A WORLD MADE NEW

Eleanor Roosevelt and the Universal Declaration of Human Rights

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Smaller nations, however, had more reason to be concerned. On the one hand, the addition of human rights references to the Charter might encourage stronger states to intervene in their affairs under pretext of championing the rights of their citizens, as Hitler had done in Czechoslovakia. On the other hand, many tyrants including Hitler had hidden behind the bulwark of national sovereignty, seemingly protected in the Charter as well. How can human rights be secured while discouraging bad-faith military adventures or economic sanctions in their name? When is intervention in a country's internal affairs legitimate, and when not? What is intervention? The vague domestic-jurisdiction language of the Charter shed little light on these problems. They would remain tough nuts to crack.

How Conscience would fare in the tug-of-war between human rights and national interests in the new international organization was anyone's guess. Much would depend on the new Human Rights Commission. A key figure on that Commission would be scholarly Charles Malik, who left the San Francisco meeting feeling like an alien. He wrote in his diary: "Intrigue, lobbying, secret arrangements, blocs, etc. It's terrible. Power politics and bargaining nauseate me. There is so much unreality and play and sham that I can't swing myself into this atmosphere and act."[54]

Charles Malik had yet to meet Eleanor Roosevelt.

CHAPTER 2

MADAM CHAIRMAN

The Creation of the Human Rights Commission

On New Year's Eve 1945, after the photographers that had surrounded such notables as Senators Thomas Connally and Arthur Vandenberg finally dispersed, a tall woman in a black coat boarded the *Queen Elizabeth* bound for Southampton. Eleanor Roosevelt, along with Connally, the Texas Democratic chairman of the Senate Foreign Relations Committee, and Vandenberg, the Michigan Republican who was the committee's ranking minority member, was headed for the first meeting of the UN General Assembly in London. Neither she nor anyone else suspected that, at age sixty-two, she was on a course that would lead to the most important achievement of her already distinguished public life.

When President Truman had asked her to be a member of the U.S. delegation to the UN, the widow of the wartime president was doubtful: "How could I be a delegate to help organize the United Nations when I have no background or experience in international meetings?"[1] Those reservations about her qualifications were shared by many members of the foreign policy establishment. The opposition to her nomination included not only prominent Republicans such as John Foster Dulles, who would later be Dwight Eisenhower's secretary of state, but distinguished Democrats, including Senator William Fulbright. The former regarded her as too liberal, the latter as too inexperienced. Fulbright was concerned

that her presence on the delegation would signal a lack of seriousness about the UN.[2]

There was also the risk, from the perspective of these foreign-policy professionals, that the outspoken former First Lady would be a loose cannon in her new environment. As a political activist and popular journalist, she had developed a formidable reputation for her independence of mind and determination to champion progressive causes. During her White House years she had even used her newspaper column to criticize decisions of her husband's administration, such as a provision of his economic recovery program that resulted in the layoff of married women.[3] FDR accepted these public disagreements with equanimity, telling his wife on one occasion: "Lady, this is a free country. Say what you think. If you get me in Dutch, I'll manage to get myself out. Anyway, the whole world knows I can't control you."[4] Wags of the day said that FDR's prayer was "Dear God, please make Eleanor tired." No wonder the foreign-policy establishment was nervous.

The decision, however, was the president's. And Harry Truman was less concerned with possible risks than with keeping the prestige of the Roosevelt name associated with his administration. Besides, Truman was the last person in the world to be dissuaded by Mrs. Roosevelt's inexperience in foreign affairs. When he was thrust into the highest office in the land the preceding April, he had had to work hard to bring himself up to speed on foreign policy. In his biography, David McCullough relates that Truman, with a summit meeting at Potsdam looming in July, "had no experience in relations with Britain or Russia, no firsthand knowledge of Churchill or Stalin. He didn't know the right people. He didn't know [Ambassador to the Soviet Union] Harriman. He didn't know his own Secretary of State, more than to say hello."[5] Franklin Roosevelt, for all his political astuteness, had not bothered to prepare the vice president to take over in the event of his death.

Truman pressed Mrs. Roosevelt to accept the UN assignment. Later she wrote that she might not have agreed "if I had known at that time . . . that the nomination would have to be approved by the United States Senate, where certain senators would disapprove of me because of my attitude toward social problems and more especially youth problems. As it turned out, some senators did protest to the President against my nomination, but only one, Senator Theodore G. Bilbo of Mississippi, ac-

Eleanor Roosevelt and President Harry S. Truman at his desk in the Oval Office.

tually voted against me."[6] The sticking point for Bilbo, apparently, was the former First Lady's devotion to the cause of racial equality.

What overcame Mrs. Roosevelt's hesitation was the belief, shared by family and friends, that the UN appointment might be the best solution to the problem with which she had been wrestling since the death of FDR in April: how to make a new life for herself.[7] In the months since leaving the White House, she had been pondering her future, dealing all the while with various family crises, personal and financial. From the time she had been a young woman, she had thrown herself into helping the most neglected members of society, her empathy aroused perhaps by her own experiences as a lonely, unloved child whose mother had regarded her as an ugly duckling. After years of involvement in Democratic Party politics at all levels, in which she had spoken out on behalf of her own favorite causes—women's rights, the end of racial discrimination, improvement of working and housing conditions—she was resolved to remain active in public life. But since the death of her husband she could not see her way forward clearly. The new international organization might, she thought, be a place where her talents and energies would be useful and where she could pursue her lifelong interest in humanitarian causes.

Truman's use of the atomic bomb to end the war with Japan in August 1945 had broadened the horizon of her concerns. That awesome decision, whose morality is still debated, did bring World War II to an immediate end, but Mrs. Roosevelt saw that it also put an end to isolationism. With that event, she had written in her column, "we came into a new world—a world in which we had to learn to live in friendship with our neighbors of every race and creed and color, or face the fact that we might be wiped off the face of the earth."[8]

Looking back a few months after her decision, she told the readers of her newspaper column:

> I [took this assignment] because it seemed I might be able to use the experiences of a lifetime and make them valuable to my nation and to the people of the world at this particular time. I knew, of course, how much my husband hoped that, out of the war, an organization for peace would really develop. It was not just to further my husband's hopes, however. . . . It was rather that I myself had always believed that women might have a better chance to bring about the understanding necessary to prevent future wars if they could serve in sufficient numbers in these international bodies.[9]

As the date of departure approached, however, Eleanor Roosevelt's anxieties returned. She wrote in her "My Day" column: "I am told we will be 'briefed' (whatever this may mean) during the trip," adding that "I need it in the worst possible way."[10] To her daughter, Anna, she said, "Say prayers that I'm really useful on this job for I feel very inadequate."[11] Later she confided to Irene Sandifer, the wife of her State Department adviser:

> [Y]ou can never know how terribly frightened I was when I got on that ship that night to go to London. I came to the ship alone and I was simply terrified. I felt that I was going to do a job that I knew nothing about, I knew I did not know anything about it. . . . And if I had known then how Senator Vandenberg and Mr. Dulles felt about me I do not believe I could ever have had the courage to go.[12]

When the time came, however, as so often before in her life, she did what had to be done. She donned her hat and coat, tossed her trademark fox furs over her shoulder, and boarded the ocean liner still painted gray from use as a troop ship. As soon as she was settled in her cabin, she wrote to Anna, "Just a line from the ship to tell you I am comfortable & tho' the responsibility seems great I'll just do my best and trust in God."[13] The next day she got up early and began studying stacks of State Department documents on the issues to be discussed in London. Her remedy for insecurity was the same as Harry Truman's: hard work and preparation.

"Last night was bad," she wrote on January 2, "fog horn most of the night, heavy roll and much colder."[14] It was but one of many bad nights Eleanor Roosevelt had passed since the shocks of the previous spring. Her grief over FDR's death had been compounded by the discovery that after urging her to remain at the family residence in Hyde Park, he had spent his last days in Warm Springs with Lucy Mercer Rutherfurd, whom he had promised never to see again after the long-ago affair that had nearly ended the Roosevelt marriage. In the days following FDR's death, Mrs. Roosevelt learned for the first time that her husband had begun seeing

Mrs. Rutherfurd at the White House while she was away—and that these visits had occurred with Anna's full complicity.[15]

While these wounds were still fresh, the ex–First Lady found herself faced with unaccustomed money problems, owing to the length of time it took to probate her husband's estate. Nor did bereavement produce a moratorium on the various marital and financial difficulties of her adult children, who still looked to Mother for advice and help.

Years of practice in dealing with disappointments large and small carried Mrs. Roosevelt through the immediate trauma. When President Truman asked if there was anything he could do for her, she was composed enough to respond, "No, thank you, Mr. President. But is there anything I can do for you, for you are the one who is in trouble now?"[16] Resorting to the strategy that had carried her through hard times before, she kept busy, attending to the tasks at hand, writing her newspaper column, and answering voluminous correspondence. She strove to join her personal suffering to the sorrows of millions who had been deprived by war of all they held most dear, including hopes and illusions. In "My Day" for April 17 she wrote, "When you have lived for a long time in close contact with the loss and grief which today pervades the world, any personal sorrow seems to be lost in the general sadness of humanity."[17] Eleanor Roosevelt did not hold with self-pity.

Later, in an introspective passage of *This I Remember,* she recalled that she had had "an almost impersonal feeling about everything that was happening" at the time of her husband's death:

> The only explanation I have is that during the years of the war I had schooled myself to believe that some or all of my sons might be killed and I had long faced the fact that Franklin might be killed or die at any time. . . . That does not entirely account for my feelings, however. Perhaps it was that much further back I had had to face certain difficulties until I decided to accept the fact that a man must be what he is, life must be lived as it is, circumstances force your children away from you, and you cannot live at all if you do not learn to adapt yourself to life as it happens to be.[18]

Love for her only daughter seems to have helped her overcome the pain of betrayal, judging from the affectionate letters she continued to write to her "darling Anna" and her ready responses to Anna's calls for financial and moral support. Regarding FDR, she was later to say, "All human beings have failings, all human beings have needs and temptations and stresses. Men and women who live together through long years get to know one another's failings; but they also come to know what is worthy of respect and admiration in those they live with and in themselves. If at the end one can say: 'This man used to the limit the powers that God granted him; he was worthy of the love and respect and sacrifices of many people, made in order that he might achieve what he deemed to be his task,' then that life has been lived well and there are no regrets."[19]

While the *Queen Elizabeth* plowed across the choppy North Atlantic, Mrs. Roosevelt threw herself into her new job. She participated actively in daily meetings with the other members of the U.S. delegation, faithfully doing her homework each evening. Her fellow delegates were all major players in foreign affairs. Besides Senators Connally and Vandenberg, there was former Secretary of State Edward Stettinius, who had served as the ailing Roosevelt's right-hand man at Yalta. After a brief stint in the cabinet at the end of the Roosevelt administration, Stettinius had been replaced by Truman appointee James F. Byrnes and was now headed to London as the first U.S. ambassador to the United Nations. Secretary Byrnes, also a delegate, traveled separately by air. Among the five alternates was John Foster Dulles, then serving as foreign affairs adviser to Thomas E. Dewey, who had been the Republican presidential nominee in 1944 and would be again in 1948.

The stature of the members of the bipartisan U.S. delegation was evidence of the seriousness and breadth of the U.S. commitment to the UN at the time. Vandenberg, a hard-core isolationist before the war, had become a major voice of internationalism not only in the Senate, but also in the GOP. Secretary Byrnes had announced that the Truman administration intended to continue FDR's internationalist policies. He told Congress, "This can be relied on, because it is supported by Republicans as well as Democrats and will be adhered to regardless of which party is in power."[20]

The newcomer's willingness to work, and her quickness in grasping the gist of technical material, did not go unappreciated. Her young State Department aide, Durward Sandifer, wrote his wife from shipboard that Mrs. Roosevelt was making "a great impression on the advisers with her alertness and sincerity and her avid desire for information."[21] Before they landed, Senator Vandenberg asked her whether she would be willing to serve as the American representative on the UN's Third Committee on

Social, Humanitarian, and Cultural Affairs (one of seven main committees set up to deal with specific matters designated as 1) political and civil, 2) economic and financial, 3) social, humanitarian, and cultural, 4) trusteeship, 5) administrative and budgetary, 6) legal, and 7) special political). Mrs. Roosevelt suspected that the third committee was thought to be a "safe" place where she could do little harm.[22] But she told Vandenberg that she would serve wherever she was needed and requested as much information as possible on "Committee Three."[23]

The UN General Assembly held its opening session on January 10, 1946, in Central Hall, Westminster, specially renovated for the occasion at the request of King George VI.[24] The participants in the San Francisco conference had settled on London as the site for that first meeting, pending the decision on a permanent home for the new organization. The mood of the delegates was less hopeful than it should have been on such a historic occasion, for relations between the Soviet Union and the West were becoming increasingly strained. Six months earlier, Truman, Churchill, and Stalin had met at Potsdam to make plans for the political future of Eastern Europe, the occupation of Germany, and the conclusion of the war with Japan. Truman had gone to the summit with hopes of developing a workable relationship with Stalin, but the Russian leader had been implacable where Eastern Europe was concerned. Like others in the West, Truman began to fear that the Soviet Union's expansionist aims would not stop there. It was the first and last time that Truman and Stalin would meet.

The day after the opening ceremonies, Mrs. Roosevelt, still anxious about her role, wrote to Anna, "My contribution to this meeting, beyond the fact that I am Pa's widow & by my presence seem to remind them all of him is very insignificant."[25] Not least among her fears was that a poor showing on her part might set back the cause of women's advancement. After her return she confessed, "[D]uring the entire London session of the Assembly I walked on eggs. I knew that as the only woman on the delegation I was not very welcome. Moreover, if I failed to be a useful member, it would not be considered merely that I as an individual had failed, but that all women had failed, and there would be little chance for others to serve in the near future."[26]

There were few women at the General Assembly in those days, and those present were mostly alternate delegates or advisers. Trying "to think of small ways in which I might be more helpful," Mrs. Roosevelt began inviting the sixteen other women to tea in her sitting room at Claridge's hotel.[27] She found that in such informal sessions a group of colleagues could often make "more progress in reaching an understanding on some question before the United Nations than we had been able to achieve in the formal work of our committees." That discovery would later stand her and the human rights project in good stead.

As the London meeting progressed, Mrs. Roosevelt began to worry less about her own role than about the impression that other countries were acquiring of the United States. Secretary of State Byrnes struck her as "afraid of his own delegation" and therefore "afraid to decide on what he thinks is right and stand on it."[28] As for Vandenberg and Dulles, "they are rude and arrogant and create suspicion." But Byrnes's nervous "over-cordiality" struck the wrong note, too. The proper course seemed plain to the woman who had nagged her husband for years to be less cautious and more proactive in advancing civil rights: "I think we must be fair and stand for what we believe is right. . . . We have had that leadership and we must recapture it."

She threw herself with her customary vigor into the work of the third committee, which was occupied with the problem of the million or more war refugees from Eastern Europe who were living in displaced persons camps. "A new type of political refugee is appearing," she wrote to her daughter, "people who have been against the present governments and if they stay at home or go home will probably be killed."[29] The representatives of Communist governments, however, were claiming that war refugees who did not want to return to their countries of origin were mostly "quislings or traitors."

