

NEW ZEALAND AND THE ORIGINS OF THE UNIVERSAL DECLARATION

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Dr Aikman here provides a personal perspective on the creation of the UDHR and, in particular, on the role of New Zealand in that process. Dr Aikman was adviser to the member of the New Zealand delegation who presented the New Zealand case at the Paris meeting of the UN General Assembly in September 1948.

I INTRODUCTION

Paul Lauren, Regents Professor of History at the University of Montana, has been researching the steps taken by individual members of the United Nations in promoting and encouraging respect for human rights. He worked for a period at Massey University examining New Zealand's record. In a recent letter from Montana he said:

...when I lecture on this subject, my audiences invariably are surprised to hear about the role that New Zealand played. In fact up to this point they have never heard of it. As you can imagine it gives me a great deal of pleasure to give credit where credit is due.

I shall say something about NZ's role at the United Nations Conference on International Organisation, held at San Francisco in 1945, and at the time of the adoption of the Universal Declaration of Human Rights at the meeting of the United Nations General Assembly, held in Paris in 1948.

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Address to New Zealand Institute of International Affairs Seminar commemorating the 50th Anniversary of the Universal Declaration of Human Rights.

II UN CONFERENCE AT SAN FRANCISCO

The Conference at San Francisco worked on the Dumbarton Oaks proposals for the Establishment of a General International Organisation prepared by the four Great Powers. The Chapters setting out the Purposes and Principles of the proposed organisation made no reference to human rights and fundamental freedoms.

The New Zealand Delegation, led by Prime Minister Peter Fraser, went to the San Francisco Conference with a proposal for a new paragraph in the Principles Chapter.¹ It read:

All members of the Organisation undertake to preserve, protect and promote human rights and fundamental freedoms, and in particular the rights of freedom from want, freedom from fear, freedom of speech and freedom of worship.

This amendment, as such, was not accepted, but there are references to human rights in the Preamble and also in article 1 which sets out the Purposes of the United Nations. Under article 1 it is a UN purpose:

To achieve international co-operation in solving problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion;

This text introduced the element of non-discrimination, but omitted the undertaking on the part of member states which was an important element of the New Zealand amendment.

The Dumbarton Oaks proposal did, in the Chapter dealing with "Arrangements for International Economic and Social Co-operation", make it one of the responsibilities of the proposed Economic and Social Council to "promote respect for human rights and fundamental freedoms". New Zealand actively supported two Australian amendments:

- 1 The Organisation should promote "observance of" as well as "respect for" human rights and fundamental freedoms.

¹ The United Nations Charter, the Dumbarton Oaks Proposals, the amendments advanced by New Zealand to the Dumbarton Oaks Proposals and the report of the New Zealand delegation are to be found in *Report on the Conference held at San Francisco 25 April - 26 June 1945 by the Rt. Hon. Peter Fraser, Chairman of the New Zealand Delegation* Publication No 11, Department of External Affairs, Wellington, 1945. See also Helen Fawthorpe, "Human Rights" in M Templeton *New Zealand as an International Citizen, Fifty Years of United Nations Membership* (New Zealand Ministry of Foreign Affairs and Trade, Wellington, 1995) 97 ["Human Rights"].

- 2 Members "should pledge themselves to take action, both national and international, for the purposes of securing for all peoples, including their own" economic and social objectives.

The purport of these amendments was eventually incorporated in articles 55 and 56 of the Charter. Under article 55 the United Nations is to promote:

- (c) Universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

And in article 56:

All members pledge themselves to take joint and separate action in co-operation with the Organization for the achievement of the purposes set forth in Article 55.

These two articles were to provide the starting point for the wide-ranging UN involvement in the development of human rights law and practice.

It is important to place them alongside article 2(7) of the Charter which reads in part:

Nothing contained in the present Charter shall authorise the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any State

Member states, including New Zealand, jealous of their sovereignty, attached a great deal of importance to the protection provided by this provision. As a Ministry of Foreign Affairs and Trade publication has since conceded: "New Zealand was to agonise over the apparent contradiction" between this provision and articles 55 and 56. New Zealand was eventually to resolve its dilemma in 1958 when it voted in favour of a UN resolution criticising South African racial policies.

