

The Binding Nature of the Universal Declaration of Human Rights

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Abstract

On 10 December 1948, the United Nations General Assembly adopted the Universal Declaration of Human Rights, considering it an ideal to be followed by all peoples and nations. Every member of society has a duty to respect and uphold these rights and freedoms. These principles are affirmed through national and international standards and effective global practice.

The Universal Declaration of Human Rights carries a shared moral and ethical value for all humanity, having become a reference for states.

These principles have been enshrined in the domestic laws of states and in international conventions, which has given them the character of peremptory norms, particularly through practice.

Keywords: Human. Rights. Universal. Resolution. Declaration

Introduction:

The Universal Declaration of Human Rights constituted the first step toward building the legal philosophy of the human rights system, which may be regarded as a constitution for human rights and for international, regional, and national human rights instruments. This is because the document embodies lofty principles that may not be violated or restricted except within the framework of the law, and only with respect to some of them and not others.

Several issues have also been raised concerning the resolutions of international organizations as a source of international law, given that such conduct is issued by a subject of international law. For an organization to possess the capacity to issue binding resolutions, it must represent a distinct entity. The legal value of the resolutions of international organizations has given rise to two principal issues that have provoked intense debate among contemporary international law scholars.¹

The first issue concerns whether resolutions of international organizations possess definite binding force with respect to members of the international community, while the second concerns whether resolutions of international organizations may be regarded as a source of contemporary international law.²

This type of resolution is characterized by a special nature that enables it to constitute an act bearing binding force in itself (First Section). Resolutions of international organizations consist of multiple categories, depending on the field and the organ that issued the resolution. A declaration is one form of expression to which international organizations generally resort on rare occasions in order to enshrine lofty principles (Second Section).

1/ The Acts Issued by International Organizations

The United Nations undertakes legal acts called resolutions, some of which are binding, such as those provided for in (Article 4/2) of the Charter, or acts under (Article 11/2), recommendations (Article 4/2), discussion (Article 11), consideration (Article 11), approval (Article 17), permission (Article 19), and invitation (Article 33/2).³

This terminological diversity concerning the various acts of international organizations resulted from the legal effects that the organization seeks to achieve when issuing one of these legal acts, or from the competence of the body issuing the legal act. Although they differ in the degree of their legal value, contemporary developments in the international community have been accompanied by transformations concerning the sources of legal rules that may be called traditional sources. However, not all acts of international organizations constitute sources of international rules; only some of them do, possessing a set of characteristics under special circumstances.

1/1/International Resolutions in the Acts of International Organizations

Resolutions issued by international organizations differ according to the context in which they are issued and the purpose intended by their issuance. What concerns us in this section is the resolution that may be regarded as the axis of the acts issued by international organizations, given its effects on international rules and the position it occupies on the agenda of international organizations.

Accordingly, international legal scholarship has surrounded the resolution with varying concepts, whether in terms of the authority issuing the resolution or the scope covered by it. This type is considered normative when it possesses the characteristics that make it a source of international law (First). Among the acts issued by international organizations, we address one of their models, namely, the declaration, and in particular, the Universal Declaration of Human Rights.

1/1/1/ The jurisprudential debate on the resolutions issued by International organizations

International legal scholarship has been divided in its attempt to provide a comprehensive and accurate concept of the resolution. Two doctrinal approaches have emerged: the first holds that a resolution should be attributed to the legislative organ of the international organization (first); the second affirms that all organs of the organization are authorized to issue international resolutions, but differs in dividing the resolution itself into two concepts (the resolution in the general sense and the resolution in the specific sense) (second).

First: The legislative body of the international organization as the legitimate authority for issuing international resolutions

A resolution is a legal instrument attributed to a legislative organ of an international organization of a global scope, regardless of its content, the name it is called, and the procedures followed in issuing it⁴.

However, this concept cannot be taken at all, as it is not possible to recognize that resolutions are issued by a single organ in the organization, since the resolutions of international organizations are issued by more than one organ⁵.

Dr. Bouyahia Jamal comments on this. "Such resolutions are consistent with the proposal advocated by newly independent states for greater 'democratization' of international relations, based

on absolute equality of sovereignty between them and major powers - in the legislative body of international organizations (the United Nations General Assembly) - which creates a certain degree of international legitimacy based on the fair representation of the will of all states."⁶.

We support this argument put forward by the professor, not because of our affiliation with these developing countries, but from a legal and logical perspective, given that countries are equal in sovereignty regardless of their weight in the international arena, and that the majority should have the upper hand in making moderate resolutions regarding subjects of international law.

Second : The Extension Of Horizontal resolution-making authority of the international organization's bodies

The resolution is seen as a formal, voluntary statement of the international organization's intent or It is a statement It comes from the intent Regarding the international organization, this statement can be in a binding format. and Here we see a limited idea of the resolution. A statement of the organization's intent is given in the form of A Sometimes, and it can also be in a non-binding format. This is what is generally called a recommendation.