The argument quickly became acrimonious, foreshadowing future debates in the Human Rights Commission where proposals for "freedom of movement" would provoke alarmed and strenuous opposition from representatives of the closed Eastern European regimes. "It was ironical perhaps," Mrs. Roosevelt later remarked, "that one of the subjects that created the greatest political heat of the London sessions came up in this 'unimportant' committee to which I had been assigned."[30]

The USSR sent its heaviest hitter, then Deputy Foreign Minister Andrei Vishinsky, to argue that the displaced persons must be sent back to their homelands, like it or not. Vishinsky, whose résumé included service as chief prosecutor in Stalin's infamous treason trials of the 1930s, was

renowned for his keen mind and sharp tongue. Since no one on the American delegation besides Eleanor Roosevelt was very well informed on the refugee question, her colleagues, after much conferring among themselves, asked her to respond.[31] When she rose to speak, she conceded that war criminals deserved punishment but pointed out that many refugees did not wish to return to their homelands simply because they disagreed with the existing regimes. Such persons, she said, did not deserve to be called "quislings" and should not be required to return. Would the Soviet Union, she inquired, want to see political refugees forcibly repatriated to Franco's Spain? With an eye toward gathering votes from the numerous Latin American delegates, she worked in a reference to the Great Liberator, Simón Bolívar. Let the displaced persons be free to make their own decisions, she urged. The majority of the third committee agreed.

Those members of the American contingent who hadn't known it before realized that their self-deprecating colleague was no babe in the political woods. Even Vandenberg and Dulles began to understand that the former First Lady could be an important asset to the United States in international settings. At the close of the London session, they approached her and said, "We must tell you that we did all we could to keep you off the United States delegation. We begged the President not to nominate you."[32] But now, as Mrs. Roosevelt later recounted with satisfaction, her erstwhile critics conceded, "We found you good to work with. And we will be happy to do so again."

Shortly after her return to New York, Eleanor Roosevelt received an assignment that finally allowed her to resolve her indecision about future plans. The UN's newly formed Economic and Social Council asked her to serve on a small "nuclear" commission charged with making recommendations concerning the structure and functions of the permanent Commission on Human Rights envisioned in the UN Charter. The nine nuclear committee members were chosen as individuals rather than as representatives of governments. Coming on the heels of her London performance, Roosevelt's nomination must have been a tribute to her personally, as well as a move to bind the United States more closely to the project and to appropriate the world-famous Roosevelt name. With a growing sense of the importance of the UN work, and increased confidence in her own ability to make a contribution, she agreed.

By the time the nuclear committee convened at Hunter College in New York from April 29 to May 20, 1946, the division between the Soviet Union and the West had been openly acknowledged by Stalin and Churchill. In February the Soviet leader had declared in a Moscow speech that peaceful coexistence between communism and capitalism was impossible. George Kennan had sent what came to be known as his "long telegram" from the Moscow embassy, advising the U.S. State Department that Stalin meant what he said. Kennan further advised that the Soviet regime, while not likely to be moved by appeals to reason or humanity, would often back off when faced with strength.[33] Then, on March 5, Winston Churchill (now ex–prime minister since the Labour Party's victory in July) turned up the heat with his famous "Iron Curtain" speech, warning against the danger of Soviet hegemonic ambitions. Truman, still hoping to get along with the Soviets, but determined not to appease them, took no public stand for the time being.[34]

Meanwhile the planning for a UN Human Rights Commission slowly went forward. The nuclear committee's first act was to elect Mrs. Roosevelt its chair. The meeting in other respects was less auspicious: only six of the nine members were in attendance.[35] At one point, after French member René Cassin had spoken for fifteen or twenty minutes without pausing for translation, the interpreter broke down in tears and fled the room, leaving Mrs. Roosevelt, who fortunately was fluent in French, to summarize his remarks as best she could. Three days before the meeting ended, a new Soviet representative arrived, claiming that the USSR was not bound by any decisions in which his predecessor had joined because the first man had had no authority to vote.[36]

The committee's most important recommendation was that the first project of the permanent Human Rights Commission should be to write a bill of human rights. Mrs. Roosevelt recounted in *Foreign Affairs,* "Many of us thought that lack of standards for human rights the world over was one of the greatest causes of friction among the nations, and that recognition of human rights might become one of the cornerstones on which peace could eventually be based."[37] After three weeks of discussion the group managed to produce only one other major recommendation: that the members of the permanent Human Rights Commission should be named by the UN on the basis of their individual qualifications, rather than appointed by the member states.[38] This recommendation was summarily rejected by the Economic and Social Council, but the idea of an in-

ternational bill of rights, long in the air, was now on its way to becoming a reality.

In June 1946 the Commission on Human Rights was established, along with a separate Commission on the Status of Women. The human rights commissioners would be representatives of eighteen member states, with five from what were still being called the Great Powers (the United States, the Soviet Union, the United Kingdom, France, and China). Thirteen seats would be rotated at staggered three-year intervals among the other nations. The first Commission was composed of delegates from Australia, Belgium, Byelorussia, Chile, China, Egypt, France, India, Iran, Lebanon (represented by Charles Malik), Panama, Philippines (represented by General Romulo), Ukraine, USSR, United Kingdom, United States, Uruguay, and Yugoslavia.[39] The decision made political sense. As John P. Humphrey, the Canadian international law expert who was named the first director of the Human Rights Division of the UN Secretariat, observed, "[T]here would be no point in preparing texts which would not be accepted by governments."[40]

The new body was given the task of preparing an international bill of rights and devising means for its implementation.[41] Humphrey and his staff were to assist with research and technical services. Drafts and proposals were already pouring into the UN Secretariat, and Humphrey began assembling documentation immediately upon his appointment in August 1946.

In January 1947 the Commission on Human Rights held its first session in the UN's temporary quarters in an old gyroscope factory at Lake Success, New York. John Humphrey recalled a mood of "optimistic excitement" on the opening day:

> All the visitors' seats in the Council chamber were occupied when the session opened. The importance which governments attached to the commission was manifested by the quality of their representatives, many of whom were also playing or would later play important roles in the General Assembly and the Security Council. Two of them, Charles Malik and Carlos Romulo, later became presidents of the General Assembly.[42]

Eleanor Roosevelt was unanimously elected chairman. That, according to Humphrey, had been expected. The preceding August, when he assumed his post in the Secretariat, he quickly gathered that "the most important person in the United Nations human rights program was already Eleanor Roosevelt."[43] Her enormous prestige, both as a reminder of the late president and in her own right as an effective champion of humanitarian causes, was "one of the chief assets of the Human Rights Commission in the early years."

Peng-chun (P. C.) Chang, head of the Chinese UN delegation, was chosen as vice chairman. Chang was a Chinese Renaissance man—a playwright, musician, educator, and seasoned diplomat, devoted to traditional Chinese music and literature but conversant with Islamic and Western culture as well. In January 1946 he had given an unusual speech at ECOSOC's historic opening meeting. Quoting from the Chinese thinker Mencius, Chang said that ECOSOC's highest aim should be "Subdue people with goodness."[44]

Lebanon's Charles Malik, enthusiastically nominated by Romulo, became rapporteur, or secretary, responsible not for keeping the minutes, but for summarizing and preparing official reports on the committee's work. This triumvirate, symbolically representing West, East, and, in the case of Malik, a crossroads of many cultures, constituted the leadership of the Human Rights Commission throughout the entire period of the preparation of the document that became the Universal Declaration of Human Rights.

Malik knew the Bible well enough to have been intrigued by the similarity between Mencius' maxim and Romans 12:21 ("Seek not to overcome evil with evil, but overcome evil with good"). Over time, Malik and Chang would discover other affinities and would learn to work effectively together. But a serious personal and philosophical rivalry between these two intellectual giants of the Commission was one of the factors that got the human rights project off to a rocky start.

Not everyone, moreover, shared the mood of "optimistic excitement" as the Commission began its work. The Soviet delegate, Valentin Tepliakov, sent a gloomy report to Moscow: "We weren't able to make the changes that we wanted to make, such as to bring the representative of the Soviet Union or Yugoslavia into the leadership of the Commission."[45] What made matters worse, he complained, was that "the Chinese repre-

sentative as well as the Lebanese representative are partisans of the position of the representative of the United States." Though Chang and Malik were more independent than Tepliakov surmised, the Soviet Union would suffer throughout the drafting process from its inability to count on more than four certain votes for its positions (its own plus those of Byelorussia, the Ukraine, and Yugoslavia). The euphoria of the opening day quickly dissolved as the commissioners began to grapple with the formidable task ahead.

CHAPTER 3

A ROCKY START

The First Meeting of the Human Rights Commission

Sixteen member states (all but Byelorussia and the Ukraine) were represented at the first session of the Human Rights Commission, held at Lake Success, New York, from January 27 to February 10, 1947.[1] The abandoned factory that served as the UN's temporary headquarters from 1946 to 1950 had been used to manufacture spare parts for airplanes during the war. The setting was conducive to business. The plain old building offered few amenities, and its quiet Long Island surroundings provided few distractions.

Most of the delegates were strangers to one another. Eleanor Roosevelt and René Cassin, both in their sixties, were the oldest of the group; Charles Malik, at forty, was the youngest. The only women members were Roosevelt and Hansa Mehta, an Indian legislator. An activist in the movement that led to India's independence in August 1947, Mrs. Mehta had been a sharp, outspoken critic of Britain's colonial policies of detention without trial, censorship, and confiscation of property.[2]

Mrs. Roosevelt, who had just written in a popular magazine, "Men and women both are not yet enough accustomed to following a woman and looking to her for leadership," knew she had her work cut out for her in more ways than one.[3] Named "the woman most admired by other American women" in a January 1947 poll, she was acutely conscious of herself as a role model. On January 16 she reflected on growing older in her "My

Eleanor Roosevelt makes her opening remarks at the first meeting of the drafting committee, June 9, 1947.

CHAPTER 4

EVERY CONCEIVABLE RIGHT

The Drafting Committee Begins Its Work

Skeptics must have chuckled when they learned that the drafting committee was composed of eight people representing nations embroiled on either side of the great conflicts of the day. Mrs. Roosevelt and her Soviet-bloc counterparts were certain to be caught up in cold war politics. Chang's relations were tense with both the Soviets and the Americans, for Russia was supporting Mao Tse-tung's Communist insurgents and the Truman administration was cool toward the corrupt Kuomintang military regime. Then there was the controversy precipitated by Britain's decision, in February 1947, to relinquish the Palestinian mandate she had held since the end of World War I. The thorny question of the future of that territory had landed in the lap of the UN, where Charles Malik was emerging as a leading spokesman for the Arab League. This could not but put a strain on his relationship with René Cassin, who had lost twenty-nine relatives, including his sister, in concentration camps.[1] Cassin ardently supported a Jewish homeland, and by 1947 Mrs. Roosevelt did too, her initial reservations overcome by her dismay at the reluctance of many countries, including her own, to accept Jewish war refugees.[2]

Colonel Hodgson was right to be wary of large drafting parties, especially when the members had no common language. More than one person must have been reminded of the old saw about too many cooks or the joke that a camel is a horse drafted by committee.

At its opening session in London, the General Assembly had picked the United States as the site for the permanent headquarters of the United Nations, hoping this decision would encourage America not to withdraw into itself as it had after World War I, when the Senate blocked America's entry into the League of Nations by refusing to ratify the Treaty of Versailles. The choice of location also signaled a desire for a fresh start. Geneva, the former home of the League, was favored by many Europeans, but it was haunted by the memory of the League's failure to avert a second world war. In December 1946 the General Assembly accepted a gift of $8.5 million from John D. Rockefeller, Jr., to buy the tract of land on the East River in New York where the UN building now stands.

The drafting group convened at the UN's temporary headquarters at Lake Success on June 9, 1947. Attending that first session were Roosevelt, Chang, Hodgson, Malik, Hernán Santa Cruz, René Cassin, Geoffrey Wilson (sitting in for Dukes), and the new Soviet delegate, Vladimir Koretsky. The substitution of Koretsky for the relatively junior Tepliakov was a sign that the Soviet Union was beginning to take the human rights project more seriously. Then a legal adviser to the Soviet Foreign Ministry, Koretsky was the USSR's most distinguished international lawyer.

In the months since the first Human Rights Commission meeting, Eleanor Roosevelt had been openly critical of the Truman administration's cold war policy.[3] What mainly disturbed her about the decision to send aid to Greece and Turkey, she explained in "My Day," was that it bypassed the United Nations: "Feeling as I do that our hope for peace lies in the United Nations, I naturally grieve to see this country do anything which harms the strength of the UN. If we could have given help for relief and rehabilitation on a purely non-political basis, and then have insisted that the UN join us in deciding what should be done on any political or policing basis to keep Greece and Turkey free from all outside interference, and to allow her [*sic*] to settle her own difficulties in the way the majority of her people desired to have them settled, I would have felt far happier than I do now."

The Truman Doctrine troubled her for the same reason, especially since it had been announced without advance notice to the United Nations or to the American UN delegates. She sent a stiffly worded note to acting Secretary of State Dean Acheson: "I hope never again that this type of action will be taken without at least consulting with the Secretary-General and with our permanent member on the Security Council beforehand. It all seems to me a most unfortunate way to do things." She feared, she said, that unilateral action by the United States would encourage the Soviet Union to take a similar course: "What if the Russians were to follow U.S. precedent and say, 'Since you have acted alone without consulting the United Nations, we are free to do the same'?" To President Truman, she wrote, "I am afraid that we are apt to lose sight of the fact that if we do not wish to fight Russia, we must be both honest and firm with her. She must understand us, but she must also trust us." Acheson's arguments that the Soviet Union was already acting on its own in Eastern Europe and that the UN was presently incapable of acting with a unified purpose did not entirely satisfy her. Nor did Truman's reply, emphasizing the strategic importance of Greece and Turkey and defending his policy as intended to strengthen democratic forces in Greece.

Roosevelt had been greatly encouraged, however, by the plan for the economic recovery of Europe unveiled by new Secretary of State George Marshall on June 5. On June 9, the day of the drafting committee's first meeting, she replied to a correspondent who feared war would ensue from Truman's decision to send military aid to Greece and Turkey. The Soviet Union, she wrote, "has inaugurated an expansionist program and somewhere it had to be stopped. I do not think it had to be stopped in just that way, and I am very much happier about Secretary Marshall's overall plan."

Roosevelt began the meeting at Lake Success by reminding her colleagues that the draft they were supposed to produce was only a preliminary document. "This Bill will be passed on—and I think it is important for all of us to remember this—six times after this session."[4]

Each step leading up to the final consideration by the UN General Assembly was potentially fraught with difficulty. The draft would first have to be approved by the full Commission on Human Rights, then circulated to all member states for comments. Those comments would undoubtedly require revisions by the drafting committee. The revised document would be returned to the full Commission for final consideration. The Commission would then submit its draft for review by the Economic and Social Council, which would decide whether or not to recommend it to the Gen-

eral Assembly, where it would have to undergo preliminary scrutiny by the Third Committee on Social, Humanitarian, and Cultural Affairs. It was reasonable to hope that the bill might be approved by the General Assembly at its fall 1948 session. But for that to happen, the Commission's draft would have to be ready for ECOSOC within a year.

The drafting group was not, of course, inventing rights out of whole cloth. The Secretariat had provided them with a review of the most fundamental and widely shared principles to have emerged over humanity's long, ongoing process of reflection on freedom. Aiming for comprehensiveness, John Humphrey had instructed his staff at the UN to study all the world's existing constitutions and rights instruments, as well as the suggestions that had poured in to the Secretariat from members of the Commission, outside organizations, and even from various interested individuals.

