

Emma Ekon

René Cassin 'Human Writes' Essay Competition 2018 – shortlisted

Competition judge Joshua Rozenberg comments:

"She has some thoughtful reflections on why the Universal Declaration has not received universal support. She also notes that the UDHR may be relied on by those whose aim is to undermine human rights.

But she is generous in her praise of the declaration, noting its influence and achievements. In her closing thoughts she, too, manages to combine pragmatism with optimism. A well-informed assessment of a demanding topic."

Towering Monument or Crumbling Relic?

At 70, is the Universal Declaration of Human Rights still fit for purpose?

In 2015, the United Nations published an edition of the Universal Declaration on Human Rights (UDHR), including in the foreword that it "remains as relevant today as it was on the day in 1948 that it was proclaimed."¹ The foreword also notes that the Declaration is the most translated document in the world, which suggests that the UDHR has achieved a status of a "secular Bible"², although there are still arguments that find the UDHR problematic. However, the UDHR has immense value even as a possible 'relic', as with nations being extracted out of the immediate post-World War Two and Holocaust context, a document that sets out 'inalienable' rights as vividly as the UDHR would not likely exist.³ Furthermore, this is also not mentioning the political climate in which the drafters still managed to craft the UDHR in, which Morsink explains when he says that it was adopted when the Cold War

¹ http://www.un.org/en/udhrbook/pdf/udhr_booklet_en_web.pdf

² Johannes Morsink, *The Universal Declaration of Human Rights: Origins, Drafting and Intent*, (University of Pennsylvania Press, 1999), p.327.

³ Francesca Klug, *A Magna Carta for All Humanity: Homing in on Human Rights* (Routledge, 2015), p.92–104.

“was at its most intense and that the moment for such a universal moral code was not a propitious one.”⁴

The judgement of whether the UDHR is ‘fit for purpose’ includes scrutinising its effectiveness and relevance in carrying out its aims. To tackle the success of the UDHR, the exact ‘purpose’ of it perhaps seen as most important was the endowment of inherent rights for *all* peoples. This intention is underlined by the rhetoric of Eleanor Roosevelt when speaking about the UDHR; “this declaration may well become the international Magna Carta for all men everywhere.”⁵ However, the limited effectiveness of the UDHR of enforcing the rights it sets out was shown not only at the time, with apartheid being introduced in the same year as the UDHR was adopted, but also in the present; in 2008, Amnesty International documented instances of torture in at least 81 countries, breaching Article 5.⁶

On the day of writing this, the official newspaper of North Korea, Rodong Sinmun, criticised the United Nations report discussing North Korea’s human rights record, calling it the “imperialists’ human rights racket.”⁷ The worrying issue at hand is not only the lack of protection of human rights in North Korea, but the underlying validity in the statement. The label of “imperialists” harks back to a common criticism of the UDHR, which is the tension between its universality and it being influenced by its colonial context. The address to ‘all human beings’ is made less legitimate by the fact that most of sub-Saharan Africa was not represented at the UN due to colonisation, and neither were any representatives of colonies drafters of the UDHR. Furthermore, the notion of “imperialists” is also found in the cultural relativist criticism of human rights as a form of Western cultural hegemony, and that a document claiming to be publishing a universal ‘common standard’ should not be allowed at all. This argument was shown as at the time of the drafting of the UDHR, with Saudi Arabia arguing that terms used in the UDHR frequently such as ‘dignity and rights’ were objectionable as they had ‘different meanings in different countries.’⁸ This argument was foreshadowed by the American Anthropological Association, who urged the drafters of the UDHR not to produce “a statement of the rights conceived only in terms of values prevalent in the countries of Western Europe and America.”⁹ Many countries resist the UDHR as they

⁴ Morsink, supra note 2, p.xii.

⁵ Eleanor Roosevelt, “On the Adoption of the Universal Declaration of Human Rights”, address to the UN General Assembly, Paris, France, 9 December, 1948.

⁶ Amnesty International Report 2008: *The State of the World’s Human Rights*

⁷ <https://edition.cnn.com/2018/03/13/asia/north-korea-un-human-rights-council/index.html>

⁸ Cited in *A Magna Carta for all humanity*, supra note 3, p.54

⁹ Cited in Morsink, supra note 2, p.62

see it as an example of how the West succeeded in “imposing its philosophy of human rights”,¹⁰ and so the nature of the UDHR affects its effectiveness.

