

HUMAN RIGHTS PROVISIONS UNDER THE UNITED NATIONS CHARTER: AN ANALYTICAL STUDY

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INTRODUCTION

“We declare that human rights are for all of us, all the time: whoever we are and wherever we are from; no matter our class, our opinions, our sexual orientation.”

–Ban Ki-Moon,
Former UN Secretary-General

The United Nations is an international organization founded in 1945. It is currently made up of 193 Member States. The mission and work of the United Nations are guided by the purposes and principles contained in its founding Charter.¹

Due to the powers vested in its Charter and its unique international character, the United Nations can take action on the issues confronting humanity in the 21st century, such as peace and security, climate change, sustainable development, human rights, disarmament, terrorism, humanitarian and health emergencies, gender equality, governance, food production, and more.

The UN also provides a forum for its members to express their views in the General Assembly, the Security Council, the Economic and Social Council, and other bodies and committees. By enabling dialogue between its members, and by hosting negotiations, the Organization has become a mechanism for governments to find areas of agreement and solve problems together.²

The UN's Chief Administrative Officer is the Secretary-General. **Antonio Guterres** is the current UN Secretary-General.

¹United Nations (Feb. 6, 2019, 10:53 AM) , <http://www.un.org/en/about-un/>.

² United Nations (Feb. 6, 2019, 10:58 AM), <http://www.un.org/en/sections/about-un/overview/index.html>.

Background:

The creation of the UN at the San Francisco Conference, 1945, was the culmination of four years of concentrated preparation. During these years, the idea of a world organization to replace the League of Nations was first debated and then fleshed out.³ Many of the important principles of the UN adopted at San Francisco were derived from earlier conferences:

- ❖ The Inter-Allied Declaration (London Declaration) of 12 June, 1941: In a dark hour of World War II, representatives of the United Kingdom, Australia, Canada, New Zealand and the Union of South Africa and of the governments-in-exile of Belgium, Czechoslovakia, France, Greece, Luxembourg, the Netherlands, Norway, Poland and Yugoslavia assembled at St. James's Palace in London.⁴ It was there that each pledged not to sign a separate peace document and declared:

"The only true basis of enduring peace is the willing cooperation of free peoples in a world in which, relieved of the menace of aggression, all may enjoy economic and social security..."

Ten days later, Hitler launched his attack against the Soviet Union.⁵

- ❖ The Atlantic Charter of 14 August, 1941: British Prime Minister Winston S. Churchill and US President Franklin D. Roosevelt met aboard the cruiser USS *Atlanta* off the coast of Newfoundland and signed a declaration giving the first indication that the two powers would strive for the creation of a new world organization once peace was restored. In it, they announced *"certain common principles ... of their respective countries ... for a better future for the world: the need for a secure peace; the abandonment by all nations of the use of force; the disarmament of aggressors; and the establishment of a wider and permanent system of general security."*

³ *United Nations* (Feb. 6, 2019, 11:14 AM), <https://www.encyclopedia.com/social-sciences-and-law/political-science-and-government/united-nations/united-nations>.

⁴ RUMKI BASU, *THE UNITED NATIONS: STRUCTURE AND FUNCTIONS OF AN INTERNATIONAL ORGANISATION* 18 (Sterling Publishers Pvt. Ltd, 2004).

⁵ *Supra* Note 3.

In his famous speech President Franklin D. Roosevelt declared **four freedoms** as being of universal importance:

1. Freedom of speech and expression;
2. Freedom of every person to worship God in his own way;
3. Freedom from want; and
4. Freedom from fear.⁶

❖ The Declaration by United Nations of 1 January, 1942: With the Japanese attack on Pearl Harbor on 7 December 1941 and the entry of the United States into the war, the conflict assumed even wider dimensions. Japan's initial successes were staggering, and it was clear that the coalition against the Axis powers (Germany, Italy, Japan, and their allies) would need to be strengthened.⁷

On New Year's Day 1942 in Washington, D.C., representatives of 26 states signed a declaration whose preamble called for subscription “*to a common program of purposes and principles embodied in the ... Atlantic Charter*” and explicitly referred to the need for promoting respect for human rights on an international basis. In that declaration, the phrase “united nations” was first used. It had been coined by President Roosevelt to express the unity of the signatory nations in their determination to withstand the onslaught of the Axis powers. The declaration was subsequently signed by the governments of 21 additional states.