One such individual was the novelist and science fiction writer H. G. Wells. Wells had been intrigued by the idea of a human rights declaration at least since September 1939, when he submitted one to *The Times* of London in order to satisfy what he perceived to be an "extensive demand for a Statement of War Aims on the part of young and old, who want to know more precisely what we are fighting for."[5] That declaration and several other versions he later produced were curious blends of utopian socialism with the traditional rights of Englishmen. One of these eccentric bills contained a right to work but prohibited "work for the sole object of profit-making." The style of these pieces is well illustrated by the following passage from his 1940 version:

> That he may move freely about the world at his own expense. That his private house or apartment or reasonably limited garden enclosure is his castle, which may be entered only with his consent, but that he shall have the right to come and go over any kind of country, moorland, mountain, farm, great garden or what not, or upon the seas, lakes and rivers of the world, where his presence will not be destructive of some special use, dangerous to himself nor seriously inconvenient to his fellow citizens.

As the author of hugely popular books like *The War of the Worlds* and *Outline of History,* Wells was able to obtain a wide circulation for his thoughts on human rights. But his linkage of human rights to world government and a collectivized global economy did not catch on, and his draft bills do not appear to have influenced the Universal Declaration, except by giving increased public visibility to the idea of human rights.

Humphrey was particularly impressed by two contemporary declarations: the draft of a "Pan American" declaration then in deliberation in Latin America, and the 1944 "Statement of Essential Human Rights" produced on the basis of a study sponsored by the American Law Institute (ALI), a prestigious organization of judges, practitioners, and academics dedicated to the improvement of the law.[6] The Latin American draft, prepared for the predecessor of the Organization of American States, was an interesting document in several respects: it represented a harvest of the main elements of the continental European, as well as Anglo-American, rights traditions; it accompanied its list of rights with a list of duties; it was supranational; and it proclaimed that "the essential rights of man are not derived from the fact that he is a national of a certain state, but are based upon attributes of his human personality."[7] One of its framers, Felix Nieto del Rio of Chile, served briefly on the first UN Human Rights Commission before being replaced by Hernán Santa Cruz.

The group sponsored by the American Law Institute had consulted experts from "Arabic, British, Canadian, Chinese, French, pre-Nazi German, Italian, Indian, Latin American, Polish, Soviet Russian and Spanish" countries and cultures in order to "ascertain to what extent there can be worldwide agreement respecting rights."[8] One of the group's advisers, Panamanian Foreign Minister Ricardo Alfaro, had proposed the ALI statement for inclusion in the UN Charter at the San Francisco conference.

After poring over all this material, Humphrey and his top aide, Émile Giraud, came up with a list of forty-eight items that represented, in Humphrey's view, the common core of the documents and proposals his staff had collected.* "The Secretariat," he said, "has put all this together and included every conceivable right which the Drafting Committee might want to discuss."[9]

Humphrey's draft may not have included every conceivable right, but it provided the drafting committee with a distillation of nearly two hundred years of efforts to articulate the most basic human values in terms of rights. It contained the first-generation political and civil rights found in

*Humphrey's draft is set forth as appendix 1.

the British, French, and American revolutionary declarations of the seventeenth and eighteenth centuries: protections of life, liberty, and property; and freedoms of speech, religion, and assembly. It also included the second-generation economic and social rights found in late-nineteenth- and early-twentieth-century constitutions such as those of Sweden, Norway, the Soviet Union, and several Latin American countries: rights to work, education, and basic subsistence. Each draft article was followed by an extensive annotation detailing its relationship to rights instruments then in force in the UN's member states, already numbering fifty-five and rising. All told, the UN Secretariat had prepared over four hundred pages of commentary.[10] The UN proudly announced in its *Weekly Bulletin* that it had produced "the most exhaustive documentation on the subject of human rights ever assembled."[11]

Mrs. Roosevelt took a few minutes at the start of the June 9 meeting to thank Humphrey and his staff for their prodigious efforts. She had scarcely finished her encomium when Colonel Hodgson erupted. "It seems to me there is no order in this document," he complained. In the January-February meeting, Hodgson had wanted to turn over the drafting job entirely to Humphrey and his staff, but now the colonel was in a cantankerous mood. He brusquely demanded to know what "philosophy" had guided the Secretariat's work. "I personally would like some explanation of this monumental document from the Secretariat," he said. "All I would like to know is—and I think we should know—what was the philosophy behind this paper? What principles did they adopt; what method did they follow? Is it their own idea; is it a collection of various principles?"[12] Humphrey replied that he could not oblige Colonel Hodgson "for the simple reason that [the draft] is based on no philosophy whatsoever." As far as he was concerned, he had been asked to compile a list of rights for discussion purposes, and that was what he had done.

Geoffrey Wilson regarded the comprehensiveness of Humphrey's list as a grave defect. Wilson had arrived at the June meeting with instructions from the British Foreign Office to work for a covenant that would impose legal obligations on the states that ratified it, rather than a mere declaration that would have no legal effect.[13] He had been supplied with a concise Foreign Office bill of familiar Anglo-American civil and political rights. The young barrister reported to his superiors in London that

the Humphrey draft was "highly unsatisfactory," because many of its provisions, especially those involving social welfare, did not lend themselves to legal enforcement. It "included everything that the Secretariat had been able to cull from previous drafts, from national constitutions, and from their own imagination."[14] The breadth of sources that made the draft so un-British was, of course, an important element of its claim to universality.

At that stage there seems to have been confusion in the minds of some members about the difference between a nonbinding declaration of principles by the UN General Assembly and instruments such as treaties, conventions, and covenants that impose enforceable legal duties on the states that sign and ratify them. Most of the human rights commissioners, after all, were not lawyers. And the precise nature of the document they were about to draft was still an open question.

Confronted with so much heavy reading from the Secretariat, the drafting group decided at the end of its first afternoon to adjourn for two days to give everyone a chance to become familiar with the material. When they reconvened, it soon appeared that the United States and Great Britain had definite, and sharply divergent, views on what kind of document the committee should be preparing. Geoffrey Wilson put forward the Foreign Office bill and urged the committee to prepare a covenant rather than a statement full of high-sounding generalities. Eleanor Roosevelt announced that the United States favored a broad Declaration, to be followed eventually "by conventions on particular subjects which might have the binding force of treaties." The group adopted a compromise satisfactory neither to the United States nor Great Britain: they would work on both types of document at the same time.

Koretsky, like his predecessor, had not received specific instructions from Moscow. Nevertheless he zeroed in on a group of articles in Humphrey's draft dealing with the right to freedom of movement, the right to a nationality, a nation's right to accord asylum to political refugees, and protections against arbitrary expulsion from a country. These rights were not new—Humphrey had found them in various national constitutions and in the Latin American draft—but they had never been internationalized. Koretsky saw their presence in an international declaration as a threat to the principle of national sovereignty. The Secretariat draft, he warned, was pushing the Commission "beyond the limit of international law." It might even lead to "intervention in the affairs of in-

dividual countries."[15] Koretsky seemed willing to cooperate, however. He told the group that "the Government of the Union of Soviet Socialist Republics considers this Declaration of great importance," but that it would "need to study the documents closely" and that it reserved the right to submit its own concrete proposals later.

In what was to be but the first of many such clashes, René Cassin responded to Koretsky's view of national sovereignty from the depths of his heart:

> I was very much struck by the statement of our colleague from the Union of Soviet Socialist Republics who several times used the word "interference." . . . I must state my thoughts very frankly. The right of interference is here; it is here in the [UN] Charter. . . . Why? Because we do not want a repetition of what happened in 1933, where Germany began to massacre its own nationals, and everybody . . . bowed, saying "Thou art sovereign and master in thine own house."[16]

When Cassin finished, it was five P.M. and Mrs. Roosevelt adjourned the meeting. The following day, although the Soviet Union had taken the initiative in demanding an expanded committee, Professor Koretsky was the first to acknowledge that little progress was likely to be made by the full eight-member drafting group. He suggested that a small, four-person working party should be appointed to "prepare appropriate drafts" of a Declaration.[17] This proposal was accepted, and the subcommittee, composed of René Cassin, Charles Malik, Geoffrey Wilson, and Mrs. Roosevelt, immediately went to work. The committee invited Koretsky to be a member of this group, but he declined, saying that the Soviet Union's proposals would be made at a later stage.

The working group was instructed to propose a logical arrangement of the articles supplied by the Secretariat, to redraft them on the basis of suggestions from the drafting committee, and to make recommendations concerning what articles should be in the Declaration and what should be placed in the Covenant. The group concentrated on the Humphrey draft, beginning with the problem of structure raised by Colonel Hodgson. Cassin, reviving a proposal Chang had made at the January meeting, suggested that the best way to begin would be to consider not the substance, but the overall "plan" of the bill, beginning with thoughts for a Preamble. Malik agreed a plan was needed but argued that "in the logical sequence of construction" the Preamble should be composed only after the content had been settled.

It did not take long for the four-person working group to conclude that the document would have greater unity if the revisions were handled by a single drafter. Malik, Roosevelt, and Wilson then turned to René Cassin, whom they asked "to undertake the writing of a draft Declaration, based on those articles in the Secretariat outline which he considered should go into such a Declaration."[18] Thus, during a crucial stage, the structure of the Universal Declaration came under the hand of an experienced legislative draftsman.

René Cassin liked to call himself "the man of three frontiers," referring to his birth at Bayonne near the Spanish border, his childhood years in Nice where his father's ancestors had lived for generations, and his frequent visits to his maternal relatives in Alsace. He was French but from his earliest years felt the tugs of Spain, Italy, and Germany.

Cassin had come of age in a society torn in two by the Dreyfus case. At the insistence of his devoutly religious mother, he had received an Orthodox Jewish education, but he was more influenced by his intensely antireligious father, from whom he imbibed the secularist spirit of the French Revolution.[19] As a result of youthful friendships with members of Catholic social action groups, he acquired, he said, "a great respect for religion and for Christian thought."[20] He once told an interviewer that he had concluded as a young man that "though each religion is an absolute, the ensemble of religious movements is very relative. I had no uneasiness on this score, but I had a great curiosity. I have always remained secular."

Though raised in an ardently Dreyfusard family, Cassin had once seriously considered a military career, believing that the army, whatever its faults, was the only means of restoring to France her lost honor and territory.[21] He served in the French army in World War I, suffering a grievous wound that required him to use a cane for the rest of his life. On his return to civilian life he married his university sweetheart, a woman of Protestant background, rose to distinction as a professor of civil law, and became active in veterans' organizations. In 1925 he helped to found an international veterans' organization so that soldiers of former enemies could work together for peace.[22]

In June 1940 Cassin was teaching law in Paris when he heard the news of his country's capitulation to German invasion. He confided his dismay

to a friend, who told him about Charles de Gaulle's radio broadcast from London calling all Frenchmen to join the Resistance. Cassin then made a fateful decision. After driving all night, he picked up his wife, Simone, at Bayonne and the couple made their way to the port of Saint Jean-de-Luz, where they managed to catch the last departing English ship. On June 29 the fifty-three-year-old jurist showed up at the Free French headquarters on the bank of the Thames.

To Cassin's surprise, he was escorted directly to the chief. In the presence of the tall young general, the older man was suddenly acutely conscious of his white hair, his limp, his old-fashioned beard, and his lack of military expertise.[23] "General," he said, "I have come to respond to your call of June 18. I know France needs all her sons. I am a disabled infantryman from the war of 1914 to 1918. I have headed a federation of a million veterans and disabled veterans. Do you think my assistance might be useful to you?" Almost apologetically he added that he was also a law professor.

This was what de Gaulle had been waiting for. The British prime minister, Winston Churchill, had just agreed to recognize the Free French, but he had insisted that there must be a legal basis for such recognition. The loose collection of individuals that had gathered around de Gaulle had to be constituted as a legal entity—with a plausible claim to being the "real" government of France. De Gaulle badly needed a lawyer.

"*Vous tombez à pic!*" he told his visitor. ("You've hit the mark.") Thus began a long collaboration between two men who had little in common beyond their love of country. Cassin later wrote he had the feeling that "everything in my life had mysteriously prepared me for that moment."

In a radio broadcast from London in April 1941, Cassin spoke of his feelings about being Jewish and French. Addressing his remarks to the Jews of Vichy France, he said: "This voice does not come to you from a rabbi nor from one of the chaplains in de Gaulle's army, nor even from one of the faithful followers of your rites. However, certain fellow feelings that slumber in times of prosperity spontaneously reawaken in time of trial. . . . Israelites of France, you know well that the French people are not responsible for the measures the enemy and its collaborators have imposed on you. . . . It is in vain that they strive to break the bonds among the spiritual families of France, the most precious of its strengths." Reminding his listeners that the Jews had been accorded full citizenship by the French Revolution, he concluded: "No sacrifice, none, is too great to partially repay this debt by aiding France to recover her liberty and her greatness."[24] The following month, the Vichy government deprived Cassin of his French citizenship, and the next year a military tribunal sentenced him to death in absentia.

As General de Gaulle's chief legal adviser during World War II, Cassin had been responsible for all the documents governing the internal structure and the external relations of the Free French.[25] When liberation approached, he prepared the ordinances that would ease the transition to republican government. Now, in 1947, Cassin held the most important legal position in France. As head of the Conseil d'État (the central organ of public administration and the highest court for public law disputes), he was responsible for reestablishing the French administrative and judicial systems and restoring the credibility they had lost under the Vichy regime.

Over the weekend of June 14–15, Cassin revised Humphrey's draft with the help of Émile Giraud, the French international lawyer who had assisted Humphrey. His redraft consisted of a Preamble, six introductory articles, thirty-six substantive articles grouped analytically under eight headings, and two concluding provisions on implementation.[26]

Cassin preserved most of the substantive content of Humphrey's draft, but under his hand the document acquired an internal logic and achieved greater unity.[27] Humphrey, a practical man impatient with what he called "philosophical assertions," had deliberately left out any material other than what he considered the key "justiciable" rights gathered from his varied sources.[28] By his own account he "had had practically no experience drafting documents."[29] Cassin, by contrast, was well versed in writing legislation, a craft that has been sorely neglected in the Anglo-American common-law countries but that was brought to high refinement in the code-based continental civil law tradition.

Humphrey had faithfully fulfilled his assignment. But Cassin believed that if people were to make sense of how the various rights fit together, more clarity was needed in their presentation. He added a Preamble, followed by what is known in continental legal terminology as a "general part": six introductory principles to guide the interpretation of each specific provision that followed. Cassin here was imitating the structure of the Code Napoléon, whose six preliminary articles perform a similar function, by providing judges with general directions on how to apply the law.

His Preamble explained the "why" of the Declaration. His introductory provisions affirmed the equal rights of every member of the human family and embodied concepts of man and society that were neither individualist nor collectivist. The rights themselves were arranged according to the logic of the introductory articles or general principles, proceeding from those belonging to the individual as such to the rights of persons in social and political relationships. The draft that Humphrey had loosely organized by topic began to take on a more organic structure, a beginning, middle, and end. Colonel Hodgson noticed the difference at once. Cassin's first few articles, he commented, "are in a sense, a prelude and a keynote to the actual rights themselves."[30]

Geoffrey Wilson, correctly fearing that work on the Declaration was about to take priority over a binding convention, was not at all pleased. He said little in the drafting committee but wrote London that such a document, if adopted by the General Assembly, "would thereupon become morally, though not legally, binding on all members. The moral obligations it imposed would be very vague and no means whatever would be provided for enforcing them and the whole thing would be a perpetual source of mischief."[31]

A comparison of Cassin's draft with Humphrey's shows that Cassin made very few substantive additions.* One important change was the inclusion of a provision for special care and assistance for mothers and children. A change that did not make it into the final document was the addition of an explanatory principle for economic rights borrowed from the International Labor Organization, stating, "Human labor is not a commodity." (The fate of this addendum may have been affected by the fact that *marchandise* in the original French was awkwardly rendered as "chattel" and "merchandise" in the UN's official translations.) His elaboration of the right to a nationality ("The United Nations, with the member States, have the duty to prevent statelessness, which is contrary to the rights of man and to the interest of the human community") was likewise omitted.