However, although the UDHR certainly does have its flaws, the appeal to all humanity has helped to create more of a so-called “human rights language”¹¹. The role the UDHR plays in transcending government and allowing individuals to realise their rights was shown when Nelson Mandela said, whilst South Africa abstained from the vote on the UDHR, that the UDHR “was proof that they (South Africans) were not alone.”¹² This would surely have been considered a success by Roosevelt, who had said that human rights begin “close to home.... unless these rights have meaning there, they have little meaning anywhere.” The success reflected in individual appreciation was also showcased when the UDHR came fourth in a YouGov survey of the eighty greatest landmarks in the past eighty years in 2014.¹³

Moreover, the UDHR is not as unfit to carry out its global purpose as critics may try to infer; there were many delegates that represented countries not deemed ‘Western’ such as Chile, China, Egypt, India, Pakistan and Lebanon. In addition, the UDHR is also interpreted to be a ‘living document’, and the main principles including that all humans have “inherent dignity” have allowed for a flexible understanding of human rights. This has been shown as the European Convention of Human Rights which sets out “to take the first steps for the collective enforcement”¹⁴ of rights in the UDHR, has helped to protect rights of groups not specifically mentioned in the UDHR, such as homosexual¹⁵ and transgender people.¹⁶

However, the UDHR is questioned on its ability to implement its articles in evolving circumstances as it does not have a binding factor; it is a “common standard of achievement.” Furthermore, many of the UDHR’s concerns have become less pressing and many recent developments have left a ‘grey area’ for many rights. For example, international organisations have had troubles legislating on the human rights abuses on social media¹⁷, and the UDHR does not seem to help; Article 19 upholds the right to freedom to express oneself “without interference... through any media.” However, many terrorist organisations have used their right to freedom of expression freely on social media to be able to share

¹⁰Antonia Cassese, the former UN Yugoslavia Tribunal judge, was quoted saying this in Morsink, supra note 2, p.x

¹¹ Michael Ignatieff, *The Attack on Human Rights* (Princeton University Press, 2001) p.102

¹² Quoted in Mary Robinson, *A Voice for Human Rights* (University of Pennsylvania Press, 2006) p.15

¹³ Cited in Klug, supra note 3, p.207

¹⁴ https://www.echr.coe.int/Documents/Convention_ENG.pdf

¹⁵ See *Dudgeon v UK* (1981) 4 EHRR 149. This case held the criminalisation of male homosexual acts breached Article 8 of the ECHR.

¹⁶ See *Goodwin v UK* (1996) 22 EHRR 123. The ECHR found that the treatment of a female transsexual breached Article 8 and Article 13 of the ECHR.

¹⁷ <https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=1690&context=cjil>

extremist content to recruit members¹⁸, which may result in the loss of the “right to life” set out in Article 3, and this is one of many tensions between rights that the UDHR sets out.

Despite the UDHR in theory not being legally enforceable, it is widely accepted to have become “the foundation of international human rights law.”¹⁹ Acknowledgements of the 30 articles have increased with time as whilst in 1948, the UDHR was adopted by 48 documents, in 2018 there are 192 states that have accepted the declaration, with it being a condition of UN membership. The rights found in the UDHR were soon incorporated in the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. The UDHR and the UN²⁰ sparked a landslide of regional human rights legislation, in both Western and non-Western states, helping to dispel cynicism towards the document, such as the African Charter on Human and Peoples’ Rights, which requires the African Commission to “draw inspiration from... the UDHR.”²¹ It must be remembered that the drafters made the decision to form a declaration and their end-goal, was, as Cassin put it, “the Declaration offered a way to move ahead. Such will be the case when it calls on member states gradually to bring their legislation into conformity.”²²

The UDHR was not able to escape the social context it was formed in, but its principles are intentionally not constricted to one time frame. The UDHR *has* had its intended global effect; it has spawned regional and domestic human rights treaties and laws and its principles are also enshrined in the work of non-governmental organisations such as René Cassin. We must treasure the UDHR, for Cassin’s words that, “what is most surprising about the Declaration is that it happened at all,”²³ should come as no shock with countries determinedly guarding their sovereignty then and now, whilst the values set out in the UDHR are deeply embedded in today’s world.

¹⁸ See <http://time.com/5008076/nyc-terror-attack-isis-facebook-russia/>, for example.

¹⁹ <http://www.un.org/en/sections/universal-declaration/foundation-international-human-rights-law/index.html>

²⁰ <http://www.un.org/documents/ga/res/43/a43r152.htm>

²¹ <http://www.achpr.org/instruments/achpr/#a60>

²² Cassin quoted in Winter and Prost, *René Cassin and Human Rights: From the Great War to the Universal Declaration* p.249

²³ *Ibid*, p.259

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