In this regard, Professor Ibrahim Al-Shibli considers, concerning decisions falling within the authority of organizations: "They comprise every form of expression of the organization's will, whether such expression takes a non-binding form, as in the case of recommendations; a partially binding form, such as declarations; or a legally binding form, such as agreements, binding rules, or decisions." However, Professor Al-Shibli himself combined unilateral and treaty-based acts, although the latter fall outside the scope of our study in this chapter.⁷

As for Muhammad Sami Abdel Hamid, he approaches the matter from the perspective that: "A decision is every expression by the international organization-made in the manner established by its constitution and through the procedures it sets forth-of its own will to produce certain specific legal effects, on a binding or recommendatory basis⁸.

In all cases, the decision has legal effects, even if it is not binding in nature, according to Mohamed Sami Abdel Hamid.

A-The decision in the general sense

It includes every act issued by an international organization, whether in the form of a recommendation, declaration, regulation (decision), and whether or not it has binding force.

B-The decision in the specific sense

It refers to the binding legal act; for this reason, this designation is associated with the term "regulation." These acts are headed by those issued by the United Nations Security Council pursuant to Chapter VII..⁹.

1/1/2/ The basic structure of international organizations' resolutions

International organizations' decisions often consist of two parts: a preamble and the operative part of the subject (first). The latter contains essential elements that make it a unilateral international legal act producing legal effects (second), and it also goes through several steps before being issued in its final form.

First: The technical structure of international organizations' resolutions

As indicated above, the decision consists of two parts: an introduction explaining the objectives and purposes of the decision, as well as the circumstances that led to its issuance. It also refers to previous decisions or links them to other actions undertaken by the organization.

The second part, which is the substantive and operative part, consists of a set of provisions intended to take a particular measure or respond to previous international provisions, using paragraphs or words from decisions preceding its issuance, expressed formally in the form of a binding rule.¹⁰

Second: Basic Features of Decisions of International Organizations Some characteristics make international decisions decisions of a normative nature, qualifying them to constitute a source of legislation for the rules of international law. These characteristics are as follows:

A- The Legal and International Nature To establish the legal nature of any decision, we must examine the direction of the will of the person issuing the decision. The result of that will must be the creation of legal effects in accordance with international systems and rules.

A decision constitutes an international act or conduct if it expresses the will of a person subject to international law, based on the organic criterion.

B- The Exercise of a Unilateral Will in Adopting the Decision

In issuing their decisions, international organizations express, in an atmosphere of independence and autonomous will, a will distinct from that of their constituent members. This grants them the freedom to directly exercise their powers; therefore, the decision is attributed to the body as a whole, that is, as an international legal person.

C- Binding Nature of the Decision

The issuing body seeks to establish, amend, or terminate a right; consequently, the decision's effect extends to all members of the organization, regardless of the consent of any member belonging to the organization.¹¹

The decision inherently carries binding force, in order to make the addressee aware of the necessity of complying with and submitting to it, particularly with regard to the issue of sanctions, which is usually associated with the characteristic of binding force.

Scholarly opinions differed regarding this idea. Some scholars denied that the sanction of a legal rule extends to the internal systems of states, on the grounds that the international legal system has a special nature. However, in practice, the sanction of a legal rule produces its effects on subjects of international law, and the legal rule retains its value and existence despite its violation or negligence in applying its provisions.

D- Generality and Abstraction

D-1 Generality

The decision is issued with a general character, which does not necessarily mean that it is addressed to everyone or concerns a specific number of persons; in that case, it is considered an individual decision.¹²

D-2Abstraction

Generality and abstraction are interrelated and together constitute a legal rule. The idea of abstraction means that the text always remains capable of being applied to a similar event in the future, despite changes in legal positions. If, in the future, the legal positions become incapable of being governed by the rule, the characteristic of abstraction ceases to exist¹³.

Third: Stages of Adopting a Resolution

The internal law of the international organization guarantees each member the right to initiate and submit a draft resolution. However, the final wording is issued in the name of the organization as a whole after the resolution has been adopted. The draft is then formally referred to the Secretariat and distributed to all members in the official languages. It is subsequently included on the organization's agenda, and the draft undergoes a series of negotiations following the necessary revision and amendments that may be made to it under ordinary circumstances. In this case, the resolution is redrafted and distributed to the members before the final vote. Thus, the voting process—which is considered a highly important stage—concludes with the adoption of the draft resolution and its legal embodiment. The organization therefore employs either the consensus method or the voting method.¹⁴.

Fourth: The different forms of resolutions of international organizations

The legislative body has come to assume powers that were the responsibility of the executive authority of the organization, namely the power to set regulatory rules, since the term legislation has come to mean an action issued unilaterally by the body responsible for establishing binding legal rules, from which various forms of resolution are formed.

1_ Binding or executive resolutions

The binding nature of the resolution pertains to the objective to be achieved through its issuance, as well as the means used to achieve it. There are two types of binding resolutions:

A-Binding resolutions in all their aspects

And they are decisions that have binding and direct legal effects

b) Binding resolutions in terms of purpose without The means

It is represented enthuse resolutions bind the addressee to the results that must be achieved, without restricting him to any means of achieving these results.¹⁵.

2– The Regulation

In legal usage, it refers to decisions issued by an international organization. The term “regulation” does not differ from “decision” in its legal effects, even if it is presented in another form of a decision. A regulation is considered a modern instrument for codifying and developing international law, keeping pace with the changes in the structure of the international community. It has become an instrument for enacting rules of international human rights law..¹⁶.