Though the document would undergo many further changes over the next year and a half, most of the ideas in Humphrey's draft ultimately found their way into the Universal Declaration, and the "logical arrangement" contributed by Cassin held firm.

*Cassin's redraft is set forth as appendix 2.

A regrettable dispute developed many years later over the question of who had written the "first" draft of the Universal Declaration. It was not exactly a question of paternity, since neither Cassin nor Humphrey ever claimed to be the "author" of the Declaration.[32] But when Cassin was in his seventies, he claimed in a speech that he had had "sole responsibility" for the "first draft" and dismissed Humphrey's contribution as "excellent basic documentary work."[33] This claim, repeated in a 1968 article, was puzzling but not without historical precedent. To this day, no one has been able to explain why Alexander Hamilton, just before his death, claimed authorship of several of The Federalist Papers that were actually written by James Madison![34]

Cassin's more enthusiastic admirers began calling him the "father" of the Declaration.[35] Some of them downplayed Humphrey's role to such an extent that he felt obliged to set the record straight in his memoir.[36] In 1984 the Canadian lawyer, who by then had served with distinction for many years in the important if low-profile post of director of the UN Secretariat's Human Rights Division, presented a straightforward account of the drafting process. "In many cases," he pointed out, Cassin "merely prepared a new French version of the official United Nations translation, and when this was translated back into English the result seemed further removed from the original than it really was."[37]

That Humphrey wrote the first draft, and that Cassin's draft was a revision of Humphrey's, is clear from the official UN records.[38] Some confusion resulted, perhaps, from the frequent use of the term *outline* to describe Humphrey's work. But the records leave no room for doubt. On June 17, 1947, the verbatim transcript finds Mrs. Roosevelt saying, "Now we come to Mr. Cassin's draft, which has based itself on the Secretariat's comparative draft."[39] Cassin himself acknowledged in the drafting committee that "it is always the Secretariat's draft which should be considered the basic source of the Committee's work."[40]

Unfortunately a few careless authors created the impression not only that Cassin had written the first draft, but that he was the principal architect of the Universal Declaration of Human Rights. This error not only scanted the roles of other key individuals such as Humphrey, Malik, and Chang, but it detracted from the universality of the document.

Humphrey felt especially aggrieved when the UN itself helped perpet-

uate this myth by permitting the French government to organize a display of Cassin's handwritten redraft in the lobby of UN headquarters on the occasion of the Declaration's tenth anniversary. That display, without any accompanying explanation, was wounding to the hardworking and generally self-effacing director of the UN Human Rights Division.

To give each man his due, one might say that Humphrey's work was to Cassin's as Tycho Brahe's was to Johannes Kepler's. Just as Kepler could not have had his paradigm-breaking insight into the movements of the planets without Tycho's meticulous records, so Cassin could not have produced an integrated document of worldwide applicability without Humphrey's distillation of the material he had collected. But just as Tycho was unable to see in his own data what Kepler saw, Humphrey had simply compiled a list of rights, loosely grouped into categories. Cassin's draft illuminated their meaning and relations. No one would suggest that Cassin's revisions yielded a document as elegant as the Code Napoléon, whose lucid style and lapidary phrases were so much admired by the novelist Stendhal that he kept a copy on his bedside table, but they did guarantee that the document would be more than a mere list or "bill" of rights in the Anglo-American sense. It was about this time that the committee began to use the term *declaration* more often than *bill.*

Cassin's Preamble set out to explain why an international bill of rights had become necessary and what it was supposed to do. This proclamation, fragments of which survive in the final Declaration, stated that "[d]isregard and contempt for human rights" had been one of the main causes of human suffering and, in particular, of the massacres that occurred during two world wars; that the four freedoms had been proclaimed as the supreme aims of the recent struggle; that the UN Charter had reaffirmed faith in basic human rights and in the equality of all men and women; and that this Declaration, being "constantly present to all members of the universal society," would "unceasingly remind them of their rights and duties." (Cassin obviously had the 1789 French Declaration of the Rights of Man and Citizen in mind as a model, for the drafters of that document had begun with the proposition that "ignorance, forgetfulness or contempt of the rights of man are the sole causes of public miseries and the corruption of governments." Their Declaration, too, was supposed to "unceasingly remind [citizens] of their rights and duties" by "being ever present to all the members of the social body.")

After the Preamble came a Chapter 1, titled "General Principles." Cassin told the drafting committee that he had taken two leading ideas as "fundamental": "that every human being has a right to be treated like every other human being" and "the concept of solidarity and fraternity among men."[41] Those propositions gained general approval, especially from Koretsky, who stated that in his opinion the nondiscrimination principle was "the most important one to be included in a Bill of Rights."[42]

Cassin also maintained that a declaration purporting to be universal should state a basis for its claim to apply to all people in the world. Though Humphrey's draft had drawn on the legal and political wisdom of many nations, the human rights commissioners were well aware that a large part of the world was not in possession of bills of rights. Cassin therefore reiterated the point upon which he had insisted since the Commission's very first meeting: the Declaration should base universal rights on the "great fundamental principle of the unity of all the races of mankind," a principle that had been shamefully violated in the recent war.[43] In that spirit, his Article 1 proclaimed the unity of the human family and echoed the cherished French themes of liberty, equality, and fraternity: "All men, being members of one family, are free, possess equal dignity and rights, and shall regard each other as brothers."

On June 16, when Cassin presented his draft to the working group, that simple formulation began to fall victim to the hazards of drafting by committee. The working group added the thought that all men are endowed with reason and sent the following text to the full drafting committee: "All men are brothers. Being endowed with reason and members of one family, they are free and equal in dignity and rights." Then P. C. Chang suggested that besides naming "reason" as an essential human attribute, the article ought to include another concept. What he had in mind, he said, was a Chinese word that in literal translation meant "two-man mindedness," but which might be expressed in English as "sympathy," or "consciousness of one's fellow men."[44] The word was *ren* (仁), a composite of the characters for "man" (人) and "two" (二).

A word emblematic of an entire worldview and way of life, *ren* has no precise counterpart in English. To Cassin, it would surely have evoked Rousseau's notion of compassion, but that word, too, fell short of the mark. Chang's suggestion was accepted, but his idea was rendered awkwardly by adding the words "and conscience" after "reason." (That unhappy word choice not only obscured Chang's meaning, but gave

"conscience" a far from obvious sense, quite different from its normal usage in phrases such as "freedom of conscience.") The incident was an early warning of the communications difficulties the ambitious human rights project would face.

Koretsky objected to the words *all men.* He was opposed, he said, to "historical atavisms which preclude us from an understanding that we men are only one-half of the human species."[45] Mrs. Roosevelt resisted the criticism, observing that, in English, "when we say 'all men are brothers,' we mean that all human beings are brothers, and we are not differentiating between men and women." She added, "I have always considered myself a feminist but I really would have no objection to the use of the word as the Committee sees it." The language stood for the time being.

The main difficulty in framing the introductory "General Principles," Cassin later wrote, was "to find a formula that did not require the Commission to take sides on the nature of man and society, or to become immured in metaphysical controversies, notably the conflict among spiritual, rationalist, and materialist doctrines on the origin of human rights."[46] The introductory general principles in the Latin American draft, for example, would not do. They recited: "Duties of a juridical nature presuppose others of a moral nature which support them in principle and constitute their basis"; and, "Inasmuch as spiritual development is the supreme end of human existence and the highest expression thereof, it is the duty of man to serve that end with all his strength and resources"; and, "Since moral conduct constitutes the noblest flowering of culture, it is the duty of every man always to hold it in high respect." Those ideas, with their religious connotations, would never have made the cut in the UN.

Yet Cassin's introductory articles (and the Declaration as ultimately adopted) did implicitly take sides against the extremes of capitalist individualism and socialist collectivism. They also implied a position on the nature of man and society. His Article 2, for example, asserted, "The object of society is to enable all men to develop, fully and in security, their physical, mental and moral personality, without some being sacrificed for the sake of others." His Article 3 presented a vision of the human person in community: "Since human beings cannot live and achieve their aims without the help and support of society, everyone has fundamental duties to society: obedience to the law, exercise of useful activity, acceptance of the burdens and sacrifices required by the common good." Article 4, in the same vein, stated, "Everyone's rights are limited by the rights of others."

Cassin's synthesis yielded a whole that was greater than the sum of its parts. By fusing rights from an older tradition of political and civil liberty to those reflecting a more modern preoccupation with social and economic needs, by providing both sets of rights with an interpretive framework, and by declaring that all these rights belonged to everyone, everywhere, the Declaration was bringing something new into the world.

When Cassin turned his draft over to the drafting committee on June 17, he tried to pave the way for a productive use of the week remaining before adjournment with some remarks about what an international declaration could and could not be expected to achieve. Though the French lawyer was one of the staunchest opponents of the Soviet Union's insistence on exclusive national sovereignty, he was also adamant that nation-states would always have to provide the *primary* line of legal defense of human rights and that a "universal" document would therefore have to leave room for an ample degree of pluralism in the understanding and implementation of many of its rights. In deciding how specifically to frame each right, he said, the committee should be mindful of its opportunity "to prove that the coexistence of States which have differing economic conceptions and differing regimes is possible and that it is not necessary for one conception to triumph over another conception."[47]

The following day Mrs. Roosevelt raised the question of priorities. In view of the short time remaining, she said "the Committee might have to choose between a completed draft of a Declaration and a completed draft of a Convention." The United States, she said, supported the preparation of both but did not feel "that anything resembling a generally acceptable Convention could be produced immediately."

The choice was made by default, as the committee continued its review of the Humphrey-Cassin draft. Cassin's Preamble was set aside: the committee agreed with Malik that the task of preparing a Preamble should be postponed until the text was in close to final form. Cassin's provision on the rights of authors was eliminated, too, on the grounds that the subject was one better handled with the detail appropriate to a legal convention. By consolidating some articles, the committee managed to reduce the total number from forty-six to thirty-six.

Perhaps the most consequential decision at this stage was to adopt Malik's proposal that a right to change one's beliefs be added to the reli-

gious freedom article. He was moved to make the suggestion, he said, because his native Lebanon had become a haven for people fleeing religious persecution, some because they had changed their religious affiliation.[48] At the time, Lebanon was still known as a cosmopolitan country where many ethnic and religious groups seemed to coexist in relative harmony, though its precarious equilibrium was threatened by the recent influx of refugees from nearby Palestine. Malik's amendment, which survived in the final Declaration, touched a nerve in other states with large Muslim populations, because of the Koranic injunction against apostasy (*murtad*) and the deep resentment of Christian missionary activity. The language was a major factor in Saudi Arabia's decision to abstain from the final vote on the Declaration.

Discussion of the social and economic rights was inconclusive. On June 23, in an attempt to head off disputes, Cassin said: "We must take into account the various possibilities and the circumstances that prevail in various countries. I do not think that within a few years all societies or all states will come to the point where they can put an end to all unemployment and give remunerative employment to everybody, but we are not working here for one year. We are working for the future."[49]

The members quickly staked out divergent positions, however, over the new rights. Regarding the right to work, for example, the American view was that everyone should have the "opportunity" to earn a livelihood, while Humphrey, Cassin, and Santa Cruz favored language saying that everyone has the right and the duty to perform socially useful work. Koretsky seized the moment to remind Mrs. Roosevelt that her late husband's "second bill of rights" (proposed in a State of the Union address that Koretsky "happened" to have with him) had included the right to useful and remunerative work.[50]

On June 25, the day of adjournment, many issues were still unresolved and a number of proposed amendments were still on the table. The drafting committee decided to permit members to insert their proposals as alternate versions next to the draft articles. The result was a rather unwieldy draft, which the committee forwarded, along with Humphrey's documentation, to the full Human Rights Commission for consideration at its second session in December in Geneva.* Some articles were sent for

*The committee's draft is set forth as appendix 3.

comment to the UN Commission on the Status of Women and the Sub-Commission on Prevention of Discrimination and Protection of Minorities. Having made no progress on a convention, they forwarded the United Kingdom's proposal to the full Commission to be considered for that purpose.

On July 1 Koretsky filed his report with the Russian Foreign Ministry.[51] He had participated relatively little in the drafting committee's discussions because he was dividing his time between the Human Rights Commission and a UN international law committee, where the interests of the Soviet Union seemed more immediately threatened. Koretsky had tried, unsuccessfully, to dissuade the Committee on the Progressive Development of International Law from recommending the codification of international penal law, preparing an international agreement based on the Nuremberg Principles, or studying the desirability of establishing a permanent international criminal tribunal with jurisdiction over such crimes. We now know he need not have been quite so concerned.

With regard to the human rights draft, he said he had been unable to make any detailed criticisms because the ministry had not supplied him with its own proposed draft or even with an indication of its basic attitude toward the project. The main problem with the draft, in his opinion, was that it might "make it easier to intervene in the internal affairs of sovereign states." He concluded with two recommendations: 1) that the Soviet Union prepare and submit its own draft no later than August, well in advance of the next Human Rights Commission meeting; and 2) that the USSR should support an international bill of rights in the form of a multilateral convention to which the signers could append any reservations they deemed necessary.

Two days later, on July 3, Eleanor Roosevelt reported to the State Department in a meeting attended by the head of the U.S. mission to the UN, Senator Warren Austin. The Department's memorandum of that conversation indicates that the reason she and her advisers had decided to push for a morally binding General Assembly declaration rather than a legally binding international agreement was that the latter would have had to be approved by the U.S. Senate—where its fate was most uncertain.[52]

Roosevelt related that she had gone along with the proposal to work on

both documents because a strong majority favored doing so. She said she was troubled about whether the Senate would accept a human rights convention and asked Austin for his opinion. The senator declined to speculate, saying that it posed "a very difficult problem." Roosevelt, no doubt thinking of Wilson's debacle with the League of Nations, said, "It would be most unfortunate if we were to take the lead in forcing a convention through the General Assembly and then be turned down by the Senate." The group agreed that U.S. policy should be flexible for the time being: open to a convention as well as a declaration, but as to the former, "we must be reasonably certain that the country will back us up."

After a rocky start, the drafting group had made considerable progress. The Soviet representative had shown some disposition to cooperate, and as Chang had predicted in the first meeting, substantial agreement in principle seemed to exist on many items.[53] Though wrangling over the precise formulation of each article would continue for many months, and some new ideas would be added as other nations were heard from, the main features of the Universal Declaration were in place by the end of June 1947.

But had the drafters, drawing on material that was largely Western in origin, produced a document that could be accepted as universal? Reassuring news, on that point, was on its way from UNESCO.

