

INTERNATIONAL HUMAN RIGHTS LAW

Second Edition

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HISTORY

Ed Bates

SUMMARY

This chapter tells the story of the historical development of the concept of human rights and their status in international law. It is divided into three main sections. As the human rights story began on the domestic plane, the chapter starts by considering this. The focus is on the key developments since the seventeenth century, but in particular since the late eighteenth century. The chapter then turns to international law, examining it from the perspective of human rights over the period up to the Second World War. Finally, it focuses on the efforts to create international human rights law in the 1940s, culminating with the proclamation of the Universal Declaration of Human Rights in 1948.

1 INTRODUCTION

As an esteemed professor of international law and (later) international judge, Hersch Lauterpacht wrote in 1945: ‘any attempt to translate the idea of an International Bill of the Rights of Man into a working rule of law is fraught with difficulties which disturb orthodox thought to the point of utter discouragement.’¹ The transformation of relations between a state and its nationals into international legal obligations by which the international community could derive a respectable and meaningful level of control and censure would, Lauterpacht argued, engender ‘restrictions on sovereignty more far-reaching in their implications than any yet propounded in the annals of international utopias’.²

To be clear, Lauterpacht was firmly committed to the establishment of international human rights law, as his books of 1945 and 1950,³ and his other work,⁴ revealed. His 1945 study was published at a time when hopes were high that there would soon be established an International Bill of Rights. It was a pioneering work as not only did it address the substance of a proposed International Bill, but it also provided a detailed discussion of how it might be implemented and enforced at the international level. The dramatic quotations above were not intended to strike a pessimistic chord. Instead, the aim was to emphasize the extent of the task ahead for the international community. Lauterpacht was calling upon the international community, and leading states in particular, to face up to

¹ Lauterpacht, *An International Bill of Rights of Man* (Columbia University Press, 1945) 9–10.

² Lauterpacht (1945), 14.

³ Lauterpacht, *International Law and Human Rights* (Stevens and Sons, 1950).

⁴ See Simpson, ‘Hersch Lauterpacht and the Genesis of the Age of Human Rights’ (2004) 120 *LQR* 49.

that task as the Second World War came to an end and plans for a 'new world order' started to take shape.

We will return to the successes and failures of the immediate post-war effort as regards international human rights law in Section 4. However, in order to obtain a better perspective on this, and the other chapters in this book, we should trace the story of the protection of human rights, first, in domestic law and then in international law prior to 1945.

2 HUMAN RIGHTS ON THE DOMESTIC PLANE

Where should an analysis of the history of human rights begin?⁵ One could go back several thousand years and find concepts related to human rights in ancient civilizations across the world, as with the Law Code of Hammurabi, created by the Babylonian king Hammurabi in the eighteenth century BC. The origins of human rights might also be traced back to various religious codes through the ages. By contrast, if the point of departure is the idea that human beings have natural rights, then the story commences at least as far back as the time of the Greek city states and the thinking of the Stoics.⁶

Finding a precise point of departure for 'a history of human rights' is an inherently controversial matter. It is probably quite unrealistic to credit any one culture, religion, or region of the world with the origins of human rights. Moreover, as a leading expert has put it, an attempt to do so would be 'politically charged'.⁷ It inevitably risks privileging 'a particular world view' of human rights; it might be viewed as 'a way either to defend a specific status quo or value system against possible challenges'.⁸ Two points must therefore be made at the outset. First, there are many different threads to the human rights idea as it exists today, and it is invidious to locate any one specific thread as *the* beginning. Second, the account that follows focuses especially on the origins of legal measures in the field of human rights. In that regard the first part of this chapter looks to the early developments in the Western world in particular, and to the extent that it might convey a Western bias, this is not the author's intention.⁹