3- The Recommendationat

It is a type of resolution through which an international organization calls for a specific resolution or stance to be taken, directed towards a country, a group of countries, or one of its branches.,or to any other international organization or body.It is characterized by the fact that it does

not create a right or obligation in favor of the person addressed by it, and therefore it does not generate any legal binding force.¹⁷.

A - Specific recommendations

The organization is only authorized to issue or refrain from issuing such a resolution, for example, accepting or rejecting a member of the United Nations.

b - The recommendations are not specific

Here, the organization is given full authority. An example of this is the Security Council's authority to resolve disputes peacefully.¹⁸.

4-Declaration

It is one of the legal forms and means through which the organization confirms certain fundamental principles concerning international affairs and confers upon them a binding character. This view is established in contemporary international doctrine. Among its proponents is Professor Gerhard von Glahn, who states: "If General Assembly declarations affirm principles that the United Nations considers legally binding, they in fact restate the legal customs of the member states of the United Nations and sometimes interpret the meaning of such customs as understood by the states that approve them.."¹⁹.

1/2/ The Issue of the Legal Characterization of the Instrument Containing the Universal Declaration of Human Rights

Legal scholarship and jurisprudence play an effective role in clarifying the importance of decisions issued by international organizations in establishing legally binding rules at the international level, which may be regarded as a new source not included in Article (38) of the Statute of the International Court of Justice when this provision was drafted.²⁰, The Declaration is one of the innovative legal mechanisms and forms of the acts of international organizations (First), and neither legal scholarship nor judicial decisions have reached a consensus regarding the legal value embodied in the Universal Declaration of Human Rights (Second).

1/2/1/The Declaration as a Legal Act in the Work of the United Nations

The declaration is considered a relatively modern method in the field of international law. Although this method has become integrated into the organizational activity of the United Nations, it represents a small proportion compared with the number of resolutions adopted by the General Assembly. Some scholars firmly assert that the principal characteristic of declarations derives from their aim of expressing, in a solemn and general manner, principles of great importance and lasting and fundamental value. This is evident from a United Nations study, which states: "A declaration, in United Nations practice, is a formal instrument resorted to only in extremely rare cases concerning matters of major and permanent importance, in which the highest degree of compliance is expected."²¹.

This introduction makes clear the importance of the declaration in terms of the subject matter in which it is issued and the form it assumes in establishing the rules of international human rights law. Within the framework of United Nations practice, no distinction is made between a recommendation and a declaration from a purely legal perspective, and it is not binding on States. By

simply conferring the designation “declaration” on a recommendation, it acquires the certain formal character of a declaration, creating the profound impression that the international community will comply with it. Over time, the declaration becomes tantamount to custom and a means of consolidating rules binding on States.

In this regard, we refer to one of the declarations that was followed by the adoption of an international treaty, namely the Declaration of the Rights of the Child, issued on 20 November 1959—which is considered a supplement to the Universal Declaration of Human Rights—and this declaration formed the foundation for the Convention on the Rights of the Child.²².

1/2/2/The Binding Force of the Legal Text of the Universal Declaration of Human Rights from the Perspective of International Jurisprudence

Asserting that the Universal Declaration has no legally binding value whatsoever contradicts the logical interpretation of this document, in order to establish the relativity of this preconceived assertion. Theories have differed on this issue, which we will address as follows:

First: The Jurisprudential Trend Denying the Binding Force of the Universal Declaration of Human Rights

The opposing trend proceeds from denying the legal value of instruments relating to human rights, foremost among them the Universal Declaration of Human Rights. Its proponents reject considering it an implementation of Articles 55 and 56 of the United Nations Charter, and recognize it only as having moral and political value, in addition to the fact that the Universal Declaration of Human Rights does not specify how it is to be implemented.

Moreover, it is not an international convention, and was not subject to ratification by all member states. Therefore, according to this trend, it has only a purely moral and philosophical effect. Its rules are also highly general, its principles are characterized by ambiguity, and it contains no specific provisions capable of enforcement.²³.

The **first** to deny the binding force of the Universal Declaration of Human Rights were its drafters, including:

Mrs. (Roosevelt) considered the Universal Declaration of Human Rights neither a treaty nor an international convention. It neither possesses nor seeks to acquire legal force. Rather, it is merely a declaration of the principles of human rights and fundamental freedoms.

The French delegate (Kelsen) likewise followed this view, describing it as the political and legislative path for States in the field of human rights, and as a document for interpreting and applying the provisions of the Charter.²⁴.

The jurist (Gerhard Van) elaborates on this matter, stating: “Declarations and resolutions possessing more than quasi-legal authority generally require the Member States to conclude a subsequent agreement based on the initial declaration or resolution ... Therefore, General Assembly declarations and resolutions essentially establish standards for State conduct; if they are positively approved through the conclusion of related agreements, they represent the first stage in creating new rules of international law...”²⁵.

Meanwhile, Professor (Brownlie) affirms that: “The Declaration is not a legal document... However, its great importance lies in considering it a fundamental instrument prepared by the General Assembly to interpret the provisions contained in the Charter... He adds... There is no doubt that it is characterized by ambiguity... Nevertheless, the indirect legal effects of the Declaration cannot be underestimated...”²⁶.

