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CHAPTER I

The *UDHR*, *ICCPR* and *ICESCR* (Int'l Covenant on Economic, Social and Cultural Rights) are referred to as the Int'l Bill of Rights. WWII was a major catalyst for reorganisation of the int'l legal system, particularly in the area of human rights.

The League of Nations

Australia was among the 20 founding member countries of the League of Nations, est. in 1920 as an outcome of the Paris Peace Conference. Many of the League's activities can be seen as important steps towards the new int'l legal framework of human rights that emerged after WWII.

Members of the League covenanted to address issues, which would now be recognised as human rights concerns, such as:

- Securing fair and humane conditions of labour;
- Ensuring just treatment of the native inhabitants of territories under members' control; and
- Supervising traffic in women, children and drugs.

The League also contributed a series of bilateral treaties among European states to protect minority rights, incl. life, liberty and equality before the law. For the first time, int'l law imposed certain obligations on its Member States to treat their inhabitants in certain ways.

Notwithstanding its respect for indigenous peoples' rights, many Member States, incl. Australia, refused to include in its Covenant a commitment to non-discrimination on the basis of race – which is the catalyst for the initiation of WWII.

International Labour Organisation

The ILO was another outcome of the 1919 Paris Peace Conference. In light of the 1917 Russian Revolution, the ILO reflected a desire to improve living standards of workers. The formation of the ILO was significant in the development of int'l human rights law. By ratifying the standards promulgated by the ILO, States agree to subject their sovereignty in the area of labour rights to those standards. This was the first time that States assumed obligations towards the treatment of their own people, and made themselves accountable to the int'l community under int'l law.

UN Charter

Post-WWII, the new way of thinking became that, if necessary, state sovereignty would need to yield to int'l standards of human rights. The *Charter* was approved unanimously on 26 Jun 1945 by the 50 States at the San Francisco Conference (discussed below), and came into effect on 24 Oct 1945.

The *Charter* today plays a quasi-constitutional role in int'l law. This is, in part, due to the fact that art 103 provides that the Chartered obligations of UN Member States prevail over obligations deriving from any other int'l agreement and, in part, because the *Charter* laid out a framework for the conduct of int'l relations in the envisaged post-war world order.

Art 2(7) provides, “Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essential within the domestic jurisdiction of any State or shall require Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII”.

UN is divided into 6 main parts:

- i. General Assembly – resolutions relating to defence and administration require 2/3 vote, other things only require a majority.
- ii. Security Council – prevent large-scale conflict – 5 permanent members, which have veto power. There are 10 other members elected on a rolling basis every 2 years.
- iii. UN Economic and Social Council
- iv. ICJ
- v. Trusteeship Council (non-operational) – suspended in 1974 after helping numerous countries to gain independence
- vi. Secretariat

Atlantic Charter

In an address to the US Congress on 6 Jan 1941, US President Franklin D Roosevelt stated his vision of a world ‘founded upon 4 essential freedoms’: freedom of speech, freedom to worship, freedom from want and freedom from fear. In Aug 1941, Roosevelt and British PM Winston Churchill issued a ‘joint declaration’ that has since become known as the “Atlantic Charter”.

Roosevelt further reported back to Congress to clarify the scope of the 4 freedoms stating, “the [Atlantic Charter] declaration of principles includes of necessity the world need for freedom of religion and freedom of information ... which are a part of the whole freedom for which we strive”. Later that same year, Herbert V Evatt quoted the 4 freedoms in the Australian Parliament as one of the guiding principles for post-war redevelopment.

Dumbarton Oaks Proposal

After the Atlantic Charter, important steps were taken towards establishing a basis for the int’l cooperation, which underpinned the formulation of int’l human rights law. Between 1941 and 1944, 26 allied nations signed a *Declaration by United Nations*, which explicitly evoked the *Atlantic Charter*, and stated the signatories’ conviction that victory to preserve human rights and justice in their own lands as well as in other lands.

In Oct 1943, the US, Soviet Union, UK and china signed the *Moscow Declaration on General Security*, in which they recognised ‘the necessity of establishing, at the earliest practicable date, a general int’l org ... for the maintenance of int’l peace and security” [Art 4].

At the Jul 1944 Bretton Woods (US) Conference, 44 allied States planned for post-war global economic relations, resolving to establish the **IMF** and the **Int’l Bank for Reconstruction and Development (IBRD)**, which is now part of the **World Bank**.

But it was the 1944 Dumbarton Oaks Conversations that represented ‘the first concrete step toward the creation of a general int’l org’. Such conversations too place in Washington DC between Aug and Oct 1944, resulting in the *Dumbarton Oaks Proposals*, in which the UK, US, Soviet Union and China agreed to establish ‘an int’l org under the title of the UN’, a General Assembly, of which would, *inter alia*, establish an Economic and Social Council for ‘facilitate

solutions of int'l economic, social and other humanitarian problems and promote respect for human rights and fundamental freedoms'.