❖ The Moscow Declaration of 30 October, 1943: This declaration laid the foundation for the establishment of a new world body to replace the League of Nations. Meeting at a time when victory seemed in sight, the US, British, and Soviet foreign ministers and an ambassador from China drew up the Declaration of Four Nations on General Security, which recognized “the necessity of establishing at the earliest practicable date a general international organization based on the principle of sovereign equality of all peace-loving States, and open to membership by all such States, large and small, for the maintenance of international peace and security.”⁸

⁶ *Supra* Note 4 at 19.

⁷ *Id* at 20.

⁸ *Supra* Note 3.

- ❖ Dumbarton Oaks Conference, Washington, 21 August–7 October, 1944: The Dumbarton Oaks conference was the first big powers meeting convoked specifically to discuss the establishment of a new world organization. At the beginning of the conference, the delegations offered widely differing proposals. On some of these divergent views they eventually reached agreement. For example, the British and Soviet delegations accepted an American position that favored a strong role for the General Assembly, in which all member states would be represented and which, therefore, would be the most "democratic" of the UN organs.⁹

There was agreement that a small Security Council should be “*primarily responsible for the maintenance of international peace and security*” and that the big powers should have the right of veto in that body. However, a deadlock developed over a Soviet proposal that a big power might exercise this right in disputes in which it was itself involved. This, the United States and the British refused to accept.

It is interesting to recall that at the Dumbarton Oaks Conference, where the preliminary working draft of the Charter was prepared, relatively little attention was given to the question of human rights and fundamental freedoms. The emphasis was on determining the relations between large and small states and the rules to govern their representation and voting in the various governing bodies.¹⁰ There was a tendency to avoid the problem of human right violations.

- ❖ Yalta Conference, February, 1945: The resultant deadlock was resolved at a meeting in Yalta attended by Prime Minister Churchill, President Roosevelt, and Marshal Stalin. The “**Yalta formula**”, actually a compromise proposed by the United States and rejected by the USSR at Dumbarton Oaks, provided that if any of the Big Five powers was involved in a dispute, it would not have the right to veto Security Council recommendations for peaceful settlement of the issue but would be able to veto a Security Council decision to invoke sanctions against it.

⁹ *Supra* Note 4 at 21.

¹⁰ Benjamin V. Cohen, *Human Rights under the United Nations Charter*, LAW AND CONTEMPORARY PROBLEMS (Feb. 7, 2019, 3:20 PM), <http://scholarship.law.duke.edu/lcp/vol14/iss3/4/>.

After some initial objections from Churchill, the three leaders at Yalta also managed to agree on the basic principles of a trusteeship system for the administration of certain dependent territories under the aegis of the projected world body.

On 11 February, 1945, the three leaders announced that a conference would be convened in San Francisco on 25 April, 1945 for the “*earliest possible establishment of a general international organization*” along the lines proposed at Dumbarton Oaks.¹¹

- ❖ Potsdam Conference, July, 1945: In the Potsdam Conference of July, 1945, USA, USSR, Britain, France and China ratified finally the UN Charter to be adopted at the San Francisco Conference. So, in a sense, the UN actually came into being from the Potsdam Conference.¹²
- ❖ The San Francisco Conference, 25 April–26 June, 1945: Despite the sudden death of President Roosevelt in early April, the United Nations Conference on International Organization convened as scheduled. President Roosevelt had been working on his speech to the conference before he died. That never-delivered address contains the often-quoted words: “*The work, my friends, is peace; more than an end of this war—an end to the beginning of all wars; ... as we go forward toward the greatest contribution that any generation of human beings can make in this world—the contribution of lasting peace—I ask you to keep up your faith....*”

China, the USSR, the United Kingdom, and the United States acted as the sponsoring powers, and 46 other states participated, comprising all those that had signed the Declaration by United Nations of 1 January, 1942 or had declared war on the Axis powers by March, 1945. The huge conference was attended by 282 delegates and 1,444 other officially accredited persons from those 50 countries and by representatives of scores of private organizations interested in world affairs.¹³

¹¹ *Supra* Note 3.