As for jurist (Shannon), he considers that the Declaration merely reiterated certain rights without specifying some important issues. For example, it mentions the human right to life, work, or to have a specific nationality, without attaching any conditions for enjoying these rights or defining how they may be exercised.

He also considers that such a description can only be implemented through subsequent national or international measures, such as enacting legislation to give effect to these rights or concluding an international convention, for example, containing practical procedures for achieving the stated objectives.²⁷.

Second-Jurisprudential views affirming the binding nature of the Universal Declaration of Human Rights

Proponents of this view maintain that a large number of decisions of international organizations have binding force. This is evident from the opinion of Professor (Paul Ritter), who stated: “These decisions are issued by bodies endowed with the authority to impose general and permanent rules on Member States, and are addressed to them in general terms.”²⁸.

Along the same lines, Mohamed El-Said El-Dekak considers that the binding force of the Universal Declaration lies in its being binding as to its objective, but not as to the means. However, states remain free to choose the method or means of achieving that objective. The spirit of this idea was not entirely absent during the discussion of the draft Declaration, but it did not assume the significance attributed to it by contemporary jurisprudence, as state representatives—during the early period of the United Nations’ activities—were wary of anything that might imply the imposition of an obligation on Member States.²⁹.

On the one hand, and on the other hand, it suffices to refer to the speech delivered by the Belgian delegate, in which he stated: “The recommendation at which the work of that committee will arrive (meaning the Universal Declaration of Human Rights) may represent a precursor to an obligation incumbent upon the States at the United Nations ... This document will acquire indisputable legal value; it may not be binding in the strict sense, but it will create an obligation incumbent upon States to seek to confer legal value upon the aforementioned Declaration...”³⁰.

The practical approach adopted by States acknowledges this idea. With regard to international precedents, it is evident that the principles contained in the Universal Declaration of Human Rights “implant” in the memory of States that binding force. In the same context, the various means adopted by States confirm that these principles have been put into practice.

Some legal scholars consider that the Universal Declaration of Human Rights contains an official interpretation or an updating of the substance of the human rights and freedoms referred to in the

provisions of the Charter of the United Nations, particularly Article (56), which provides: “Members of the United Nations undertake to take joint or separate action in cooperation with the Organization for the achievement of the purposes set forth in Article (55).³¹ The most important of these is respect for human rights and fundamental freedoms for all. The Declaration reinforced the work of the United Nations through the legal character of the principles it contained.

Thirdl-The prevailing opinion

Modern jurisprudence has adopted it, considering that the provisions of the Universal Declaration of Human Rights are now viewed as an integral part of customary international law, and that the Declaration is stronger than a recommendation.³² Consequently, they constitute binding rules. The provisions of the Declaration may bind States as international customs because they constitute a codification of customary international law,³³ and derive this force from general international practices recognized as legally binding. It has become an integral part of international law, and its provisions constitute universal binding rules and have acquired customary force..³⁴

2/ The Conformity Value of the Universal Declaration of Human Rights

The Universal Declaration of Human Rights came as a logical consequence of completing the details addressing human rights and fundamental freedoms introduced by the Charter of the Organization. This subject became not only necessary but also an urgent, fundamental issue: the rights and freedoms had to be defined simply, in a clear, independent, and comprehensive form, so that everyone-governments, bodies, and individuals-could understand, consult, and act upon them.

The former Secretary-General of the United Nations, Javier Pérez de Cuéllar, affirmed: “The Universal Declaration is a milestone in human history.”³⁵

The text of this Declaration includes a long list of rights and freedoms, including those relating to civil and political, cultural, economic, and social rights (First). It was not easy to establish a universal document encompassing and reconciling these rights amid the opposing and heated trends prevailing at that time, as drafting the Universal Declaration of Human Rights constituted an unprecedented challenge (Second).

2/1/Content of the Universal Declaration of Human Rights

The Universal Declaration of Human Rights comprises a preamble or introduction and thirty articles. These articles contain a list of political, civil, social, cultural, and economic rights.

The San Francisco Conference refused to include a list of human rights in the Charter of the United Nations. The Declaration was therefore produced after considerable effort, in simple and comprehensible language, and was divided into a preamble and a body (First). The body contains these two categories of rights: civil and political rights, the latter receiving the greatest attention in the body, followed by the second category, namely economic, cultural, and social rights (Second). The body concludes with several final articles addressing detailed matters of a general nature.

2/1/Content of the Universal Declaration of Human Rights

It includes The Universal Declaration of Human Rights: Preamble and Thirty Articles ³⁶These materials contain a regulation of political, civil, social, cultural and economic rights.

The San Francisco Conference refused to include the regulation of human rights in the United Nations Charter. The declaration came after a long struggle in simple, understandable language and adopted the division of the declaration into a preamble and body (first), and the text contains these two regulations of civil and political rights. The latter received the most attention In the text, then followed by the second category ,It is the sum of economic rights, Cultural and social (secondly), and the text ends with some concluding material as detailed issues of a general nature.