San Francisco Conference

This took place between Apr and Jun 1945 and the text of the *Dumbarton Oaks Proposals* was the basis of discussions at the Conference; however, NGOs and States (other than the major powers) called for stronger recognition of human rights in the text. The San Francisco Conference est. a no. of technical committees to make recommendations on diff. parts of the text for what would become the *UN Charter*.

Art 55(c) of the *Charter* states that the UN "shall promote ... universal respect for, and the observance of, human rights and fundamental freedoms". It is said that the **Australian delegation, led by H V Evatt**, was responsible for art 55(c) as well as art 56, which states that the UN Member States 'pledge themselves to take joint and separate action' to achieve the UN's economic and social purposes, incl. those relating to human rights.

International Military Tribunal at Nuremberg

In Aug 1945, as WWII came to an end, just a few weeks after signing the *UN Charter*, the *Charter of the Int'l Military Tribunal* was concluded by the four major allies—UK, US, France and the Soviet Union. The categories of crime provided for under this Charter were 'crimes against peace', 'war crimes' and 'crimes against humanity'.

UDHR

Drafting by the UN Commissioners on Human Rights

The signatories to the *UN Charter* in 1945 agreed to interim arrangements that est. a Preparatory Commission of the UN, the Executive Committee of which recommended that the Economic and Social Council (ECOSOC) establish a Commission on Human Rights at its first meeting.

Under art 68 of the *UN Charter*, which empowered the UN to set up 'commissions in economic and social fields and for the promotion of human rights', ECOSOC est. a Commission on Human Rights at its 1st session in 1946. The Commission, at its 1st meeting in Feb 1947, immediately set about drafting what it called an *Int'l Bill of Rights*. The Commission appointed a Drafting Committee, which delegated the task of drafting a declaration to John Humphrey.

The UNESCO Survey

In Mar 1947, The UN Educational, Scientific and Cultural Organisation surveyed about 150 'individual thinkers', asking them for a 'statement on the subject of human rights or a particular aspect thereof'. The UNESCO *Committee on the Philosophic Principles of the Rights of Man* oversaw the survey. The Committee published a final report, *The Grounds of an Int'l Declaration of Human Rights*.

The Humphrey-Cassin Draft

Humphrey's Draft was a carefully constructed and pragmatic attempt to reconcile a range of diff. approaches, primarily 'to combine humanitarian liberalism with social democracy'. This draft was referred by the Drafting Committee to a working group and was redrafted by René Cassin (a French Judge), which was substantially the same as Humphrey's. The 2 drafters shared a view that acceptance of declared human rights as a new int'l norm would require very careful phrasing, but they differed in their approach.

Cassin felt it necessary to offer a reason behind the declaring of a norm. Mindful of the political need to negotiate wide acceptance of a declaration, Cassin's philosophy was a 'synthesis that was bringing something new into the world', one, which avoided 'the extremes of both capitalist individualism and socialist collectivism'.

Final UDHR Draft

The UN Commission on Human Rights, ostensibly basing its work on the Humphrey-Cassin doc produced by the Drafting Committee, completed the declaration and unanimously adopted it. The Commission had been highly critical of the UNESCO Committee's report, although it seems that the report's 'feasible and practical' approach to human rights *did* influence the Commission's final formulation.

Adoption of the Draft

The UN Commission on Human Rights reported its draft to the Economic and Social Council, which transmitted it to the UN General Assembly. The GA referred the draft to the Third Committee, which, in 81 meetings between Sep and Dec 1948, considered 168 resolutions for amendments to the draft.

The Third Committee finally adopted the draft Declaration by a vote of 29-0, with 7 abstentions, and reported to the GA. Resolution 217 (III), 'Int'l Bill of Human Rights', was adopted by the GA on 10 Dec 1948, by a vote of 48-0, with 8 abstentions. H V Evatt, President of the GA at the time, welcomed the Declaration as a 'step forward in a great evolutionary process'. The UDHR was not intended to have binding effect, but rather to provide the standards, against which the obligation contained elsewhere could be applied.

Art 38(1) of the ICJ Statute authoritatively states that the sources of int'l law are:

- i. Treaties, or conventions;
- ii. Customary int'l law, or the consistent practice of States undertaken in the belief that the conduct is permitted, required or prohibited by int'l law;
- iii. The general principles of law recognised by and typically derived from the domestic legal systems of states; and
- iv. As a subsidiary source, commentaries in judicial decisions and academic writings of the 'most highly qualified publicists'.

Formal sources are those giving a particular norm its validity or authority – treaty, custom and general principles. The reason why *lex specialis derogat legi generali* (special words prevail over general words) applies to help to interpret a treaty, or why circumstantial evidence may be relied upon in int'l law, is because these are accepted general principles of int'l law.