III COMMISSION ON HUMAN RIGHTS

The Economic and Social Council set up the Commission on Human Rights with Eleanor Roosevelt as Chairperson. The first task was to define the human rights and fundamental freedoms which were to be respected and observed. It was decided that there should be an International Bill of Rights comprising three parts:

A Declaration of Human Rights, to be adopted by resolution of the United Nations General Assembly.

An International Covenant of Human Rights, under which states would accept legal obligations to observe the rights set out in the Covenant.

Measures for the implementation of the Declaration and the Covenant.

The Commission on Human Rights began work on the Declaration of Human Rights and, in 1947, a draft Declaration was sent to UN member governments for comment. The

Peter Fraser Government referred the Commission's proposals to a special Human Rights Committee comprising the Solicitor-General (Mr H E Evans), the Director of Education (Dr C E Beeby), the Director of the New Zealand Council of Educational Research (Mr A E Campbell) and Professor R O McGechan, Professor F L W Wood, Dr J C Beaglehole and Mr J O Shearer of Victoria University College (as it then was). The Committee's findings, with minor departmental modifications, were sent as the Government's views to the Commission. New Zealand was one of the few governments to make such a submission.

I had been studying in London and, in May 1948, I was sent to New York to observe and report on the Third Session of the Commission on Human Rights. The Session spent most of its time on the draft Declaration and I reported back to Wellington on its work. The Commission sent its draft on to an Economic and Social Council meeting in Geneva. The ECOSOC meeting referred the draft on to the session of the United Nations General Assembly that was to meet in Paris in September 1948.

IV PARIS ASSEMBLY 1948

The New Zealand Delegation at Paris, again led by Peter Fraser, included Mrs Ann Newlands, a Labour Party stalwart and former Mayor of Timaru. I was to act as her adviser.

Mrs Newlands presented the New Zealand case before the General Assembly's Third Committee which examined the draft Declaration at 83 lengthy meetings over a period of 3 months. We were well briefed, armed as we were with the Government's submission to the Commission and further comments from the Human Rights Committee in Wellington. I think it is fair to say that we were prominent and effective participants in the debate.²

At an early stage, Mrs Newlands expressed the New Zealand view that the Declaration should not be adopted at the Paris Assembly. It would, she said, be preferable if the International Bill of Rights, that is, the Declaration, Covenant and measures of implementation, were to be adopted as a whole. Our position was that the Covenant, which would create legal obligations, was the more important document. The adoption of a Declaration that was intended to be a statement of principles, with moral effect only, would prejudice the preparation of the Covenant.

New Zealand eventually went along with the majority view that a need for a definitive UN position on human rights called for immediate Assembly action. We did,

² *The United Nations, Report of the New Zealand Delegation on the First Part of the Third Regular Session of the General Assembly held at Paris, 21 September to 12 December 1948* Publication No 75, Department of External Affairs, Wellington, 1949, 5 and 96. See also "Human Rights", above n 1.

however, successfully sponsor a resolution calling on the Commission on Human Rights to continue to give priority to its work on the Covenant and measures of implementation.

Subsequent experience was to suggest the Assembly made the correct decision to proceed with the immediate adoption of the Declaration. One writer has described that adoption as a quickstep compared with the 18-year trudge to the adoption of the International Covenants on Civil and Political Rights and Economic, Social and Cultural Rights. It is likely that, if there had been delay, it would not have been possible to have arrived at a declaration that had the same unanimous support.

V ECONOMIC AND SOCIAL RIGHTS

A persistent area of disagreement of human rights standards has been whether economic, social and cultural interests should have the same status as traditional liberal values such as life, liberty and freedom of speech. Despite Franklin Roosevelt's inclusion of Freedom from Want in his Four Freedoms, the Western Allies as a group showed little enthusiasm for the inclusion of social and economic rights in the Declaration. On the other hand, the Eastern Bloc argued not only for their inclusion, but also that the responsibility of the state for their promotion be recognised.

On this issue, as on other issues, the Third Committee and the Assembly made relatively few changes to the draft Declaration that had been submitted by the Commission on Human Rights. The Declaration proclaims economic and social rights, but responsibility for their implementation is placed on states only in the very general terms provided in article 22 of the Declaration.