2/1/1/A descriptive study of the content of the Universal Declaration

Before delving into the issue of rights contained in the Universal Declaration, we will begin with a descriptive study of this model. Where do we begin? Analysis of the language and content adopted by the drafters of the Universal Declaration of Human rights.

First: The introduction (preface)

It calls for respect for human dignity, freedom, justice and freedom of speech. It enshrines the right to belief and equality between men and women. It rejects injustice and tyranny. It calls for peace in the world. The latter includes seven merits which can be divided into two categories

1-First category

This category contains six different paragraphs in terms of the purpose it aims to achieve. We find that its importance is justified by human dignity, the consequences of contempt for human rights, and the necessity for the law to protect it. It shows the importance of the United Nations Charter, which affirmed the belief of peoples in human rights, and in the pledges made by states to cooperate with the United Nations in order to ensure the observance and respect of human rights and fundamental freedoms³⁷.

2-Second category

It calls for respect for human dignity, freedom, justice and freedom of speech. It enshrines the right to belief and equality between men and women. It rejects injustice and tyranny. It calls for peace in the world. The latter includes seven considerations, which can be divided into two categories. As for the considerations contained in this category, they come in a relatively long paragraph, the content of which is that the General Assembly calls for this Universal Declaration of Human Rights as the common level that should be targeted by all peoples and nations so that every individual and body in society, always keeping this Declaration in mind, seeks to consolidate respect for these rights and freedoms through education and upbringing And take steady national and global measures to ensure its effective global recognition and observance among the countries and members themselves and the peoples of the world under their authority³⁸.

What is interesting about the introduction is that it came in a broad and continuous form of the concept of human rights compared to the form in which the concept of human rights came in the United Nations Charter.³⁹.

Second: In the text

The Universal Declaration contains thirty articles that define human rights and fundamental freedoms, which are naturally guaranteed to all men and women without discrimination. Article 1 mentions the scope of fundamental freedoms and personal freedoms, prohibits slavery and servitude,

enshrines the right to the inviolability of legal personality, prevents torture and punishments, cruel or brutal treatment, and degrades one's dignity.

In order to enshrine these principles and achieve ideal conditions or human aspirations for the protection of human rights, the drafters of the Declaration made this division.

This text takes the form of numbered articles that include a number of subparagraphs that are also identified by numbers.

What distinguishes this declaration from other human rights declarations in terms of form compared to some declarations is that it highlights the special character in which the Universal Declaration of Human Rights was issued. Take, for example, the Declaration of the Rights of the Child,⁴⁰ which consists of an introduction and ten paragraphs, each of which embodies an independent principle.

This special structure of the Declaration was carried out by the Economic and Social Council, which is considered one of the United Nations bodies, as it ultimately formed an international human rights regulation, which was approved by this Council.

2/1/2/Duality of Rights Set Forth in the Universal Declaration of Human Rights

The first and second articles contain the fundamental principles on which the Declaration is based. The first affirms that the right to life and equality is a right with which the individual is born, while the second develops the preceding idea by establishing the fundamental principle of equality and non-discrimination with regard to the enjoyment of human rights and fundamental freedoms. We note the formulation of concluding provisions in Articles (28 to 30), which recognize matters that are relatively separate from one another and of a general nature.⁴¹

First: Civil and Political Rights

Articles (1, 2, 3, 7) of the Universal Declaration of Human Rights stipulate the right to equality in dignity and fraternity, and that all people are equal before the law without discrimination and have equal protection against any discrimination. There shall be no slavery, no feudalism, no class privileges for nobles and churchmen, and no infringement of women's rights. The Declaration also recognizes equality in occupying public positions according to academic qualifications.

The Declaration affirmed the most important civil and political rights, including the right to personal liberty, which is the individual's freedom to live the life they choose, provided it does not infringe upon the freedom of others; the protection of their person from any attack; the prohibition of arrest, punishment, or imprisonment except in accordance with the law; the individual's freedom of movement and travel; the right to seek asylum in another country to escape persecution; and the individual's right to personal security. It also stipulated that no one shall be subjected to torture or to cruel, degrading, or inhuman treatment or punishment.⁴²

second: Economic ,social and Cultural rights

They are contained in Articles 22 to 27, with Article 22 serving as an introduction to the articles defining these rights. They include every individual's right to social security; the right to work, rest and leisure; the right to an adequate standard of living to maintain their health and well-being; as well as the right to education and to participate in social and cultural life. The Declaration

recognizes that everyone has the right to enjoy a social and international order in which these rights and freedoms can be fully realized. It also highlights the duties and obligations incumbent upon the individual toward their community⁴³.

2/2/Challenges in Issuing the Universal Declaration of Human Rights

The Universal Declaration is of exceptional importance due to its universal nature, as it calls upon all States to respect the provisions contained therein. In addition to being a lofty objective, the General Assembly proclaimed it as the common ideal to be attained by all peoples and nations. It is also considered to possess significant political, legal, and moral value, and it contributed to the adoption of many international conventions that regarded it as a reference⁴⁴.

2/2/1/ The Basic References for Drafting the Universal Declaration of Human Rights

The task assigned by the United Nations to the Human Rights Commission was described as nearly impossible at that time. The idea was to create a basic reference for human rights. The starting point was to establish a precise definition of the term “human rights” and to formulate what was called the International Bill of Rights for the entire world.

