all irrelevant. I think that Eleanor Roosevelt and the other framers thought they were beginning a process, a long-term historical process, to establish the principle that how a nation treats its own citizens was no longer just that nation's business. And they succeeded, because it is now universally admitted that how a nation treats its own citizens is a matter of international concern. That was a revolutionary idea.

From this Universal Declaration, which was not intended to be law, we have developed treaty law, not just the Covenants, but treaties like the Torture Convention,⁵ which are applied

⁴ The ILO is the principal international forum for presenting international labor rights claims. The ILO was created after World War I for the codification of international fair labor standards.

⁵ Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted on Dec. 10, 1984, art. 3, S. Treaty Doc. 100-20,

now in American courts. We have had cases, like the *Filartiga*⁶ case, where under the Alien Tort Claims Act⁷ suits have been brought in American courts against foreign persons found here who tortured in foreign places.

Again, I was the only one so far to mention the Pinochet case. Here is a case where an action is brought in a Spanish court by Spanish citizens whose relatives have been tortured and murdered by Pinochet, and by Americans, you all know the famous movie, "Missing,"⁸ joined in a Spanish court. Now, it has been held by the House of Lords there is no immunity and the Ministry of Home Affairs of Britain has said they are not going to for any political reason stop the extradition process. So there is a very good chance Mr. Pinochet may be answerable in a Spanish court for things that he did in Chile. All this would have been unthinkable before the Universal Declaration. So I do not think we ought to just say, "Oh, this is all hopeless."

Also, I have been very critical of the United States, but I think we again have to be careful not to go too far. It was, after all, the United States that took the leadership in creating the Bretton Woods institutions, the ILO, the FAO, UNESCO, however much we may have withdrawn in the last years. But it was basically the United States that pushed economic and social rights at the beginning and the U.N. Charter.

And in our time, who took the leadership in bringing an end to the massive human rights violations in Bosnia? Without American leadership, that would still be going on. And who played a decisive role in bringing an end to the problems of Northern Ireland? Yes, we can give a lot of credit to Irish and British leaders, but without American leadership, the work of George Mitchell, who we heard last night, supported by our President, there would not have been a settlement. So it is a mixed story.

19, 20, 23 I.L.M. 1027, 1028 (extending protection under Article 3 to individuals who are in substantial danger of being subjected to torture).

⁶ *Filartiga v. Pena-Irala*, 630 F.2d 876 (1980).

⁷ Alien Tort Claims Act, 28 U.S.C. §1350 (1988). The Alien Tort Claims Act holds that district courts shall have jurisdiction over civil actions "by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States." *Id.*

⁸ "Missing" is a 1982 movie about a father who comes to a politically volatile Latin American country in search of his missing son.

I want to close with one final point because these are very complex issues. Nobody has mentioned the fact that Article 29 of the Universal Declaration has a qualification. We really need a lot more attention to this. Article 29 says in Paragraph 2:

In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order, and the general welfare in a democratic society.⁹

Therefore, the framers understood there had to be a balancing between individual rights and societal interests. Different countries of the world strike a balance in rather different ways.

So, I think one of the challenges as we celebrate the fiftieth anniversary is to explicate where this line is to be drawn and what are the just requirements of morality, public order, and general welfare in a democratic society. Those are hard questions. We should not be dogmatic and think we know the answers to them.

⁹ Universal Declaration Art 29(2).



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A Haitian refugee in the Haitian camp at the United States military base in Guantanamo Bay, Cuba, holds up a sign reading "Haitian Refugees Ask Asylum" as he stands behind a barbed wire fence in the camp September 22. Many Haitians in the camp intend to continue seeking political asylum in the U.S. despite changes in Haiti.