CHAPTER 5

A PHILOSOPHICAL INVESTIGATION

The UNESCO Report

In June 1947, while the drafting committee was embroiled in philosophical debates, the UNESCO philosophers' committee was coming to some very practical conclusions. They had received about seventy responses to their questionnaire asking for reflections on human rights from Chinese, Islamic, Hindu, and customary law perspectives, as well as from American, European, and socialist points of view. The replies included letters from Mohandas Gandhi, French Jesuit paleontologist Pierre Teilhard de Chardin, Italian philosopher Benedetto Croce, and *Brave New World* author Aldous Huxley.[1]

Several respondents from non-Western backgrounds noted that the sources of human rights were present in their traditions, even though the language of rights was a relatively modern European development. The absence of formal declarations of rights in China, said Confucian philosopher Chung-Shu Lo, did not signify "that the Chinese never claimed human rights or enjoyed the basic rights of man." He explained:

> [T]he problem of human rights was seldom discussed by Chinese thinkers of the past, at least in the same way as it was in the West. There was no open declaration of human rights in China, either by individual thinkers or by political constitutions, until this conception was introduced from the West. . . . [However], the idea of human rights devel-

> oped very early in China, and the right of the people to revolt against oppressive rulers was very early established. . . . A great Confucianist, Mencius (372–289 B.C.), strongly maintained that a government should work for the will of the people. He said: "People are of primary importance. The State is of less importance. The sovereign is of least importance."[2]

In a similar vein, Indian political scientist S. V. Puntambekar wrote that great Hindu thinkers had "propounded a code, as it were, of ten essential human freedoms and controls or virtues necessary for good life": five social freedoms ("freedom from violence, freedom from want, freedom from exploitation, freedom from violation and dishonor and freedom from early death and disease") and five individual virtues ("absence of intolerance, compassion or fellow-feeling, knowledge, freedom of thought and conscience, and freedom from fear, frustration or despair").[3]

The Bengali Muslim poet and philosopher Humayin Kabir sounded a universalist note in writing about human rights and the Islamic tradition. Kabir proudly recalled that early Islam had "succeeded in overcoming distinction of race and colour to an extent experienced neither before nor since."[4] In the world today, he continued, "[t]he first and most significant consideration in framing any charter of human rights . . . is that it must be on a global scale. . . . Days of closed systems of divergent civilisations and, therefore, of divergent conceptions of human rights are gone for good." The "fundamental flaw in the Western conception of human rights" was not in the idea, but in the frequent failure to live up to it. "In practice," he remarked, human rights "often applied only to Europeans and sometimes to only some among Europeans."

Shirin Sinnar in a Harvard History Department honors thesis has illuminated the context of India's early and strong defense of universal human rights in international settings.[5] She points out that this stand in part reflected India's long struggle on many fronts against discrimination. The language of universal rights was a powerful weapon for challenging European colonialism and the disparate treatment by South Africa of its minority Indian population. Hindu positions on human rights were also informed by Gandhi's expansive concept of nationalism and his moral message of universal brotherhood. "My nationalism," he once wrote, "includes the love of all the nations of the earth irrespective of creed."[6]

By contrast, India's *internal* discourse on rights was bitter and divisive,

owing to acute tensions between the Hindu majority and the minority Muslim communities. That troubled state of affairs was reflected in Puntambekar's response to UNESCO. We should first "be men," he wrote, noting sadly that in India, "There is at present a continuous war of groups and communities, of rulers and ruled, in our body politic and body social, from which all conception of humanity and tolerance, all notion of humility and respect, have disappeared."[7]

The situation was soon to become far worse. Just two months after the UNESCO philosophers' meeting, Muslims achieved their aim of a separate state, Pakistan, that became independent with India in August 1947. The partition, which left large minorities of Muslims in India and Hindus and Sikhs in Pakistan, ushered in an era of violence and unrest. Widespread hostilities broke out between the communities, leaving over five hundred thousand people dead by the end of the year. Some sixteen million men, women, and children, fearing for their safety, fled across the borders.

Most Asian and some European respondents strongly emphasized the importance of including duties in a universal declaration of rights. That was the main advice of Gandhi himself, who jotted down his thoughts in a short letter while traveling by train to New Delhi, where he would be assassinated a year later. He urged those who were thinking about universal rights to remember that respect for rights ultimately depends on ingrained habits and attitudes having more to do with duty than entitlement.

> I learned from my illiterate but wise mother that all rights to be deserved and preserved came from duty well done. Thus the very right to live accrues to us only when we do the duty of citizenship of the world. From this one fundamental statement, perhaps it is easy enough to define the duties of Man and Woman and correlate every right to some corresponding duty to be first performed. Every other right can be shown to be a usurpation hardly worth fighting for.[8]

Chung-Shu Lo made a similar recommendation, writing that "the basic ethical concept of Chinese social political relations is the fulfilment of the duty to one's neighbor, rather than the claiming of rights."[9] Infringement of rights could best be prevented, he said, by fulfillment of mutual obligations and by the quality that P. C. Chang had tried to explain to his fellow human rights commissioners as two-man mindedness: "a sympathetic attitude of

regarding all one's fellow men as having the same desires, and therefore the same rights, as one would like to enjoy oneself."[10]

Both Humphrey's and Cassin's drafts included duty language drawn from continental and Latin American rights documents, informed by classical, biblical, and socialist thought. Cassin had proposed the following article as one of the general principles: "[E]ach man owes to society fundamental duties which are: obedience to law, exercise of a useful activity, acceptance of the burdens and sacrifices demanded for the common good."[11] Such ideas, in one form or another, had long been a familiar part of the constitutional traditions of many countries, though not explicit in Anglo-American rights documents.

From Teilhard de Chardin, who pioneered in reconciling Christianity with modern evolutionary theory, and social philosopher Salvador de Madariaga, an early proponent of European unity who was teaching at Oxford in exile from Franco's Spain, came recommendations to focus on "man in society" rather than as an isolated individual.[12] That theme, too, could be found in the Cassin draft.

Benedetto Croce advised that the most useful thing for UNESCO to do would be to conduct "a formal, public, and international debate on the necessary principles underlying human dignity and civilisation."[13] Aldous Huxley agreed that a bill of rights could "certainly do something to protect the masses of ordinary, unprivileged men and women against the few who, through wealth or hierarchical position, effectively wield power over the majority," but the well-known author warned that "mere paper restrictions, designed to curb the abuse of power already concentrated in a few hands, are but the mitigations of an existing evil." Prevention, he said, "is always better than cure."[14]

All in all, the results of the UNESCO survey were encouraging: they indicated that the principles underlying the draft Declaration were present in many cultural and religious traditions, though not always expressed in terms of rights. Somewhat to the UNESCO group's surprise, the lists of basic rights and values submitted by their far-flung correspondents were broadly similar.[15] UNESCO's list of widely shared norms included both political and civil liberties and social and economic rights. There were fifteen in all: the right to live, the right to protection of health, the right to work, the right to social assistance in cases of need, the right to property, the right to education, the right to information, the right to freedom of thought and inquiry, the right to self-expression, the right to fair procedures, the right to political participation, the right to freedom of speech, assembly, association, worship, and the press, the right to citizenship, the right to rebel against an unjust regime, and the right to share in progress.[16]

Finding that several practical concepts constituted "a sort of common denominator" among widely separated ideologies, the philosophers pronounced themselves "convinced that the members of the United Nations share common convictions on which human rights depend."[17] They cautioned, however, that "those common convictions are stated in terms of different philosophic principles and on the background of divergent political and economic systems." Their report explained:

> Varied in cultures and built upon different institutions, the members of the United Nations have, nevertheless, certain great principles in common. They believe that men and women all over the world have the right to live a life that is free from the haunting fear of poverty and insecurity. They believe that they should have a more complete access to the heritage, in all its aspects and dimensions, of the civilisation so painfully built by human effort. They believe that science and the arts should combine to serve alike peace and the well-being, spiritual as well as material, of all men and women without discrimination of any kind.[18]

The UNESCO group concluded that it was possible to achieve agreement across cultures concerning certain rights that "may be seen as implicit in man's nature as an individual and as a member of society and to follow from the fundamental right to live." But they harbored no illusions about how deep the agreement they had discovered went. Maritain liked to tell the story of how a visitor at one meeting expressed astonishment that champions of violently opposed ideologies had been able to agree on a list of fundamental rights. The man was told: "Yes, we agree about the rights but on condition no one asks us why."[19]

Maritain and his colleagues did not regard this lack of consensus on foundations as fatal. The only feasible goal for the UN, he maintained, was to achieve agreement "not on the basis of common speculative ideas, but on common practical ideas, not on the affirmation of one and the same conception of the world, of man, and of knowledge, but upon the affirma-

tion of a single body of beliefs for guidance in action."[20] If there are some things so terrible in practice that virtually no one will publicly approve them, and some things so good in practice that virtually no one will oppose them, a common project can move forward without agreement on the reasons for those positions.[21]

An international declaration of rights would provide a "framework within which divergent philosophies, religious, and even economic, social and political theories might be entertained and developed."[22] The challenge was to make the framework "sufficiently definite to have real significance both as an inspiration and a guide to practice" but "sufficiently general and flexible to apply to all men, and to be capable of modification to suit people at different stages of social and political development."[23]

The UN Charter, despite much evidence to the contrary, had professed the signers' "faith in freedom and democracy." That conviction, according to the Charter, is grounded in another belief that is often sorely tested: "faith in the inherent dignity of men and women."[24] A faith based upon a faith was not much to go on, perhaps. But it was enough, the philosophers concluded, "to enable a great task to be undertaken."[25]

CHAPTER 6

LATE NIGHTS IN GENEVA

The Implementation Debate

"There is always a little excitement about going off to a new job," Eleanor Roosevelt wrote in a column published on the day of her departure for the Geneva meeting of the full Human Rights Commission.[1] "But as I grow older, I find that I regret the things I leave behind. The lovely pink light in the sunrise sky as I awake on my porch at Hyde Park, the morning walks in the woods with a little black dog cavorting happily beside me or dashing off after the squirrels, the beautiful bluebird I saw unexpectedly take wing across my brook the other day, the family and friends I like to have around me, the Christmas preparation which I enjoy—all these are hard to leave." The only thing that made the trip worthwhile, she said, was the hope "of something tangible accomplished that may be of value in the future."

On November 29, 1947, Eleanor Roosevelt set off for Geneva in the company of David Gurewitsch, who had been her doctor since 1945. Gurewitsch, the Swiss-born son of Russian emigrés, had come down with tuberculosis and was headed for Davos to convalesce at the famous sanatorium there. Apprehensive about traveling alone, he had asked Mrs. Roosevelt if he might join her party. She readily agreed. The elegant young doctor, then in his forties, had been recommended by her friend Trude Lash, whose husband Joseph Lash recalled him as possessing "gifts of sympathy and empathy, which, when combined with blue eyes and conti-

Chang and Santa Cruz joined forces to rebut Baroody's "Western" accusation. Chang pleaded once again for "two-man mindedness," the ability to see things from another's standpoint as well as one's own particular point of view. "As only he can do," wrote Humphrey, Chang reminded his fellow delegates that each culture's contributions had to be made with a view toward producing a document "meant for all men everywhere."[51] As the debates proceeded, Chang's position received some support from delegates representing nations with large Islamic populations.

Santa Cruz told his fellow Latin Americans that they were right when they said the draft was "not perfect," but he asked them to consider how difficult it had been to arrive at an acceptable text, one that could apply to different economic, social, and legal systems and to cultures at varying stages of development.[52]

Charles Malik, in the chair, listened attentively and seldom intervened. Weeks later he would eloquently state the case for the universality of the Declaration when he presented it to the General Assembly. His case would rest in part on the broad participation of third committee members as they now turned from general debate to discussing the Declaration's articles, one by one.

CHAPTER 9

THE NATIONS HAVE THEIR SAY

Chang and Malik Navigate the Shoals

When the third committee turned from its general discussion to the specific provisions of the Declaration, Mrs. Roosevelt was dismayed to find that the members of that large group seemed determined to debate "every single word of that draft declaration over and over again."[1] There was hardly any issue that the human rights commissioners had not thoroughly considered, yet the third committee, she complained, was treating each article "exactly as though it was all an entirely new idea and nobody had ever looked at it before."[2]

To a bored and impatient John Humphrey, most of the speeches and proposed amendments seemed inspired by considerations of national prestige. He found the silent role of an international civil servant increasingly frustrating. "Sitting next to the Chairman, and both professionally and emotionally involved, I wished at times that I were a delegate. . . . There were times when I felt that I must speak if only to set the record straight."[3]

Perhaps only someone like Malik, from a small, newly independent country, could understand how important it was for every member state to have a sense of ownership with respect to the Declaration. Malik was heartened by the fact that though amendments were flooding in from many countries, no nation thus far had rejected the Declaration outright. The debates might be lengthy and tedious, but he knew it was essential to

clear up the misunderstandings that were bound to occur among delegates who were not as familiar with the draft as the human rights commissioners. Most important of all was the need to assure broad participation in what everyone felt to be a great historical event. The process took time, but it was well gauged to smooth the Declaration's path to adoption and to improve its chances of reception among many cultures in the long run.

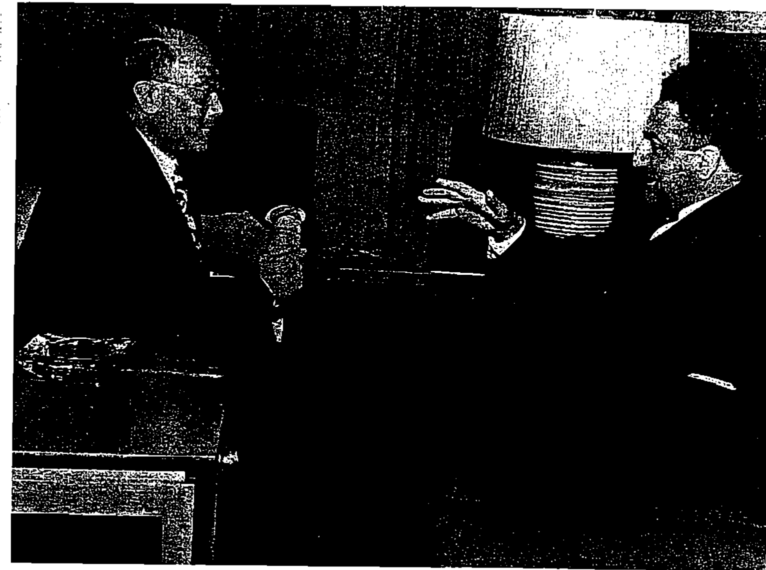
Not that Malik was less determined than any of his fellow commissioners to get the Declaration to the General Assembly before its adjournment in December: when some speakers went on for too long, he reminded them in the language of the draft itself that everyone's rights are limited by the rights of others. In the case of flagrant offenders, he did not hesitate to gavel them down; but he took pains to give everyone a hearing. Humphrey began to revise his estimate of Malik's skills as a chairman, noting that "Malik is doing better . . . and shows much more energy and leadership than at Geneva."[4]

Two years of verbal sparring with P. C. Chang had paid dividends. When Mrs. Roosevelt expressed her impatience with the committee's progress, Malik blandly answered her, Chang-like, with a Chinese proverb: "Matters must be allowed to mature slowly free from sharp corners."[5] In fact, Malik seems to have been moving things along in the only way they could be if the Declaration was to win broad-based support.

Even Malik's heart must have sunk, however, when it took six days to get through Article 1. That much-revised draft article at this stage read:

> All human beings are born free and equal in dignity and rights. They are endowed by nature with reason and conscience, and should act towards one another in a spirit of brotherhood.

South African representative C. T. Te Water produced a brief show of solidarity among the rest of the delegates when he moved to replace "dignity and rights" with "fundamental rights and freedoms."[6] While everyone was equally entitled to certain "fundamental" rights, he explained, the principle of equality could not be extended to *all* rights listed in the Declaration. Nor, he insisted, was there any universal standard of dignity. Te Water's motion "so electrified the meeting," Humphrey wrote, that everyone there, including Mrs. Roosevelt and Pavlov, "united in protest."[7] Malik reminded Te Water that the word *dignity* had been inserted in the UN Charter on the suggestion of Field Marshal Jan Smuts, who had led the



P. C. Chang and Charles Malik in conversation. By most accounts, the two philosopher-diplomats were the intellectual leaders of the Human Rights Commission.