In the absence of Mrs Newlands, I was given the opportunity to state the New Zealand position on this issue before the General Assembly:

My delegation ... attaches equal importance to all the articles ... At the same time we regard with particular satisfaction the place which is given in the declaration to social and economic rights. Experience in New Zealand has taught us that the assertion of the right of personal freedom is incomplete unless it is related to the social and economic rights of the common man. There can be no difference of opinion as to the tyranny of privation and want. There is no dictator more terrible than hunger. And we have found in New Zealand that only with social security in its widest sense can the individual reach his full stature. Therefore it can be understood why we emphasize the right to work, the right to a standard of living adequate for health and well-being, and the right to security in the event of unemployment, sickness, widowhood and old age. Also the fact that the common man is a social being requires that he should have the right to education, the right to rest and leisure, and the right to freely participate in the cultural life of the community.

These social and economic rights can give the individual the normal conditions of life which make for the larger freedom. And in New Zealand we accept that it is the function of government to promote their realization.

I can contrast the statement made to the Assembly by Mrs Eleanor Roosevelt, United States representative on the Third Committee:³

... my Government has made it clear in the course of the development of the declaration that it does not consider that the economic and social and cultural rights stated in the declaration imply an obligation on governments to assure the enjoyment of these rights by direct governmental action.

VI TRADE UNIONS

New Zealand took positions on a number of other articles. Thus our conciliation and arbitration system at the time gave us particular difficulty with paragraph 2 of article 20 which reads: "No one may be compelled to belong to an association." and with the wording of paragraph 4 of article 23. We voted against article 20(2), while the Third Committee accepted a New Zealand wording for article 23(4). It now reads "Everyone has the right to form and join trade unions for the protection of his interests" rather than "Everyone is free to form and join trade unions".

VII RIGHT TO PETITION

One of our proposals to which New Zealand was to remain faithful over the years was that the Declaration should contain a right to petition. This, we said, was a fundamental human right. However, at Paris, we accepted that this must await the establishment of international implementation procedures.

VIII ADOPTION OF DECLARATION

The Universal Declaration was adopted on 10 December 1948 by a resolution of the General Assembly of the United Nations, having the force of a recommendation only (at no stage were signatures involved). There were 48 votes in favour and 9 abstentions - the six Eastern European states, Honduras, Saudi Arabia and South Africa.

IX THE TWO COVENANTS

After the adoption of the Declaration, the Commission on Human Rights proceeded with the task of putting the Universal Declaration into the form of legal obligations. It

³ Glenn M Johnson "The Contribution of Eleanor and Franklin Roosevelt to the development of International Protection for Human Rights", *Human Rights Quarterly*, Vol 9 No 1, February 1987, 19, 35.

was decided that there were to be two Covenants, one on Civil and Political Rights and the other on Economic, Social and Cultural Rights.

The Commission passed the Covenants on to the General Assembly in 1954, but they were not adopted until 1966. In the meantime, the cold war intensified and many new members - mostly from the developing world - were being admitted to the United Nations. The Third Committee became preoccupied with the issue of self-determination and each of the Covenants was to include the right to self-determination. Next, apartheid in South Africa and colonial problems in Africa led to emphasis on racial discrimination. As a result, the International Convention on the Elimination of All Forms of Racial Discrimination, adopted in 1965, preceded the Covenants.

The late Professor Quentin-Baxter, who frequently represented New Zealand on the Third Committee and who was for a time a member of and Chairman of the Commission on Human Rights, has provided a graphic description of the atmosphere in the Committee:⁴

There was an air of irreverence and demagogy. In great arguments, such as that of self-determination, the debate was repetitious, extensive, extravagant and heated. The people who had to rely on speeches written for them, or on detailed instructions from their governments, were like crossbowmen at Crecy - absolutely outmanoeuvred by their more mobile opponents.

Nevertheless, the Committee eventually adopted the two Covenants in 1966. The 35 ratifications required to bring them into force were not made until 1976. New Zealand signed both in 1968, signalling its intention to ratify, and ratified them in 1978.

Instead of a separate part in the Bill of Rights dealing with measures of implementation, as originally contemplated, each of the Covenants contains its own implementation procedures involving periodic reports to the United Nations by the ratifying state.