From the perspective of legal measures championing the rights of the common person against the state, the starting point of the history of human rights is typically taken to be the Magna Carta of 1215. Yet this is somewhat erroneous. The Magna Carta resounds with statements that have since come to be celebrated: 'To none will we sell, to none deny or delay, right or justice'; and 'No freeman shall be taken, or imprisoned, or disseized, or outlawed, or exiled, or in any way harmed . . . save by the lawful judgment of his peers or by the law of the land.' But the rights to trial by jury and of habeas corpus for all were hardly established by the Magna Carta. It had little to do with the rights of the common man, and much to do with securing rights for powerful barons against an overbearing king of England. The enduring significance of the Magna Carta, and other similar documents of this age,¹⁰ for the history of human rights lies in the fact that it has come to be seen as a

⁵ See Ishay, *The History of Human Rights: From Ancient Times to the Globalization Era* (University of California Press, 2004) ch 1; Ishay, *The Human Rights Reader* (Routledge, 2007) chs 1–4. For a useful 'timeline' on the history of human rights, see <<http://www.facinghistory.org/udhr-timeline>>.

⁶ See n 3, ch 5. ⁷ Ishay, n 5, xxii. ⁸ Ishay, n 5, xxii.

⁹ For much broader perspectives on the history of human rights, see n 5.

¹⁰ Eg the King's agreement with the Cortes of Leon (1188, Spain) and the Magnus Lagaboters Landslov (1275, Norway).

starting point—the beginning of the limitation of absolute and arbitrary power of the sovereign. It therefore earns its place as the traditional point of departure in the story of how domestic law has addressed the enduring struggle of the individual against the tyranny and oppression of the state. This is a story that has lasted many centuries for some states and is still very much continuing in others.

We advance to the latter half of the seventeenth century for the next chapter in the overall story. The context was the English Civil War and the so-called ‘Glorious Revolution’, culminating in the Bill of Rights of 1689. Despite its name, that document was really a constitutional settlement that championed the sovereignty of Parliament. It set the seal on the absolute power of the Stuart kings after the myth of their ‘divine power’ had been debunked—in England at least, for it would last many more decades in France. So the bill of 1689 was no bill of rights in the sense that would be understood in modern democratic societies today.¹¹ Nonetheless it was the source of a limited number of defined rights, for example that ‘cruel and unusual punishments [should not be] inflicted’, which were applicable to all, at least in theory. Moreover, there were other important developments in this era such as the eradication of the practice of torture from the legal system of England in 1641 and the Habeas Corpus Act of 1679. The Bill of Rights of 1689 therefore saw the assertion of human liberty progress a stage further but, above all, its significance lay in its confirmation of a fundamental idea: that the absolute power of the state should be limited *for the sake of the individuals within it*. This idea had been prevalent in the contemporary writing of Thomas Hobbes and especially John Locke. And it deserves special emphasis since it is arguably the foundation stone upon which all progress in the field of human rights has been built.

2.1 THE ENLIGHTENMENT THINKERS

Hobbes’ *Leviathan*,¹² published in 1651, soon after the beheading of Charles I, spoke of a world in which there was an imperative for absolute power; it was needed to keep society from the very type of disorder that had afflicted England in the 1640s. The *Leviathan* world did not accept the idea of formal restraints on power. It envisaged few if any natural rights for the individual, for all were subservient to the ruler. A level of abuse on the part of the ruler vis-à-vis his subjects might almost be expected; it was the price to be paid for the greater collective gain for a society that was protected from the much greater evil of mass disorder. Having said this, the ruler was expected to exercise his authority responsibly, and in accordance with the laws of God and of nature, and in turn this placed theoretical restraints on his authority. Hobbes’ *Leviathan* is therefore credited with introducing the concept of the ‘social contract’, that is, the idea that power to govern is to some extent derived from the consent of the governed.