South African delegation to the San Francisco conference. The next day Te Water stated that he wished to clarify his government's position: The Declaration ought to be devoted to statements of fundamental rights, and since "dignity" was not a "right," South Africa questioned the advisability of the reference to "dignity" in Article 1.[8]

Mrs. Roosevelt, when her turn came, said that the word *dignity* had been considered carefully by the Human Rights Commission, which had included it in order to emphasize that every human being is worthy of respect.[9] In the scheme of the Declaration, Article 1 did not refer to specific rights because it was meant to explain why human beings have rights to begin with.

Next, a proposal was made by a Greek delegate to move the second sentence of Article 1 into the later article dealing with duties. Chang, who understood and appreciated the holistic character of the text, quickly stepped in. He had apparently repented the position taken in his black mood the previous spring, for he now argued that it was essential to keep the injunction to act "in a spirit of brotherhood" in the first article. Otherwise the rights that followed would appear too individualistic.

Controversy then broke out over the words *by nature.* The Belgian delegation wanted to eliminate them, while a Brazilian amendment would have added that "all human beings are created in the image and likeness of God." It was Chang, again, who carried the majority by reminding everyone that the Declaration was designed to be universally applicable. His own country, he pointed out, comprised a large proportion of humanity, and its people had ideals and traditions different from those of the Christian West. Chinese ideals included good manners, decorum, propriety, and consideration for others. Yet he, as the Chinese representative on the Human Rights Commission, had refrained from proposing those ideals for inclusion in the Declaration. He hoped his colleagues would show similar consideration. Article 1 as it stood, Chang said, struck just the right note by calling upon all men to act toward one another in a spirit of brotherhood. That was consistent with the Chinese belief in the importance of considerate treatment of others—and also with the ideals of eighteenth-century Western thought. The first line of the article, therefore, should refer neither to nature nor to God. Those who believed in God, he suggested, could still find the idea of God in the strong assertions that all human beings are born free and equal and endowed with reason and conscience.[10]

Mrs. Roosevelt must have been impressed with Chang's argument, for she later adopted it when she explained to an American audience why the Declaration contained no reference to the Creator. Consciously or not, she also echoed the UNESCO philosophers:

> Now, I happen to believe that we are born free and equal in dignity and rights because there is a divine Creator, and there is a divine spark in men. But, there were other people around the table who wanted it expressed in such a way that they could think in their particular way about this question, and finally, these words were agreed upon because they . . . left it to each of us to put in our own reason, as we say, for that end.[11]

Chang was also supported by Mrs. Lakshmi Menon of India and by Salomon Grumbach, a French representative, who reminded the group of Jacques Maritain's conclusion (in the UNESCO philosophers' committee) that the nations should and could reach practical agreement on basic principles of human rights without achieving a consensus on their foundations.[12] The Belgian motion to eliminate "nature" was adopted, and the Brazilian delegate withdrew his amendment.

Chang played a mediating role time and again throughout the third committee debates in the fall of 1948. The Chinese ambassador to the UN was uniquely suited for his role as explainer of the Declaration to the committee's diverse membership.[13] Then in his fifties, he had spent much of his adult life trying to make China better understood in the West and familiarizing his own countrymen with ideas from other traditions. As ambassador to Turkey from 1940 to 1942 and to Chile from 1942 to 1945, Chang had developed an interest in Islam and a sympathetic appreciation for the problems of South American countries. A lover of Chinese high culture, he had pioneered in making the riches of Chinese literature and theater accessible to Western audiences. It was scholarly P. C. Chang, not the Disney Corporation, who first introduced Americans to the story of Mu Lan, the brave girl who dressed as a boy, took her aged father's place in the army, and rose to the highest rank. His English dramatization of the Chinese folk tale, performed at the Cort Theatre on Broadway in 1921 to raise money for famine relief in China, was well reviewed by the *Christian Science Monitor* and *The New York Times.*

Chang's earlier career as an educator and his long-standing avocation as a man of letters now stood him and the Declaration in good stead. As a poet and playwright he intuitively grasped the relations among the parts of the text and, like the good teacher he was, could explain them to many different sorts of listeners. As the discussions wore on, he was able to clear up misunderstandings, allay anxieties, promote consensus, and engineer compromise on many occasions.

THE LONG MARCH THROUGH THE ARTICLES

The discussion of Article 1 continued for almost a full week. A number of delegates questioned the wisdom of beginning a Declaration of rights with an article that contained no rights. Soviet-bloc representatives attacked the article's affirmations as hypocritical, meaningless, or patently false. Pavlov scoffed at the brotherhood language. The relations between the United Kingdom and Malaya, between the Netherlands and Indonesia, between different groups in Spain, between the rich and the poor everywhere, could not be described as brotherly, he commented wryly, unless the brothers referred to were Cain and Abel.[14] Jamil Baroody, the Lebanese Christian Arab who represented Saudi Arabia, took issue with the statement that all human beings are endowed with reason and conscience. That, he said, was not, and never had been, true.[15] Iraq's A. Abadi argued, as philosopher Robert Nozick would years later, that it is logically impossible for human beings to be both free and equal since inequality is the inevitable result when people are free to develop all their latent talents.[16]

Several members suggested that the content of Article 1 be transferred to the Preamble, at which point an alarmed Cassin intervened.[17] The Declaration was designed to begin with a statement of the framework within which all of its rights were contained, he said. Article 1, together with Article 2 on the nondiscrimination principle and the article on limits and duties (later moved over Cassin's objections to the end of the document), constituted that framework. It was essential, he urged, for the United Nations to proclaim to the world the basic principles of freedom, dignity, equality, and responsibility that had come so close to extinction during the preceding ten years.

Finally, on October 12, the third committee voted to adopt Article 1, deleting only the words *by nature.*

The committee then turned to Article 2, whose blanket principle of nondiscrimination made it unacceptable to South Africa. The article then read: "Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, property or other status, or national or social origin."

The debates on this language produced some awkward moments for the United States. "Mr. Pavlov lectured the U.S. for its sins for about a half hour in Committee III this morning," Durward Sandifer wrote his wife, "lumping us with South Africa. To which the South African delegate retorted that his only consolation was that he was placed in the distinguished company of the United States, which put us in our place as South Africa is virtually a pariah in this Conference."[18]

Yugoslavian representative Vladimir Dedijer inquired why the United States had kept silent when it was revealed that South Africa was preparing new, severely discriminatory legislation—referring to the apartheid system that went into legal effect in 1950. The reason, he charged, was obvious: The United States itself legally condoned racial discrimination.[19] Mrs. Roosevelt replied, as usual, that the position of Negroes was improving in the United States, though it still had far to go. She pointedly called Dedijer's attention to the fact that Article 2 condemned *political* as well as racial discrimination.

Dedijer then trained his sights on the European colonial powers, proposing a new article to state that the rights proclaimed in the Declaration apply to people in non-self-governing territories. Representatives of Belgium, France, the Netherlands, and the United Kingdom objected, saying that this specification was unnecessary in view of Article 2's general ban on discrimination. Mrs. A. M. Newlands of New Zealand shot back that "a vague line or two" was not enough, in view of entrenched discriminatory practices in colonial territories. Those who opposed the proposal, she said, "had little idea of the feeling of exasperation and despair generated in peoples living under colonial regimes." Dedijer's motion passed by a narrow vote. Later the new language was moved into Article 2 as a second paragraph: "Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to

which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty."

One might have expected Article 3 ("Everyone has the right to life, liberty, and security of person") to require little discussion. It was, in fact, approved without changes, but not before the committee had spent most of a week debating the Soviet Union's proposal to abolish capital punishment (legally banned in the USSR since 1947). At its Geneva meeting, the Human Rights Commission had rejected a Soviet amendment to that effect, along with proposals by Chile and Lebanon to specify that the right to life includes unborn life. Different countries had different laws on those subjects, and the decision had been made to avoid specificity.

Now Pavlov renewed the plea for a ban on the death penalty, taking the occasion to decry the lynchings mentioned in the petition the NAACP had submitted to the UN in the fall of 1947. Eleanor Roosevelt was becoming exasperated with the Russian's windy and repetitious speeches. "I would remind my Soviet colleague," she said, "that since we are dealing with [human rights], we should try not to attack each other or our Governments, but since he has in his speech again chosen to repeat many things which I have heard many times, I would suggest to him that he has used the petition of the NAACP . . . that is over a year old, and that lynching in the United States is deplorable but that it is against the law and when it takes place it is a violation of the law and exceptional."[20]

Two full days of cold war polemics then ensued, with Soviet-bloc denunciations of racism and colonialism and Western attacks on the Communist regimes for limiting personal freedoms. René Cassin said that he personally favored the abolition of capital punishment, but that if it were included, it would have to be carefully defined, "so as to cover the practice of sending prisoners to concentration camps where a lingering death awaited them."[21] Party man Pavlov commented, startlingly, "Under proper administration, concentration camps and penal institutions did not lead to death but rather to reform of the persons temporarily deprived of their liberty."[22] The United Kingdom's Christopher Mayhew then accused Russia of having "erected within its borders a system which made slaves of millions of human beings." Pavlov said the British representative had shown complete ignorance of the real situation in the USSR and must have been reading books written by persons the Soviet Union considered "traitors."

At that point Mexico's Pedro De Alba protested in vain that the major powers were reducing "countries of lesser importance" to the role of "worried and helpless spectators to their verbal duels."[23] Chang offered some ancient wisdom addressed to no one in particular: "Sweep the snow in front of your own door. Overlook the frost on another's roof tiles."[24] But the bickering continued.

John Humphrey, bored to distraction, used some of the time to catch up on his correspondence. He wrote to his sister on October 14:

> I am writing this letter during a session of the Third Committee of the General Assembly. I suppose I should be listening to the South American gentleman who is expounding on Article 3 of the Declaration of Human Rights, but I have heard so many of these speeches that it is only in revolt that I can hope to find sanity. We have been on this thing for 3 weeks now and have adopted 2 out of the 28 articles. When we will finish the Lord only knows. But I am really very happy about the way things have gone so far and fully expect that the General Assembly will adopt the declaration substantially as it was drafted by the Human Rights Commission. . . . A sense of duty calls me back to work. They also serve who only stand and wait.[25]

During breaks Eleanor Roosevelt relieved the monotony with sightseeing and Christmas shopping. On the first Sunday in October, she, Dr. Gurewitsch, Durward Sandifer, and Malvina Thompson attended an afternoon performance at the opera, followed by a drive out to Versailles for a view of the formal gardens and fountains. A few days later, on October 11, friends and coworkers gave her a sixty-fourth birthday party at the Crillon. "The party was gay," she wrote in her column, "and I proceeded to cut my birthday cake and feel duly grateful for having reached the advanced age of sixty-four. One should be grateful for the accumulated experience and knowledge that goes with the years. At least, one knows, in addition, that one must say one's prayers daily that what one has acquired in knowledge may translate itself into wisdom and tolerance which can make old age useful to rising generations."[26]

On October 20, after six days of debate, Article 3 was at last adopted. The Soviet Union's amendment was defeated, with only three countries besides the Soviet bloc voting in favor—Cuba, the Dominican Republic,

and Mexico. Though many representatives had expressed sympathy for abolishing capital punishment, and several of their own countries had done so, most agreed with the Human Rights Commission's decision to state the general principle without taking an explicit position on abortion, euthanasia, or the death penalty.

Later that day the third committee had to suspend its discussion of the Declaration to listen to UN mediator Ralph Bunche's report on the plight of the half million Arab refugees who had been forced by hostilities to leave Jewish-held territory and seek refuge in neighboring countries. When Bunche had finished his report, the Iraqi delegate commented that the third committee would do better to take up this concrete case of human rights violation than to spend hours debating human rights in the abstract.[27] But the committee moved on. The sands in the hourglass were running.

On Saturday, October 23, Eleanor Roosevelt made a quick trip to Stuttgart, where she gave a speech under the auspices of a German women's group. Her main emphasis was on the importance of democratic institutions. Noting that women now outnumbered men in war-ravaged Germany, she encouraged her listeners to be in the forefront of rebuilding a free and democratic society. Before returning to Paris, she visited some of the refugee camps to which over fourteen million displaced persons had fled from Eastern European countries. "Human misery is widespread over here," she wrote Anna.[28]

MALIK'S STOPWATCH

Malik, at this point, adopted a more aggressive strategy against the Soviet bloc's stepped-up delaying tactics. "We were alerted to this danger," Malik later recalled, "by many signs, even intimations, both in and outside the Committee."[29] Ulla Lindstrom of Sweden moved to limit the length of interventions to three minutes.[30] This motion, fiercely opposed by the long-winded Pavlov, was adopted (though not until the committee had spent most of an afternoon arguing about it). Malik took two more steps. With a whole month elapsed and only three articles approved, he announced that the committee would begin holding night sessions, and he bought himself a stopwatch.

Malik later wrote that he had used the stopwatch "mercilessly, warning

each speaker by a stroke of the gavel 30 seconds before the end of the time allotted to him. Now and then I used my judgment about the 3-minute limitation, but as I recall, I never allowed more than 5 minutes, be the speaker Mrs. Roosevelt or Cassin or Pavlov or Santa Cruz or Chang or Azkoul of Lebanon. The Committee cooperated splendidly."[31]

The committee began to average one article a day as it moved through the political and civil liberties, often meeting morning, afternoon, and late into the evening. One night, as Mrs. Roosevelt and Sandifer returned to their Paris hotel together at three A.M., she joked, "If we don't keep earlier hours we are going to lose our reputations here."[32] On November 3 the news came from the United States that Harry Truman, contrary to most predictions, had defeated Thomas Dewey in their close race for the presidency. "President Truman," Eleanor Roosevelt commented, "only had the people with him."

The Palestinian refugee crisis prompted discussions that led to two significant changes. Fighting between Israeli and Arab forces had resumed in October, and some of Israel's neighbors had become concerned about the burden on their societies posed by the continuing influx of refugees. On the motion of Lebanon, the "right to return" to one's own country was added to Article 13, and on the motion of Saudi Arabia, the right to be "granted" asylum from persecution was diluted to become the right to "enjoy" asylum in Article 14. Delegates from many countries, including the United States, were persuaded to vote for the latter change after Mrs. Corbett, the United Kingdom delegate, pointed out that a right to be "granted" asylum would conflict with the immigration laws of nearly every country.

A more controversial change was made in Article 16's right to marry, when the committee decided, on the motion of Mexico, to add "without any limitation due to race, nationality or religion." That article, with its bold proclamation of equal rights for men and women in marriage, was already problematic for some delegates representing countries with predominantly Islamic populations. In an unsuccessful attempt to replace "equal rights" in marriage with "full rights as defined in the marriage law of their country," Saudia Arabia's Baroody charged that the authors of the draft Declaration had adopted Western standards for family relations and "had ignored more ancient civilizations, which were past the experimental stage, and the institutions of which, for example marriage, had proved their wisdom through the centuries."

The Saudi reaction cannot have come as a surprise to Eleanor Roosevelt. Upon FDR's return from Yalta, he had told her that his "one real failure" had been with King Ibn Saud, whom he had arranged to meet there.[33] On Palestine, "Franklin got nowhere." When the American president tried to discuss the possibility of irrigating the desert for agricultural development, the Saudi monarch curtly replied that his people were nomads. Roosevelt's impression, he told his wife, was that the warrior king "did not want his people changed and he felt contact with Europeans would be bad for them." Ibn Saud had even declined American coffee, politely offering the services of his own coffeemaker.