This task raised philosophical and political challenges, as a conflict arose over what exactly was meant by human rights and what their source was: did they come from God, nature, reason, or governments? To whom did they apply? Could all people claim them? What was the relationship between human rights and “peace,” “justice,” and “security”? Were some rights—such as civil and political rights—more important than others—such as economic, social, and cultural rights—or were they interdependent, indivisible, and equal in value? These issues could also arise during discussion of this idea⁴⁵. We will later attempt to examine these circumstances and the sensitivities that arose among the various currents at that time, as well as the efforts made to bring together the ideologies, policies, and other differences in a document consisting of a preamble and thirty articles.

First: Political and Historical Backgrounds

The meeting of the Human Rights Commission to draft the text of the Universal Declaration of Human Rights coincided with the end of the Second World War and the Allies’ victory in the war, at a time when many international developments and crises had begun to show negative signs:

The Soviet Union—formerly—began imposing the Iron Curtain on Eastern Europe, and the Cold War between the USA and the former Soviet Union intensified.

- The strategic arms race, which included new nuclear weapons of mass destruction.
- The outbreak of conflicts within the colonial empires, and the emergence of the idea of the right to self-determination.

Agreement was far from attainable, since the members of the newly formed United Nations had governments adhering to widely divergent political systems. Thus, the problem of national sovereignty and domestic legal authority emerged, as several national governments instructed their representatives on the committee to avoid approving any binding or implementation-related measures, and to focus instead on the declaration alone. Surprisingly, something was accomplished despite all these challenges.⁴⁶.

The declaration came in language worthy of attention and reflection, as Article 1 stated: “All human beings are born free and equal in dignity and rights.” This sentence alone boldly affirmed that human rights are (natural). In Article 2, the answer to the question of who should enjoy human rights was clear and definitive. It began with the phrase “everyone,” thereby avoiding any discrimination or interpretation that could be understood.⁴⁷

Second: The Western liberal influence

A/Procedurally

The General Assembly undertook preparatory work for the issuance of the Universal Declaration of Human Rights, which culminated in the adoption of the Declaration by Resolution No. (217) during its third session, held at the Palais de Chaillot in Paris on 10/12/1948, on the initiative of the Fifth Committee. Its prominent members were from Western countries; the Committee was chaired by “Eleanor Roosevelt,” widow of the President of the United States, and included the Frenchman “Cassou,” “Chang” from China, “Hansamhta” from India, and “Charles Malik” from Lebanon. These non-Western members subscribed to a liberal Western orientation. At that time, the General Assembly had (58) members, most of them from Western countries. It was adopted by a majority of (48) votes, with eight countries abstaining and two absent..⁴⁸

b/ In substantive terms

The emergence of human rights law stems from the heart of Western liberal traditions, which reduced the contributions of other civilizations to the development of the universal formulation of human rights. Initially, the concept of human rights sought its roots in Greek philosophy, based on the idea of natural law, where the concept of principles of justice was proposed as a foundation for human rights. In the search for a non-religious basis, the idea of the social contract emerged, essentially grounded in the secular origin of the state. Ultimately, the concept of human rights settled on the idea of utility.⁴⁹

2/2/2/ Human Rights: Between Universality and specificity

In this section, we attempt to examine the two concepts: do they carry contradictory implications, or are they complementary? And how did the text of the Universal Declaration reconcile the two concepts within the framework of human rights?

First: Factors That Made the Human Rights System Merely a Declaration without Binding Force

- 1- The sense of customary and cultural superiority that seeks to be universal despite contradicting other customs and cultures.
- 2- The idea that power is the source of rights, which grants military power the right to possess the country it has invaded—a view repeated by U.S. Secretary of Defense Ronald Rumsfeld regarding the Palestinian territory occupied by the Zionist entity (the State of Israel).
- 3- The profit criterion, which remains the supreme law in the market economy, and the various consequences resulting from it, reaching the point of fraud and corruption. It is a decisive and extremely powerful criterion, devoid of ethics and humanity, that pays no attention to any side effects, such as unemployment.

4- Individualism that breaks free from state dominance and confines it to the narrowest limits can reach the point of denying others.⁵⁰

5-Globalization⁵¹ and the threat of global terrorism have made it imperative to adopt a vision that respects human rights, confronts terrorism, and creates a new kind of balance.

Second: Universality and Interdependence of Rights in the Text of the Universal Declaration

The Universal Declaration affirmed the universality⁵² and interdependence of the rights set forth therein, as they must be recognized for all human beings without exception and, in all circumstances, restrictions on these rights must be prohibited. Any restriction may only be permitted by way of exception. These rights are indivisible, being characterized by interconnection and mutual complementarity.

Dr. Ahmed Al-Rashidi states: “The interdependence of rights and their non-separability and indivisibility do not mean that it is never possible to depart from their requirements, when there is an objective justification warranting such departure⁵³.”