However, it was Locke who carried this concept very much further, above all in his *Two Treatises of Government*,¹³ published in 1690, shortly after the overthrowing of another English king in 1688 (James II) and the approval of the Bill of Rights by Parliament in 1689. Locke advocated the natural liberty and equality of human beings: ‘[m]an’ was *born* with ‘a title to perfect freedom, and an uncontrolled enjoyment of all the rights and privileges of the law of nature, equally with any other man, or number of men in the world’;

¹¹ For modern bills of rights, see Chapter 22. For a highly readable account of events and legal milestones related to this period, from the perspective of human rights and the rule of law, see Bingham, *The Rule of Law* (Penguin, 2010) ch 2.

¹² Many modern versions of the text are available, see eg Hobbes, *Leviathan* (OUP, 2009).

¹³ Eg Laslett (ed), *Locke: Two Treatises of Government* (CUR, 1988).

he had ‘by nature a power...to preserve his property, that is, his life, liberty and estate, against the injuries and attempts of other men.’¹⁴ Locke was therefore a strong advocate of natural rights, and in particular the right to property in the broad sense identified here, and, as he saw things, it was the state’s duty to provide an environment in which such rights could flourish. His enduring contribution to the ideas that fuelled human rights thinking, however, lay in his theory of government, for it is in Locke that we see the origins of the idea of limited constitutional government and the fuller development of the idea of government by consent. Locke wrote that the ‘end of government is the good of mankind’; so rulers ‘should be sometimes liable to be opposed, when they grow exorbitant in the use of their power, and employ it for the destruction, and not the preservation of the properties of their people.’¹⁵ Within Locke’s writing therefore were the seeds to the idea of modern democratic governance, although how much Locke expounded the democratic ideal through the idea of government by consent should not be exaggerated. He did not advocate universal suffrage and was, after all, writing in the seventeenth century when the right to vote remained a privilege of very few in England. But it is surely Locke we recall first when we read from the preamble to the Universal Declaration of Human Rights (UDHR) of almost three hundred years later: ‘Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law’.

On the continent of Europe, the major historical contribution to ideas concerning the state and its relationship with the individual came in the eighteenth century. Authors such as Baron de Montesquieu (*The Spirit of Laws*, 1748), Jean-Jacques Rousseau (*The Social Contract*, 1762), Voltaire (*Philosophical Dictionary*, 1769), and Immanuel Kant (*On the Relationship of Theory to Practice in Political Right*, 1792) were leading figures in a movement which was later called ‘the Enlightenment’. Montesquieu’s contribution remains best known for his thoughts on the structures of government and his emphasis on the separation of powers. Rousseau advanced the theory of the ‘social contract’, but justice cannot be done in a few sentences here to the immense contribution made by him and others. It must suffice to say that the essence of all these philosophers’ thinking was to place a new importance on the intrinsic value of man in society. There was thus further emphasis on the idea that everyone was born with certain natural rights which no authority could take away. This thinking was the intellectual force behind the French Declaration of the Rights of Man and Citizen (1789), but of course its impact was felt far beyond France. Indeed as one author has neatly put it:

Natural rights were the cutting edge of the ax of rationalization that toppled many of the inherited medieval traditions of eighteenth-century Europe. They were part of that general aspiration toward bringing peace and order to the world that led Immanuel Kant to think that royal dynasties were the cause of war, and that a world of republics would bring a peaceful era to mankind.¹⁶

2.2 HUMAN RIGHTS TRANSFORMED INTO POSITIVE LAW

It was, however, in the ‘new world’ where the ‘ax of rationalization’ first achieved practical effect in a constitutional document. Locke’s influence was unmistakable, and immortalized, in the US Declaration of Independence of 1776. That document listed grievances against

¹⁴ Laslett (ed), ch VII, para 87 (emphasis added).

¹⁵ Laslett (ed), ch XIX, para 229.

¹⁶ Minogue, ‘The History of the Idea of Human Rights’ in Laqueur and Rubin (eds), *The Human Rights Reader* (Meridian, 1977) 11.

George III and inspired the successful prosecution of the American War of Independence. Its opening words are now infamous:

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights; that among these are Life, Liberty and the Pursuit of Happiness. That to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed; that whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it, and to institute new government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness.