¹² *Supra* Note 4 at 23.

¹³ *Supra* Note 3.

The Charter was formally adopted and signed on **26th June, 1945** by 51 states. It came into force on **24th October, 1945**, after the five Great Powers and a majority of the signatory states had ratified it.¹⁴

CRITICAL APPRAISAL OF PROVISIONS OF UN CHARTER DEALING WITH HUMAN RIGHTS

“The United Nations will go down in history as the first international organisation to concern itself in a sustained and serious way with the rights of all human beings”.

- Dr Kurt Waldheim,
Former UN Secretary- General¹⁵

At the San Francisco Conference it was expressed by several delegates that the United Nations should establish an International Bill of Rights. Although that could not be done, it was well realised by the members that it should be the obligation of the international community to cooperate in eradicating the scourge of war, and they were therefore determined that the promotion and respect for human rights which at present constitute so important and so conspicuous an integrated part of the U.N. Charter.

The result was that the Charter contained a number of provisions for the promotion of human rights and fundamental freedoms in the Preamble and in Articles 1, 13(1)(b), 55, 56, 62(2), 68 and 76(c) which are discussed as follows :

❖ **Preamble of the Charter:** The **Para (2) of the Preamble of the Charter** lays down that.....

“We the peoples of the United Nations determined to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small...”¹⁶

¹⁴ *Supra* Note 4 at 25.

¹⁵ Zenon Stavrinides, *Human rights obligations under the United Nations*, THE INTERNATIONAL JOURNAL OF HUMAN RIGHTS(FEB.7,2019,5:40PM),https://www.researchgate.net/publication/239789865_Human_rights_obligations_under_the_United_Nations_charter.

¹⁶ DR. H.O. AGARWAL, INTERNATIONAL LAW AND HUMAN RIGHTS 764, (18th ed. Central Law Publications, 2011).

❖ **Articles 1(3), 55(c) , 56 and 76(c){The promotion of human rights as a purpose of the United Nations} : Para 3 of Article 1** of the Charter provided that the achievement of international co-operation in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion shall be one of the purposes of the United Nations. The above provision shows that the desirability of promoting and encouraging respect for human rights and fundamental freedoms' without distinction as to race, sex, language or religion was generally recognised. There was a general agreement that all human beings are entitled to some basic rights. It marked the birth of the international and universal recognition of human rights. However, despite the differences as to what rights and freedoms are, the achievement of the maximum freedom and dignity of the human beings was the primary aim of the United Nations.

Article 1(3) may be compared with a similar provision in Article 55. **Article 55** provided that *the United Nations shall promote:*

- a) *higher standards of living, full employment and conditions of economic and social progress and development;*
- b) *solutions of international economic, social, health and related problems, and international cultural and educational cooperation; and*
- c) *universal respect for, and observance of for , human rights and fundamental freedoms for all without distinction as to race, sex, language or religion.*¹⁷

Under Article 55(c), the United Nations is obliged to promote a certain end which is essentially identical with the end which, under Article 1(3), the Organization is obliged to promote and encourage by achieving international co-operation. In fact the two articles are more similar in meaning than they may appear. On a superficial reading, the obligation imposed on the United Nations by Article 1(3) relates to the achievement of international co-operation for the purpose

¹⁷ *Id.* at 765.

of promoting respect for human rights, whereas the obligation imposed by 55 (c) relates directly to the promotion of this end itself.¹⁸

Further, **Article 56** provided that *the members of the United Nations pledged themselves to take joint and separate action in co-operation with the Organisation for the achievement of the purposes set forth in Article 55.*

Further, **Para (c) of Article 76** stipulated that *one of the basic objectives of the trusteeship system is to encourage respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion, and to encourage recognition of the interdependence of the peoples of the World.*¹⁹

Granted that the United Nations is obliged by its own Charter to pursue the purpose or objective of promoting and encouraging respect for human rights, what obligation does this fact impose on Member States? A general kind of understanding of the matter may be achieved by considering certain provisions in **Article 2** of the Charter. The article begins with the words: *'The Organization and its Members, in pursuit of the Purposes stated in Article 1, shall act in accordance with the following Principles'* - and proceeds to specify seven principles. In the present connection, the most significant of the principles are the following:

(2) All Members, in order to ensure to all of them the rights and benefits resulting from membership, shall fulfill in good faith the obligations assumed by them in accordance with the present Charter.