Third: secificity as a Means of Departing from the Principles of the Universal Declaration of Human Rights

The formerly communist states constituted most of the countries that abstained from voting, arguing that the Universal Declaration had not addressed the individual’s duties toward society, that it had favored capitalist freedoms, had not addressed the means that states should adopt to implement these rights, and that the Declaration had not condemned the idea of fascism, which had been behind the outbreak of the Second World War.⁵⁴

Conclusion

The Universal Declaration is characterized by a general, non-binding declaratory nature, as it is consensual in character. It did not take the form of a treaty that establishes specific and clear legal obligations. The non-binding consensual nature of the Declaration made it very difficult to compel States to comply with its provisions. Nevertheless, the Universal Declaration of Human Rights was regarded as the common ideal for all peoples and nations, toward which every individual, body, or organization in the international community should strive in order to promote due respect for the fundamental rights and freedoms set forth therein, as it encompasses nearly all important traditional rights.

Since its adoption in 1948, the Universal Declaration of Human Rights has been one of the most famous and influential documents of all time.

¹1 - Bouyahi Jamal, *International Law in Facing the American Challenge*, Ph.D. Thesis in Law, University of Mouloud Maamri, Tizi Ouzou, Faculty of Law and Political Science, 2014, p. 23.

²2 - Omar Saadallah, *Studies in Contemporary International Law*, 2nd ed., University Publications Office, Algeria, 2005. p. 18.

³3 - Boudhyab Badreddine, *Le caractère législatif des résolutions des organisations internationales (les Nations Unies comme modèle)*, Mémoire pour l’obtention d’un master en droit international « Droit international public », Faculté de droit et de sciences politiques, Université de Tizi Ouzou, 2011. p.16 .

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- ⁴⁾Bejaoui Mohamed, For a New International Economic Order (translated by Jamal Morsi, Ibn Ammar Al-Saghir), National Publishing and Distribution Company, Algeria, 1980.p. 171.
- ⁵⁾Manea Gamal Abdel Nasser, Public International Law (Introduction and Source),Dr.T.,Dar Al-Ulum,Annaba2005.p. 269.
- ⁶⁾Bouyahia Jamal,Op cit.p. 60.
- ⁷⁾Bouziab Badr Al-Din, the op citQ.p. 19.
- ⁸⁾Mohamed Sami Abdel Hamid, Principles of Public International Law-International ruleInternational Life,D.T., Publisher: Alexandria Knowledge Establishment, D.S.N.128p.
- ¹⁾Bouyahia Jamal, op cit.p. 66.
- ¹⁾See: Omar Saadallah, Studies in Contemporary International Law, 3rd ed., University Publications Office, Algeria 2005, pp. 23-24.
- ¹¹⁾dhYab Badr al-Din, op cit. p.24.
- ¹²⁾Bouyahya Jamal, op cit, p. 63.
- ¹³⁾Look:Bouyahia Jamal, op cit, p. 63.
- ¹⁴⁾Look:Bouziab Badr al-Din, op cit, p. 24.
- ¹⁵⁾Manmani Mohamed Al-Mawldi, Integrating and Implementing General Assembly and Security Council Resolutions into the Domestic Legal Systems of Member States. Thesis submitted for the Master's Degree in International Law and International Relations, Faculty of Law, Ben Aknoun, University of Algiers 1, 2013. p. 18.
- ¹⁶⁾Look:Omar Saadallah, Introduction to International Human Rights Law, 5th ed., University Publications Office, Algeria, n.d..100.
- ¹⁷⁾Salah al-Din Amer, International Organization Law (General Theory – The United Nations and its Specialized Agencies – International Bodies Outside the UN)frameworkUnited Nations), n.d., Cairo University Press,.2002p.264.
- ⁽¹⁸⁾Look:Manmani Muhammad al-Mawldi, op cit.p. 19.
- ¹⁹⁾Look :Omar Saadallah, op cit.p. 37.
- ²⁰⁾See Article 38 of the Statute of the International Court of Justice, Charter of the United Nations and Statute (ICC), United Nations Department of Public Information Publications, New York.
- ²¹⁾See: Omar Saadallah, Introduction to International Human Rights Law, op cit, p. 103.
- ²²⁾The Convention on the Rights of the Child was adopted by the General Assembly in its resolution 44/25 of 20 November 1989 and entered into force on 2 September 1990 under article 49. It is available on the following website:
http://aihr-iahd.net/pdf/international_conventions/conventionenfants.pdf
dateViewLocation: 05/03/2015 at the hour:20:50
- ²³⁾Younis ZakoRHuman Rights: An Analytical Perspective, Civil Dialogue, Issue 6317, published on the following website:
<http://www.ahewar.org/debat/show.art.asp?aid=83276>
dateViewThe locationDate: 09/05/2015on the hour:07:55

²⁴⁾See: Muhammad Al-Saeed Al-Daqqaq, International Organization, University House, Alexandria, n.d.p. 409.

²⁾See: Omar Saadallah, opcit, p. 40.

³⁾Mohamed Mohieddine, Summary of Lectures on Human Rights (Main Themes), Faculty of Law, University of Algiers, 2003, p..24.

²⁷⁾Look:Mohammed Al-Saeed Al-Daqqaq,Opcit.p. 412.

²⁾Look:Mohammed Al-Saeed Al-Daqqaq,Same referencep.411.