X RIGHT TO PETITION

I expect Don McKay will discuss these procedures, but I should like to refer to the right of petition espoused by New Zealand in 1948. Neither Covenant contains the right to petition, but the Assembly did adopt an Optional Protocol to the Covenant on Civil and Political Rights. This gives individuals, who have exhausted their domestic remedies, the right to complain that their rights under the Covenant have been violated. The complaint is made to the Committee on Human Rights set up under the Covenant. New Zealand acceded to the Protocol in 1989. Prime Minister David Lange said at the

⁴ R Q Quentin-Baxter, "International Protection of Human Rights" in K Keith (ed) *Essays on Human Rights* (Sweet and Maxwell, Wellington, 1968) 132, 137.

time: "New Zealand's willingness to submit its human rights record to international review is a clear demonstration of our commitment".

XI CORE CONVENTIONS

Despite its troubles the Third Committee was able to produce a great deal in the way of Conventions and Declarations establishing international standards in the field of human rights. There are six human rights treaties that can be regarded as having core status. Besides the two Covenants and the Racial Discrimination Convention, there are the Convention on Elimination on All Forms of Discrimination against Women, the Convention on the Rights of the Child and the Convention against Torture and Other Cruel Inhuman and Degrading Treatment or Punishment. New Zealand is a party to all six.

Before I finish, I return to two issues regarding the Declaration: its legal status and a Maori translation.

XII THE DECLARATION AS LAW

As a resolution of the Assembly of the United Nations, the Universal Declaration was to be accorded only moral and political authority. Nevertheless, there were those who, even in 1948, argued that, since the UN Charter imposed the legal obligation on member states to observe human rights and fundamental freedoms, the Declaration setting out those rights and freedoms should be given greater legal status than a mere resolution of the Assembly. This view has since gained more credence. The Declaration has become an international standard by which the conduct of governments is judged. It has inspired a whole cluster of treaties, including human rights conventions in Europe, South America and Africa. It is reflected in other international conventions and declarations, in national constitutions and in the decisions of international and national courts. As the result of this undisputed recognition of the principles of the Declaration - in particular the articles enunciating civil and political rights - it is now generally recognised that the Declaration has acquired the force of law as part of the customary law of nations. This means that the Declaration is legally binding on all states whether or not they are members of the United Nations.

In addition, the Declaration is now accepted as the authoritative interpretation of the human rights provisions of the United Nations Charter and, as such, binding on all members.

XIII MAORI TRANSLATION

There has been a suggestion that there has been no Maori translation of the Universal Declaration of Human Rights. However, I must point out that a translation was published as long ago as 1951.

In response to a General Assembly request that the Declaration should be published in all possible languages, a Maori translation was prepared. A first translation was made by W T (Bill) Ngata of the Internal Affairs Department. This was worked on by a drafting committee consisting of M R (Mick) Jones, Pei Jones, Charles Bennett (later Sir Charles Bennett) and John Grace (later Sir John Grace), along with Bill Ngata. I attended some of the meetings to offer assistance with the meaning of the Declaration.

Further improvements in the text were made as a result of suggestions by Sir Apirana Ngata. The English and Maori texts appeared in a Department of External Affairs publication.⁵

At Paris we supported the inclusion, in article 2 of the Declaration, of the reference to Trust and Non-Self-Governing territories. Arrangements were, therefore, made for a translation of the Declaration into Samoan.⁶

XIV CONCLUSION

I have necessarily had to confine this address to the progress that has been made in establishing international standards for the protection and observance of human rights. These days our concern must be with the progress that has been made in the implementation and enforcement of those standards. As I suggested at the beginning, a feature of this progress has been the increasing incursions on state sovereignty that could not have been contemplated by those signatories of the United Nations Charter, including New Zealand, which placed their faith in the domestic jurisdiction protection of article 2(7).

I leave to others the examination of this and other issues.

5 *Universal Declaration of Human Rights: Ko te Whakapuakitanga o nga Mana Whakatika i te Noho a te Tangata i te Ao* Publication No 87, Department of External Affairs, Wellington, 1951.

6 *The United Nations and Western Samoa*, Apia, 1952.