(5) All Members shall give the United Nations every assistance in any action it takes in accordance with the present Charter...

(7) Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state...

¹⁸ *Supra* Note 15.

¹⁹ *Supra* Note 16 at 766.

Here paragraph (5), implies for all the Members certain obligations in the form of giving assistance to whatever the Organization does in pursuit of its purposes. This must be taken to mean that Member States ought not only to refrain from obstructing the efforts of the Organization, but also to participate actively in these efforts. If Member States *merely* refrained from being obstructive, but they never did anything positive in connection with the purposes of the Organization, nothing much would ever be achieved.²⁰

According to paragraph (7), the United Nations has no authority to undertake any action which constitutes an intervention in the domestic affairs of any state. In other words, the Organization is not permitted by its Charter - and *a fortiori* it is not obligated - to impose on any state, or compel it to accept, any arrangements in its internal administration or its relations to its own inhabitants, for whatever purpose.²¹

It was clearly understood by the authors of the Charter that whereas the United Nations and its Members should assume obligations for the promotion of respect for human rights, the actual observance of human rights was primarily the concern of each state.

However, **Dr Kurt Waldheim**, notes certain ‘ambivalence’ in the Charter: On the one hand Members pledge themselves ‘to take joint and separate action in co-operation with the Organization to promote universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion’. On the other hand, the Organization is not authorized ‘to intervene in matters essentially within the domestic jurisdiction of any state...’ This provision is too often used to override any specific human rights obligations a state may have accepted. When the Organization seeks to induce Members to observe universal standards, it moves into a delicate and often inflammatory area of activity.²²

The ambivalence of the Charter - committing the United Nations both to working for the establishment of respect for human rights in all states, and also to refraining from interference

²⁰ *Supra* Note 15.

²¹ *Id.*

²² Kurt Waldheim, *In the Eye of the Storm: the Memoirs of Kurt Waldheim* 134, *Supra* Note 15.

in the internal affairs of any state - is explained by the historical circumstances in which the instrument was drafted and signed. The representatives of the 50 governments of the anti-fascist alliance who met in San Francisco between April and June, 1945, to draft the Charter were well aware of the terrible violations of human rights and general repression practised by the enemy powers - Fascist Italy, Nazi Germany, the Empire of Japan and their lesser partners - against their own citizens and peoples in conquered countries before and during the Second World War, and many of them wanted to make respect for human rights a matter of international concern; but they also wanted to re-establish the traditional principle of the sovereign equality of all states, which had also been violated by these powers.²³

The ambivalence and the resulting tensions in the Charter gave rise from the beginning to a serious problem of interpretation of the human rights provisions, and more specifically of the nature of the obligations which these provisions imposed on the United Nations and its Members. With the start of the Cold War in the late 1940s, politicians in various countries, as well as representatives of governments at the United Nations, were often engaged in controversy as to whether some state or states were fulfilling their obligations, and if not, what the Organization was to do about the matter. But even disinterested scholars of proven integrity understood these obligations in different ways. For example, **Hans Kelsen**, one of the earliest and most eminent commentators on the Charter, expressed the view that *'the function of the United Nations with respect to human rights is not very consistently determined in it'*, and went on to argue that *'the language used by the Charter in this respect does not allow the interpretation that the Members are under legal obligations regarding the rights and freedoms of their subjects.'*²⁴ **Georg Schwarzenberger**, another important early commentator, held that *'in the Charter, a clear distinction is drawn between the promotion and encouragement of respect for human rights, and the actual protection of these rights. The one is entrusted to the United Nations. The other remains in the prerogative of each Member State.'*²⁵ A very different interpretation was provided by an equally important jurist, **Sir Hersch Lauterpacht**, who wrote

²³ *Id at 135.*

²⁴ Hans Kelsen, *The Law of the United Nations* 29, *Supra* Note 15.