Even before Thomas Jefferson and others penned these words on 4 July 1776, the process of drafting the constitutions of the newly independent individual states in what would become the United States of America was well underway. In 1776, five would be drafted so as to enshrine the protection of human rights, and by 1783 all states would have done so in one form or another. Probably the most celebrated example was the Virginia Declaration of Rights of 12 June 1776, regarded by many as the first 'proper' bill of rights. Its first article proclaimed that:

all men are by nature equally free and independent, and have certain inherent rights, of which, when they enter into a state of society, they cannot, by any compact, deprive or divest their posterity; namely, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety.

The Virginia Declaration then set out the idea of government by consent ('all power is vested in, and consequently derived from, the people') and separation of powers ('the legislative and executive powers of the state should be separate and distinct from the judicative'), before listing a number of human rights including, for example, basic due process rights and freedom of expression ('the freedom of the press is one of the greatest bulwarks of liberty and can never be restrained but by despotic governments').

Events in France would help to ensure that the end of the eighteenth century was a defining time in the history of human rights. The years 1789–91 stand out above all. The French Revolution swept away any notions of absolute monarchical power, replacing it with the philosophy of the French Declaration of the Rights of Man and Citizen. With this Declaration on 26 August 1789, the French National Assembly pronounced that 'ignorance, forgetfulness, or contempt of the rights of man' were 'the sole causes of public misfortunes and of the corruption of governments'. It therefore:

resolved to set forth in a solemn declaration the natural, inalienable, and sacred rights of man, in order that such declaration, continually before all members of the social body, may be a perpetual reminder of their rights and duties; in order that the acts of the legislative power and those of the executive power may constantly be compared with the aim of every political institution and may accordingly be more respected; in order that the demands of the citizens, founded henceforth upon simple and incontestable principles, may always be directed towards the maintenance of the Constitution and welfare of all.

Article 16 French Declaration provided a classic formulation of the link between institutional limitations on state power and protecting human rights: 'Any society', it proclaimed, 'in which no provision is made for guaranteeing rights or for the separation of powers, has no Constitution.'¹⁷

¹⁷ See also the French Declaration of the Right of Man and Citizen of 1793, a redraft of the 1789 text with an added emphasis on the principle of equality.

Today, a study of the French Declaration would form a good starting point for any course on human rights and, no doubt, stimulate much debate. The Declaration defined 'liberty' as 'the power to do whatever is not injurious to others'. It followed that 'the enjoyment of the natural rights of every man has for its limits only those that assure other members of society the enjoyment of those same rights'. According to the Declaration 'such limits may be determined only by law'. A flavour of what followed may be gleaned from paragraphs in the Declaration setting out due process rights such as the presumption of innocence and to the effect that free speech was 'one of the most precious of the rights of man', so 'every citizen may speak, write, and print freely', 'subject to responsibility for the abuse of such liberty in cases determined by law'. More generally the Declaration profoundly announced that: 'The law has the right to forbid only actions which are injurious to society. Whatever is not forbidden by law may not be prevented, and no one may be constrained to do what it does not prescribe.'

Against this background, the US Constitution of 1789 might, at first sight, have been regarded as a disappointment. There was no grand statement about the theory of government along the lines of the Declaration of Independence. Moreover, it provided for the protection of just a few rights; for example, the right to trial by jury (Article III, Section 2) and a right of habeas corpus, not to be suspended unless 'in cases of rebellion or invasion the public safety may require it' (Article I, Section 9). However, in 1791 the first ten amendments to the Constitution came into force having been ratified by three-quarters of the states. The (US) Bill of Rights, as it became known, began in now celebrated tones: 'Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble and to petition the government for a redress of grievances.' Among other things, the bill included the famous right to bear arms (Amendment II), protection from unreasonable search and seizure (Amendment IV), various protections relating to due process and fair trial (Amendments V and VI), and a prohibition on 'cruel and unusual punishments' (Amendment VIII). It should be added, however, that at this stage such rights were to be protected only at the federal level. It was in the individual constitutions of the states, with their own bills of rights, that the expression of the rights of man was really seen in the USA in the late eighteenth century.