²⁹⁾This can be considered one of the main reasons behindIssueThe Universal Declaration of Human Rights, in the form of a recommendation from the General Assembly rather than a legally binding document, reflected a fear and aversion to any international obligation placed on governments during that critical period. This rendered it a declaration of moral value, a point we will address.in.p. 29.

⁽³⁰⁾Look:Muhammad al-Sa'id al-Daqqaq, the referencethe previousp. 413.

³¹⁾Article 55 states:"Desiring to create the conditions of stability and well-being necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations has worked to promote throughout the world respect for human rights and fundamental freedoms for all without distinction as to race, language, or religion." From the Charter of the United Nations and the Statute of the International Court of Justice, signed by the representatives of the governments of the United Nations, at the San Francisco Conference on 26 June 1945, entered into force on 24 October 1945. Algeria joined the United Nations on 4 October 1962, pursuant to General Assembly Resolution 176 (XVII), adopted on 4 October 1962 at its 1020th meeting.

³²⁾Look:Ghazi Hassan Sabarini, A Concise Guide to Human Rights and Fundamental Freedoms, 2nd ed., Dar Al-Thaqafa Library for Publishing and Distribution,Oman1997. p. 48.

³³⁾Khalil Hussein, "Human Rights in the Universal Declaration"The opcit, p. 15.

³⁾Cij, barcelona traction, light and power company, limited, (Belgium C / espagnie), Arret du 5 Feb. 1970 33et34.

Available on the site: http://www.icg_cij.org/doc/ket/files/5387.pdf.

Date of access to the site: 12/04/2015 at 00:10.

³⁵ - Khalil Hussein, "Human Rights in the Universal Declaration," op. cit.p.16.

³⁶⁾See: documentUniversal Declaration of Human RightsThe opcit.

³⁷⁾See: Farouk Muhammad Ma'alqi, Human Rights between International Charter and International Humanitarian Law, 1st ed., Modern Book Foundation, Beirut 2013, p. 32.

³⁸⁾See: Omar Saadallah, opcit, p. 154.

³⁹⁾See: Preamble to the Charter of the United Nations, opcit.

⁴⁰⁾The Declaration of the Rights of the Child was adopted by the United Nations General Assembly in Resolution 1386 (XIV) of 20 November 1959.On June 18, 1948, and it was ratified by the United Nations General Assembly at its session held in Paris on December 10, 1948..

⁴¹⁾Refer to Articles 1, 2, 28, 29, and 30 of the Universal Declaration of Human Rights.

⁴²⁾See: Shihab Talib Al-Zubaidi, International and Regional Protection of Human Rights in Light of International Changes, Faculty of Law and Politics, Department of Political Science, Arab Academy in Denmark, 2008, p. 85.

⁴³⁾Refer to Articles 22 to 27 of the Universal Declaration of Human Rights.

⁴⁴⁾See: Masawi Abdel Halim, The Legal Status of Minorities in International Human Rights Law, Master's Thesis in Public Law, Faculty of Law, Abou Bekr Belkaid University, Tlemcen. 2008. p. 105.

⁴⁵⁾Paul Gore Don Lauren, "The Universal Declaration of Human Rights: Launching and Sustaining a Revolution," Journal IIPDIGITAL June 2, 2009, published at the following link:

[Http://www.arabhumanrights.org/dalil/ch_3.htm](http://www.arabhumanrights.org/dalil/ch_3.htm).

Date of access On the website: 05/05/2015. At 14:30.

⁴⁶⁾Paul Gore Don Laurent, opcit. p. 19.

³⁾Four Arab countries voted in favor of the declaration: Egypt, Iraq, Syria, and Lebanon. These countries constituted the majority of those that abstained. For more details, see: Khalil Hussein, opcit, p. 4.

¹⁾Khalil Hussein, opcit, p. 17.

²⁾See: Mahboob Abdel Hafeez, Human Rights under the New World Order (Between Islam and the Universal Declaration of Human Rights), Dar Nasher for Electronic Publishing, Kuwait, 2014, pp. 22-23. Published at the following link:

<http://uqu.edu.sa/page/ar/85694> Accessed on: 11/05/2015 at 21:52

⁵⁰⁾Paul Gore Don Laurent, opcit, p. 19.

²⁾**La mondialisation:** The design of the process by the same way that relations between nations have interconnected devenues and can overcome the physical and geographic limits that may exist during the period. The World Cup revêt more aspects, in effect, it touches politics, economics, culture, society or access to information. It représente the front door and the international commerce market for delocalisation and the freedom of circulation of people and children.=

=Document available on the site:

<http://www.andlil.com/definition-de-mondialisation-151326.html> visitele: 06/06/2015 à 13:31

¹⁾Universality: In addition to its authority over all human beings, it recognizes the privacy of others. and It is necessary to take it into account and respect it, while the term globalization that we referred to before does not recognize the other, but rather denies his right to maintain his cultural particularities. and social It indicates an action, not a quality intended to Directing The thing about its nature Imposing it on societies...

²⁾See: Ben Othman Fawzia, "Universal Human Rights and the Specificity of National Action in Protecting Them", Academic Journal of Legal Research, Issue (01), 2012, pp. 181-195. Look also Abdul Hafeez Mahboub For the opcit. p. 25 and onwards.

⁵⁴⁾Khalil Hussein, opcit, p. 4.