²⁵ Georg Schwarzenberger, *Power Politics* 462, *Supra* Note 15.

that the Charter of the Organization actually imposes on the Member States the *'legal duty to respect and observe fundamental human rights and freedoms'*.²⁶

❖ **Articles 13(1)(b), 62(2) and 68{The fulfilment of human rights obligations by the UN and its members} :**

The question now arises: What specific kinds of action the United Nations and the Member States are required to take in fulfillment of their human rights obligations under the Charter? To answer this question it is necessary to understand what the Organization and its Members *can* do in this regard.

It would be quite unreasonable to suppose that the United Nations may be charged by its Charter with obligations which come into conflict with Article 2(7), or which are beyond the powers and means granted to it by the same instrument.

The United Nations organs which are most closely associated with the promotion of respect for human rights are the General Assembly and the Economic and Social Council (ECOSOC). The powers which these organs have in this connection are provided explicitly in articles mentioned below:

According to **Article 13(1)(b)**, *"The General Assembly shall initiate studies and make recommendations for the purpose of...assisting in the realization of human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion."*

Article 62(2) provides that *the Economic and Social Council may make recommendations for the purpose of promoting respect for, and observance of, human rights and fundamental freedoms for all.*

Further, according to **Article 62(3) and (4)**, *ECOSOC may prepare draft conventions for submission to the General Assembly and call international conferences on matters falling within its competence - which cover human rights issues.*²⁷

²⁶ Hersch Lauterpacht, *International Law and Human Rights* 147, *Supra* Note 15.

²⁷ *Supra* Note 16.

Further, **Article 68** states that, “*The Economic and Social Council shall set up commissions in economic and social fields and for the promotion of human rights.*”

Besides these articles, there is also **Article 10**, which empowers the General Assembly to ‘*discuss any questions or any matters within the scope of the present Charter*’ - and these must be taken to include questions and matters relating to human rights.

Articles 1(3), 55(c) taken in conjunction with 56, and 76(c), Member States must be taken to have an obligation (among others too) to appoint to the United Nations able and knowledgeable representatives, and to instruct them to work with others constructively and effectively in ways provided for by the Charter, with a view to promoting respect for human rights everywhere.²⁸

What is to *promote respect for human rights everywhere*? Basically it is to work to bring about a certain state of affairs in which respect for human rights is established or secured in every part of the world by means of suitable and effective legislative and administrative measures.

Although, the United Nations cannot normally *force* states to adopt the measures necessary for securing respect for human rights, or to accept its recommendations for remedying human rights violations, or to ratify and implement human rights conventions prepared and adopted by it, the United Nations is to tries to *persuade* or *induce* states to do these things, by using good arguments and exercising its moral authority.²⁹

CONCLUSION

The Charter imposes on the United Nations the obligation to initiate international co-operation, and on the Member States the obligation to participate actively and in good faith in such co-operation, for the purpose of promoting respect for human rights and fundamental freedoms for all, by bringing about the adoption of suitable legislative and administrative measures in all independent states and dependent territories.

²⁸ *Id.* at 767.

²⁹ *Supra* Note 15.

It is to be noted that the Charter is a global constitution without a bill of rights. It neither defined the human rights nor were they enumerated therein. There is no provision in the Charter laying down *expressis verbis* that there is a legal obligation resting upon nations to observe human rights and fundamental freedoms. Courts in various states which have been called on to consider the legal effect of the Charter provisions relating to human rights have differed in their conclusions. Some have affirmed the binding nature and direct enforceability of the Charter provisions³⁰, while others have denied it³¹, others while considering them as binding have declined to enforce them on the ground that they had not formally incorporated as part of the law of the land.³² However, since the adoption of the Charter, International Human Rights Law has been developing in an unprecedented way, and presently, it has become a substantive part of international law as a whole.³³

“To deny people their human rights is to challenge their very humanity.”

– Nelson Mandela,
Former President of South Africa

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³⁰ *Oyama v. State of California* 322 U.S. 633 (1948).

³¹ *Kemp v. Rubin, A.D.* (1947).

³² *Re Noble*, High Court of Ontario, 15 A.D. (1949).

³³ *Supra* Note 16 at 767.

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