The Muslim nations, however, were not of one mind on the question. Shaista Ikramullah of Pakistan said her delegation would accept the "equal rights" in marriage language, with the understanding (also shared by Mrs. Roosevelt) that equal rights did not mean identical rights.[34] The Saudi amendment, she noted, might condone discrimination against women. Egypt's Dr. Wahid Raafat announced that his country would vote for the marriage article, but that candor required him to express his delegation's view that religious limitations on the freedom to marry did not "shock the universal conscience, as did, for instance, the restrictions based on nationality, race or colour, which existed in certain countries and which were not only condemned but unknown in Egypt."[35] At the time, an Allied commission was purging such restrictions from German law, and miscegenation bans were still in effect in several American states.

The Muslim delegates were also divided on Article 18's freedom to change one's religion. Though that right was arguably implicit in the general principle of religious freedom, Malik's insistence that this be spelled out had made the article controversial. Baroody was again the most outspoken critic. His delegation supported freedom of conscience and religion but objected to the right to change one's religion because proselytization historically had caused so much bloodshed and warfare. Saudi Arabia's vigorous opposition to the marriage and religion articles in the third committee foreshadowed that country's abstention from the Declaration. A Muslim delegate from India, Mohammed Habib, took a different view, supporting the right to change one's religion and pointing out that the new Indian Constitution guaranteed the right to convert or be converted. And Egypt's Rafaat said that his delegation, though "not entirely" in agreement with the right, would vote for the Declaration and that his country "intended to apply and execute it in all honesty."[36]

On November 11 the committee took up the right to participate in government. A consensus rapidly developed that it was desirable to be more specific about how that right was to be exercised. As suggestions for amendments began to accumulate, Malik requested the proponents to get together and try to reach agreement. The result was an amendment that greatly strengthened the article by adding, "The will of the people shall be the basis of the authority of government: this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures."

Pavlov, after fulminating against the denial of voting rights to American blacks, had participated actively with Chang and several Latin American delegates in framing the new language. Durward Sandifer, sitting in temporarily for Mrs. Roosevelt, had objected, commenting only that while he agreed with the principle, he found the details "unsatisfactory." In the event, however, he voted in favor of the joint product. The revised article was overwhelmingly approved, with only one dissenter—the Haitian representative, who said he thought it might lead to restrictions on voting by illiterate people.

In mid-November the provisions on social and economic rights predictably slowed the committee down. The debate was not over the principle of including these rights, but on their scope and details. John Humphrey, listening silently for the past two years, felt he had heard it all before. Though he was tired of the debate, he admitted to his diary that his socialist views had changed. "[M]oral bankruptcy is the reason for our failure to organize peace. I once thought that socialism could fill this moral gap; but now, although I still remain a socialist, I know better. For socialism is a technique and nothing more. What we need is something like the Christian morality without the tommyrot."[37]

René Cassin temporarily took the chair on November 18 to handle questions about the "new" rights. Humphrey was bemused to note that Cassin, with "one of the quickest minds that I have ever seen," was a poor chairman.[38] "He sometimes forgets indeed that he is in the chair," Humphrey wrote in his diary, "and the meeting goes on merrily without leadership." General de Gaulle had been similarly disappointed in Cassin's administrative skills in the summer of 1941 when he had left his legal aide in charge of the Free French operations in London while he traveled to the Middle East for talks with leaders of British and Turkish

forces. The general had told Cassin to use a firm hand, but when he returned he found the office in chaos. That one incident marked a change in the relationship between the two men. From that time on, according to historian Jean-Louis Crémieux-Brilhac, "René Cassin, secure in the honor of being a founding father of Free France and its republican conscience, would never again be entrusted with first-rank political responsibilities."[39] Despite the high legal positions he had achieved after the war, Cassin always resented his exclusion from the innermost circles of power.[40]

In his own sphere of expertise, though, Cassin excelled. Throughout the third committee sessions, and especially in connection with the social and economic rights, he reverted to his old role of law professor, patiently explaining each article in relation to the structure of the whole document—the connections among various articles and the way the different parts of the Declaration worked to amplify or limit other parts.

P. C. Chang, with his love of language, was also adept at these *explications de texte.* Chang seemed to enjoy pointing out how "perfectly clear and logical" the document was and calling attention to the relations among its parts. Leo Beaufort, the Dutch delegate, chimed in from time to time, appealing to the delegates not to lose sight of the document as a whole when they submitted their amendments to individual articles, and the Norwegian delegate Frede Castberg gave a little lecture on the interpretation of texts.

The struggles over the social and economic articles were mainly between representatives of liberal democracies such as the United States and the United Kingdom, who wanted to leave more room for individual initiative and collective bargaining, and delegates who thought the state should play a greater role in regulating wages and working conditions. The latter group was sizable, for it included social and Christian democrats from Latin America and Western Europe, as well as the Communist representatives.

Pavlov, one of the first to speak, praised this group of rights, which, according to him, "had not appeared in any of the previous declarations of the rights of man; their inclusion was a result of the social progress achieved in the nineteenth and twentieth centuries."[41] That was not quite accurate, since the Bogotá declaration, from which Humphrey had drawn some of this language, had been adopted earlier that year. Pavlov, however, proposed an amendment to the introductory "chapeau" article to

stress the need for the state "to insure every individual a real opportunity to enjoy" these rights. Cassin said that he did not think "a special guarantee" should be included in the chapeau, because a general pledge to honor all the rights and freedoms in the Declaration was included elsewhere.

Santa Cruz and several others expressed concern that the term *social security* in the chapeau's opening sentence ("Everyone has a right to social security . . .") was apt to be misconstrued. In some states it had a technical sense, limited to the situations of persons unable to work because of incapacity, whereas its function here was to introduce a series of articles aimed at protecting individuals against a variety of social and economic risks including unemployment. Syria proposed to replace "social security" with "social justice." Mrs. Roosevelt, though conceding the term *social security* might not be perfect, said she hoped the chapeau would be adopted without modifications. She opposed the Soviet amendment because her government did not believe that the obligations of the state should be specified in a Declaration, as distinct from a Covenant, and because a special guarantee by the state in this article would suggest that the economic and social rights were more important than political rights.

The Soviet and Syrian amendments were both rejected, and the committee moved on to consider a Cuban proposal to give the "new" rights parity with the "old" by stating that the "new" rights are "indispensable" for the dignity and free development of the individual. The chapeau, with that amendment, was adopted by an overwhelming majority (39–1, with three abstentions). The article, in its final form, reads:

> Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international cooperation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

The only nay vote was cast, curiously, by Lebanon. Karim Azkoul, sitting in temporarily for Malik, seems to have been confused about the article's meaning. After the vote, Jamil Baroody of Saudi Arabia explained his abstention. He had been disappointed by the failure of the Syrian motion to substitute "social justice" for "social security." The former term conformed better to the Saudi system, where "*zaka,* a voluntary tax levied for the purpose of assisting the poor and unemployed, was one of the five pil-

lars of Islam. Social security was a recent historical development in western society, while *zaka* had been an article of faith in actual operation in Moslem communities for almost fourteen centuries." This and other Islamic institutions, he said, "were not only the equivalent of a social security system, their machinery was simpler, their administration less costly and their effectiveness had stood the test of time."[42]

The committee then turned to the article on the right to work. There, controversy centered on Soviet amendments to include a right to protection against unemployment and a right to equal pay for equal work without discrimination as to race, sex, or nationality, and a Cuban proposal to add the right to a level of pay suitable for a worker and his family. The United States opposed all three changes: the first implied too great a role for the state, the second was already covered in Article 2, and the third was objected to on the grounds that it was undesirable to take the needs of a worker's family into consideration, other than by way of a minimum wage for everyone. All three amendments were adopted.

Then a crisis developed. When Malik, now back in the chair, put the right-to-work article to a vote, paragraph by paragraph, each paragraph was approved, but when the committee voted on the article as a whole, the votes were evenly split, which meant that the article had been rejected. The Soviet bloc, with Denmark and several Latin American countries, had voted in favor; the United States, China, India, and most European countries had voted against. Mrs. Begtrup of Denmark called the situation "ridiculous," and Pavlov said it was "disgraceful," charging the United States and the colonial powers with bad faith.

Malik invited those delegates who wished to do so to explain their votes. Cassin began by saying that it was "unthinkable" that the Declaration should not contain a right to work, but that he had voted against the article because the clause forbidding discrimination on the basis of race, sex, or nationality seemed to limit the protection afforded by Article 2's broader ban on discrimination. Mrs. Roosevelt said that she agreed on the need to include the right to work, but she, too, was unable to vote for a provision that, by omission, might appear to condone discrimination on the basis of religion or political opinion.

Chang pointed out that the favorable votes on each paragraph were a sign that the draft needed only to be improved. Santa Cruz agreed, commenting that many seemed to have voted against the article only because the wording was inadequate. In that spirit, Fernand Dehousse of Belgium proposed to eliminate "without distinction as to race, sex or nationality" after the prohibition on discrimination in employment and moved that the article be reconsidered. His motion was adopted unanimously, and a drafting subcommittee was instructed to prepare a revised text, taking all suggestions into account.

Meanwhile the committee moved on. In the article on education it made an important change, influenced directly by recollections of the National Socialist regime's efforts to turn Germany's renowned educational system into a mechanism for indoctrinating the young with the government's program. The draft already contained a paragraph, based on a proposal submitted by the World Jewish Congress, that said education should promote tolerance, understanding, and respect for human rights.[43] In the third committee, after Beaufort of the Netherlands recalled the ways in which German schools had been used to undermine the role of parents, a third paragraph was added: "Parents have a prior right to choose the kind of education that shall be given to their children."

In the subcommittee on work, Dehousse's proposal to remove the limitation on the nondiscrimination clause was accepted. Now the problem was the family wage, which Mrs. Roosevelt unsuccessfully opposed again. On November 22 she wrote to Anna, "our working hours are getting bad as they do at the end of the Assembly."

When the article on work came back to the third committee on Thanksgiving Day, November 25, Roosevelt said the article was now acceptable to the United States, except for the provision that the needs of a worker's family should be considered in determining wages.[44] Several countries, including the United States, she said, had learned from experience that the scale of wages should be fixed by assessing the work done, and not on the basis of considerations foreign to the idea of labor proper. Social protection for the family, she pointed out, was covered in the article on the right to a minimum standard of living. Her position was overwhelmingly rejected. The rest of the third committee was now ready to suppress their differences in order to approve the article. When the vote was taken, the only negative vote was that of the United States.

The article, in its final form, reads:

> (1) Everyone has the right to work, to free choice of employment, and to just and favorable conditions of work and to protection against unemployment.

(2) Everyone, without any discrimination, has the right to equal pay for equal work.
(3) Everyone who works has the right to just and favorable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.
(4) Everyone has the right to form and join trade unions for the protection of his interests.

Explaining her vote, Mrs. Roosevelt said that "it would be a matter for long and difficult discussion to decide exactly what was meant by a decent existence."[45] She predicted that the principle in paragraph (3) would prove extremely difficult to implement, noting that different countries had different methods of giving social protection to the worker who needed more than he was able to earn. "To assess a worker's wages by his needs rather than by the work he performed" was, in her opinion, "a false principle."

Thanksgiving dinner for the Americans that day had to be held between the first and second of three committee meetings, but Mrs. Roosevelt was determined not to let the holiday pass unobserved. She invited sixteen guests to the Crillon, instructing the hotel to prepare a dinner from two large turkeys she had obtained from the American Embassy commissary. That special order seems to have posed a challenge to the chef. Durward Sandifer described himself as "startled" when the turkeys were brought to the table with their feet still on and "sticking high in the air."[46]

For the remaining days of the third committee's work, the Soviets replaced Pavlov with Ambassador Bogomolov. Gone was the genteel, cooperative Bogomolov who had given such fine parties in Geneva. Now it was no more Mr. Nice Comrade. Humphrey was disappointed in the change but wrote in his diary, "I do not think this necessarily means the Soviets will not vote for the declaration. . . . But whatever Mr. Bogomolov's motives are I am sure they are not dictated by personal interest. I can therefore respect him."[47]

On November 26 the Soviet Union, Yugoslavia, and Denmark made one final attempt to revive the issue of protection of minority groups. Once again the Americans, North and South, successfully resisted. In her November 30 "My Day" column, Mrs. Roosevelt explained the U.S. position to her readers in terms of an assimilationist ideal that most Americans in 1948 took for granted:

> So far as I was concerned, the point brought most clearly before us was the fact that this was not a subject on which a general article could be written for a universal declaration. All of the Americas' delegates declared that this problem did not exist with them because people who come to our shores do so because they want to become citizens of our countries. They leave behind certain economic, religious and social conditions that they wish to shed and prefer to be assimilated into the new country that they are adopting as their own. They are accepted by us with that understanding, and from our point of view we would like to see the committee recognize the fact that the European problem should be handled differently.[48]

When the third committee took up the Preamble as its final item, a last vain effort was made (by the Netherlands) to insert a mention of the deity. Malik, who earlier in the drafting process had proposed a reference to "the Creator," seems to have come round to Chang's and Mrs. Roosevelt's view. Arguments about the use of words like "God" and "created," he later wrote, "are often concluded silently by sheer sensing that the prevailing climate of opinion will never admit such terms."[49]

As soon as the committee wound up its review of the draft Declaration, a subcommittee on style chaired by Cassin began to put everything into final form. At this stage a few changes were made in the sequence of articles, and the title was officially changed to the "Universal Declaration of Human Rights" from "International Declaration of Human Rights." The new title had been in casual use for some time, but Cassin, who proposed the official change, rightly considered the name to be of the utmost significance. The title "Universal," he later wrote, meant that the Declaration was morally binding on everyone, not only on the governments that voted for its adoption. The Universal Declaration, in other words, was not an "international" or "intergovernmental" document; it was addressed to all humanity and founded on a unified conception of the human being.[50]

At last, on December 4, the Declaration was ready for the final vote in the third committee. Remarkably, after more than eighty third-committee (and numerous subcommittee) meetings, during which nearly 170 amendments

had been proposed, the structure of the document had survived relatively intact, and its content, though further qualified and refined, was roughly similar to the draft that had emerged from the Human Rights Commission in June 1948. That was due in large part to the fact that the members of the Human Rights Commission, except for the Soviet bloc, were committed to the draft that had emerged from their deliberations. Roosevelt, Malik, Cassin, Chang, and Santa Cruz presented a united front most of the time, resisting the temptation to reopen old debates.

Most of the changes made by the third committee consisted in drawing out the implications of, or extending, principles already present in the draft. The general nondiscrimination clause of Article 2, for example, was made specifically applicable to non-self-governing territories and to the freedom to marry. Special mention was made in the Preamble of the equal rights of men and women, thanks to Minerva Bernardino of the Dominican Republic. Cuba was largely responsible for strengthening the link between new and old rights and for reviving Cassin's original inclusion of a reference to the special needs of families in the article on the right to an adequate standard of living. On the motion of Ecuador, the article guaranteeing that no one shall be subject to arbitrary arrest or detention was amended to include arbitrary exile. At Mexico's behest the committee added a new article adopting the Latin American institution of the *amparo* (the right to a hearing for acts in violation of fundamental rights under national law).

With the end in sight, Chang's patience and composure began to erode. On December 4 Humphrey wrote in his diary, "P. C. Chang was less helpful than usual. His emotional outbursts have become more frequent and he has made some personal enemies. I am told however that he has not been well and he must be disturbed by events in China."[51] Within a month Beijing would fall, and the world's most populous nation would come under Communist rule.

On December 7 at three A.M. the draft was approved by the third committee for submission to the General Assembly. There were no votes against it, but seven countries recorded abstentions—the six members of the Soviet bloc (including Yugoslavia) and, to the surprise of many, including an indignant John Humphrey, Canada. The Canadian position, ostensibly having to do with federal-provincial relations, was quickly reversed, but not before Canada had taken a considerable public relations hit for its abstention.[52] Humphrey stated in his memoirs, "I had no doubt whatsoever that this quick change in position was dictated solely by the fact that the government did not relish the company in which it found itself."[53] Saudi Arabia and South Africa did not vote.[54]

Over the course of the fall, Humphrey had upgraded his estimate of Malik's political skills. "We were fortunate in having Charles Malik in the chair," he conceded in his memoirs. "Presiding over a much more turbulent body—perhaps the most turbulent in the United Nations, he conducted the proceedings with a firmness that at first surprised me. There were indeed times when he approached arrogance, even losing his temper, and with a bang of his gavel refusing the floor to delegations. But my respect for him grew as the session progressed, and he got the Declaration through the committee."[55] Durward Sandifer commented with awe that Malik "was the only person I ever knew who succeeded in holding a stopwatch to Pavlov."[56]

THE ADOPTION OF THE DECLARATION

As the day of decision in the General Assembly approached, the climate among the delegates was as chilly as the December weather. Relations between the Soviet bloc and the North Atlantic powers had never been worse. British and American planes were flying supplies into Berlin around the clock at the incredible rate of a planeload every three and a half minutes. The atmosphere in the UN was tense, the mood cynical. Mrs. Roosevelt wrote to her aunt Maude that she thought they would be lucky to get the required two-thirds vote. "The Arabs and Soviets may balk—the Arabs for religious reasons, the Soviets for political ones."[57]

It was a good sign therefore when the General Assembly adopted the Genocide Convention on December 9 unanimously and without debate. When ratified, the convention would require its signers to prevent and punish acts of genocide, defined as acts "committed with intent to destroy, in whole or in part, a national, ethnical, racial, or religious group, as such." Australia's Herbert Evatt, president of the General Assembly, urged all member states to ratify as soon as possible. It marked, he said, "an epoch-making development in international law":

> Intervention of the United Nations and other organs which will have to supervise application of the convention will be made according to in-

ternational law and not according to unilateral political considerations. In this field relating to the sacred right of existence of human groups we are proclaiming today the supremacy of international law once and forever.[58]

At eight-thirty P.M. on December 9 Charles Malik took the podium to introduce the Universal Declaration. Now one of the most respected figures in the General Assembly, the tall, striking Arab showed no trace of the insecurities that had plagued him in his early UN days. The crowd of delegates, reporters, and onlookers fell silent as the philosopher-diplomat began to speak. Flanked by fifty-eight brightly hued flags, Malik tailored his plea to the public and posterity as much as to delegates caught up in the play of power and interest. Unlike previous declarations of rights that had sprung from particular cultures, he said, the Universal Declaration was something new in the world.

> Thousands of minds and hands have helped in its formation. Every member of the United Nations has solemnly pledged itself to achieve respect for and observance of human rights. But, precisely what these rights are we were never told before, either in the Charter or in any other international instrument. This is the first time the principles of human rights and fundamental freedoms are spelled out authoritatively and in precise detail. I now know what my government pledged itself to promote, achieve and observe when I had the honor to sign the [UN Charter]. I can agitate against my government, and if she does not fulfil her pledge, I shall have and feel the moral support of the entire world.[59]

He described the Declaration as a "composite synthesis" of all existing rights traditions, and of much Asian and Latin American wisdom. Such a synthesis had never occurred before in history.

Malik pointed each country to places in the Declaration where it could either find its own contributions or the influence of the culture to which it belonged. The Latin American countries had brought to the process the ideas and experience gained in preparing the Bogotá Declaration on the Rights and Duties of Man. India had played a key role in advancing the nondiscrimination principle, especially with regard to women. France was responsible for many elegancies in drafting. The United Kingdom and the United States had shared the wisdom acquired in their long experience with traditional political and civil liberties. The Soviet Union, with broad support from many quarters, had championed the newer social and economic rights in the interest of "improving the living conditions of the broad masses of mankind." The importance of remembering that rights entail duties had been emphasized by participants from China, Greece, Latin America, the Soviet Union, and France. Many countries had contributed to the articles on freedom of religion and the rights of the family. Due to the immense variety of its sources, the Declaration had been constructed on a "firm international basis wherein no regional philosophy or way of life was permitted to prevail." In a last-ditch effort to win Soviet support, Malik mentioned each of the Russians who had served on the Human Rights Commission by name, praising them for their "unrelenting efforts to lift the Declaration from being a mere catalog of hopes and aims into something directly and materially bearing on material life."

It would be impossible, he said, to name and thank all the individuals who had been involved in the process leading up to this day, but he made another exception for his old rival, P. C. Chang, who had "never failed to broaden our perspective by his frequent references to the wisdom and philosophy of the Orient and who, by a special drafting gift, was able happily to rectify many of our terms."

Malik closed by reviewing the history of the document, its "negative roots" in the atrocities of the recent war and its "positive roots" in the common aspirations summed up so well in Franklin Roosevelt's four freedoms. The Declaration represented delivery on the promise of the UN Charter, which had mentioned human rights seven times but had not specified what they were or how they were to be protected. The Declaration would now need to be supplemented with binding conventions and an enforcement machinery. But even without these, he concluded, it would "serve as a potent critic of existing practice. It will help to transform reality."

Of Malik's speech, Santa Cruz later wrote: "He gave a detailed account of the whole long process of elaboration of the instrument that was being discussed. No one was able to do it with such authority, not only because of the responsibilities he had assumed in the process, but also by virtue of his lucid intelligence and his extraordinary talent for explanation."[60]

Others were then given the opportunity to speak. Cassin harshly re-

buked the Soviets for their criticism of the Declaration as an incursion on national sovereignty. He reminded them that in 1933 Hitler's representatives had used the same argument in the League of Nations to justify their actions against their own countrymen.[61]

The speeches continued on December 10. P. C. Chang told the General Assembly that over the course of the long debate on the Declaration, "representatives had reached agreement whenever they were concerned first and foremost with the defense of human rights." Their disagreements had been due to "preoccupations of a purely political nature."

The effort of the Chinese delegation, he said, had been to promote a spirit of sincere tolerance of the different views and beliefs of one's fellow men. He blamed "uncompromising dogmatism" for accentuating disputes, saying that there was at the present time "a tendency to impose a standardized way of thinking and a single way of life." With that attitude, he concluded, "equilibrium could be reached only at the cost of moving away from the truth, and employing force. But however violent the methods employed, equilibrium achieved in that way could never last." Mrs. Lakshmi Menon made a plea for tolerance, too, and took the occasion to recall Mahatma Gandhi's insistence that all rights are born of obligations. From the very fact that it proclaimed rights, she said, the Declaration should be understood as a "declaration of obligations."

When her turn came, Mrs. Roosevelt, in a simple, long-sleeved blue dress, stepped up to the bank of microphones and donned her reading glasses. The golden brooch at her neck, resembling a fleur-de-lis, was a replica of the three-feathered Roosevelt crest that FDR had given her on their wedding day. In a high, clear voice, she announced:

> We stand today at the threshold of a great event both in the life of the United Nations and in the life of mankind, that is the approval by the General Assembly of the Universal Declaration of Human Rights recommended by the Third Committee. This Declaration may well become the international Magna Carta of all men everywhere. We hope its proclamation by the General Assembly will be an event comparable to the proclamation of the Declaration of the Rights of Man by the French people in 1789, the adoption of the Bill of Rights by the people of the United States, and the adoption of comparable declarations at different times in other countries.[62]

She praised the Declaration as an important step in the unfinished task of lifting human beings everywhere "to a higher standard of life and to a greater enjoyment of freedom." It was based, she said, "upon the spiritual fact that man must have freedom in which to develop his full stature and through common effort to raise the level of human dignity." In passages that were probably written by the State Department, she emphasized that the document was not legally binding and explained why most of the amendments proposed by the Soviet bloc had been rejected. She concluded with her characteristic blend of idealism and realism about human nature, "Let this session of the General Assembly approve by an overwhelming majority the Declaration of Human Rights as a standard of conduct for all; and let us as Members of the United Nations, conscious of our own shortcomings and imperfections, join our efforts in good faith to live up to this high standard."

It was not one of Roosevelt's best speeches. Santa Cruz wrote that her "intervention disappointed me a little. I did not hear the spontaneous expression of her personal fight for human rights that was present on previous occasions. On the other hand, one sensed the caution of someone who was speaking on behalf of a State that does not forget the political implications of the practical application of human rights instruments."[63]

The Soviet-bloc delegates made one last effort to have the matter put over to the next session of the General Assembly on the grounds that, while it had "many good features," the Declaration was still seriously defective. The bases for their objections were somewhat inconsistent. The project was mostly empty words, but it was also a threat to national sovereignty. They called it "overly juridical" but complained that it lacked effective legal guarantees.

Stung by Cassin's charge that the doctrine of national sovereignty had led to crimes against Germany's own people and against human rights, Soviet Deputy Foreign Minister Andrei Vishinsky took the occasion to deliver a blast in return.[64] The French representative, he said, had forgotten the real reasons for the Second World War. Those reasons were not to be found in the violation of the human rights of the German people, but in the policies of the leading European statesmen of the day, namely Daladier and Chamberlain, supported by the United States. Their 1938 Munich agreement (permitting Germany to occupy the Sudetenland of Czechoslovakia) had encouraged the reestablishment of Germany's mili-

tary power, in order to direct German aggression toward the Soviet Union and the East. (The 1939 Soviet-German nonaggression pact that had enabled Hitler to invade Poland apparently slipped his memory.) The principle of national sovereignty, Vishinsky concluded, was the sole protection of small, weak countries against the expansionist aims of more powerful states.

In the end, the controversial religious-freedom article caused only one defection. All the states with large Muslim populations except Saudi Arabia voted yes when the whole draft Declaration was presented for approval by the third committee. The main speaker on the issue in the General Assembly was Muhammad Zafrulla Khan, the foreign minister of Pakistan and head of its UN delegation. A member of the minority Ahmadi Muslim sect, Kahn told the delegates that the article on religious freedom would have the full support of Pakistan, then the UN member with the largest Muslim population. The issue, he said, "involved the honor of Islam."[65] He cited a passage from the Koran for the proposition that faith could not have an obligatory character: "Let him who chooses to believe, believe, and him who chooses to disbelieve, disbelieve." Moreover, he pointed out, Islam was a proselytizing religion that strove to persuade others to change their faith and to alter their way of living. It recognized the same right of conversion for other religions, though it had objections to Christian missionary work when that work assumed a political character. The freedom to change beliefs, he concluded, was consistent with the Islamic religion.

Syria's Abdul Rahman Kayaly rose to defend the Declaration against those who complained of its imperfections. There had been many human rights declarations throughout history, he began. Those earlier declarations had not been perfect, nor had they been perfectly observed. Civilization had progressed slowly. As for the present Declaration, "It was not the work of a few representatives in the Assembly or in the Economic and Social Council; it was the achievement of generations of human beings who had worked towards that end." Now the task was to put its principles into effect—through education, national legislation, and forms of government.[66]

In all, thirty-four delegates expressed their views. There was a "great solemnity, full of emotion" in the Palais de Chaillot, Santa Cruz recalled, as one speaker after another offered his or her appraisal of the value the document was likely to have.

> I perceived clearly that I was participating in a truly significant historic event in which a consensus had been reached as to the supreme value of the human person, a value that did not originate in the decision of a worldly power, but rather in the fact of existing—which gave rise to the inalienable right to live free from want and oppression and to fully develop one's personality. In the Great Hall . . . there was an atmosphere of genuine solidarity and brotherhood among men and women from all latitudes, the like of which I have not seen again in any international setting. Sincerity and a sober eloquence free of bombast characterized most of the interventions.[67]

When the speeches were over, the General Assembly polled the members on each article separately, with an impressive result: twenty-three of thirty articles gained unanimous approval. A few scattered abstentions were recorded on Articles 1 and 2—as well as on the articles dealing with freedom of movement, freedom of religion, freedom of opinion and expression, the right to education, and the article stating that everyone has a right to a social and international order in which the Declaration's rights can be fully realized. There were no nays except on the nondiscrimination article (one vote); the article on the family (six votes); and the article on freedom of opinion and expression (seven votes).

With the Declaration certain of adoption at that point, the question uppermost in the minds of the framers must have been whether any of the nays on certain articles would carry over into votes against the Declaration as a whole. Roosevelt seems to have expected the Soviet bloc might vote against it, while Humphrey was still desperately hoping until the last minute for the "miracle" of their approval.[68] Neither her fears nor his hopes were realized.

At four minutes before midnight the president called the roll and drew by lot the name of the country to vote first, Burma. After Burma voted yes, Byelorussia, next in order, abstained, as did the other members of the Soviet bloc when their turns came up—Czechoslovakia, Poland, the Ukraine, the USSR, and Yugoslavia. It had been clear from the beginning that South Africa would be unable to accept the Declaration, but she too abstained rather than voting against it. So did Saudi Arabia, breaking

ranks with the other Muslim nations that had voted yes. The final tally was forty-eight in favor, eight abstentions, and none opposed. Two countries, Honduras and Yemen, were absent. The Soviet abstention, Mrs. Roosevelt believed, was attributable mainly to one article that "they couldn't possibly accept": Article 13, which provides that everyone has the right to leave his country.[69]

Herbert Evatt, president of the General Assembly, closed the session by paying tribute to Eleanor Roosevelt: "It is particularly fitting that there should be present on this occasion the person who, with the assistance of many others, has played a leading role in the work, a person who has raised to greater heights even so great a name—Mrs. Roosevelt, the representative of the United States of America."[70] As the General Assembly rose to give her a standing ovation, a radiant smile illuminated her weary face.

Now that her efforts on the Declaration had been brought to a successful conclusion, Eleanor Roosevelt was uncharacteristically pensive. "It was after midnight when I left the Palais de Chaillot," she wrote. "I was tired. I wondered whether a mere statement of rights, without legal obligation, would inspire governments to see that these rights were observed."[71] The mood soon passed, however. Throughout her life she would treasure the memory of December 10, 1948, when her most important work came to fruition.

Charles Malik seems not to have been in a triumphal mood, either. His diary, after draft notes for his speech, contains only one cryptic, Heideggerian note: "*Wir sind zu spät für die Götter, zu früh für das Sein.*"[72]* René Cassin was more sanguine. He had gone out to celebrate with some English and American reporters. "That night, with so many martyrs in my memories," he later mused, "it was my good fortune to be seated next to the great dancer, Katherine Dunham, whose modern dance troupe was then enjoying acclaim in Paris."[73] He took the African American woman's companionship as a sign that a new age of brotherhood was perhaps dawning.

The absence of any nays enabled the framers of the Declaration to proclaim a great victory. Less emphasized at the time, but equally significant was the fact that twenty-three of thirty articles were approved without nays or abstentions when votes on each article were taken separately. For the first time in history, the organized community of nations had issued a common declaration of human rights and fundamental freedoms. With its claim to universality, the Declaration marked a new stage in humanity's quest for freedom. But what could that claim to universality mean in a world so divided along political, cultural, and ideological lines?

*"We are too late for the gods, too early for Being."