These comments on the French and US experiences would not be complete without paying tribute to the work of Thomas Paine. Paine's 1776 work *Common Sense* set out the case for US democracy in the lead up to 4 July 1776. In 1791–2 he published *The Rights of Man*, which was in part a response to Edmund Burke's attack on the French Revolution. But he also subjected England's constitutional arrangements to severe criticism: 'government without constitution, is power without a right'. *The Rights of Man*, perhaps the first book ever to use the phrase 'human rights',¹⁸ is said to have sold over 250,000 copies, making it a huge bestseller in today's terms. Paine did not invent the human rights thinking that was distilled into the landmark documents referred to here. But, as Louis Henkin has observed, his writing 'did much to spread and root' the idea of human rights: 'he provided us a theology and a terminology, guiding principles as well as blueprints'.¹⁹ Paine remains revered in the USA, as was evidenced when he was quoted by President Obama in his inauguration speech in 2009. But he remains little known in his native England where, in his lifetime, he was considered as a dangerous revolutionary and convicted of seditious libel.²⁰

¹⁸ See Lauren, *The Evolution of International Human Rights: Visions Seen* (University of Pennsylvania Press, 1998) 20.

¹⁹ Henkin, *The Rights of Man Today* (Stevens and Sons, 1978) 135. ²⁰ Lauren, n 18, 21.

2.3 NINETEENTH-CENTURY CHALLENGES TO NATURAL RIGHTS

The French Declaration and the US Bill of Rights were landmarks in the history of human rights for they transformed the philosophy espoused by the likes of Locke and Rousseau, and the thinking behind natural rights, into positive law. Nonetheless, during the nineteenth century the idea of natural rights came under attack from a new generation of philosophers.

The critics were led by Jeremy Bentham who famously criticized the idea of natural, God-given rights obtained by virtue of birth as ‘nonsense upon stilts.’²¹ His point was that natural rights counted for nothing on their own. To mean something, they required the protection of the law; so the real issue for Bentham, expounding a very British ‘rights and remedy’ approach to things, was what the law actually protected. As he famously put it: ‘from real law come real rights; but from imaginary laws, from laws of nature, fancied and invented by poets, rhetoricians, and dealers in moral and intellectual poisons, come imaginary rights.’²² For Bentham natural rights were dangerous since they fuelled revolutions such as those in France and so ultimately caused great social damage, hence the title of his famous work *The Anarchical Fallacies* (1843). Criticism of this type had already been made by another Englishman at the very time of the French Revolution. In his *Reflections on the Revolution of France*, Burke attacked the French Declaration as a ‘monstrous fiction’. It inspired ‘false ideas and vain expectations into men destined to travel in the obscure walk of laborious life’ and had ‘serve[d] to exaggerate and embitter that real inequality, which it can never remove.’²³

The nineteenth century also saw an altogether different type of opposition to natural rights in the writing of Karl Marx. His 1844 work *On the Jewish Question* asked what use the French Declaration would be for Jews such as himself. As he saw it, it was found completely wanting for in reality the rights of man were the privileged rights of the bourgeoisie. According to Marx, rights were for egotistical men; they did not truly free the individual at all.²⁴

As shown in Chapter 3, the longer term legacy of Bentham’s and Marx’s attacks on natural rights and the perspective they offer to contemporary thinking on human rights is still keenly debated today.

2.4 DOMESTIC PROTECTION OF HUMAN RIGHTS TODAY

We have seen, then, that for domestic law the human rights story really began in the seventeenth and eighteenth centuries. History will record the tribute to be paid to the visionaries of that age, such as Locke and Rousseau, many of whom were treated as dissidents at the time. The Bill of Rights of 1689, and in particular the American Declaration of Independence (1776), the French Declaration of the Rights of Man and Citizen (1789), and the US Bill of Rights (1791) were milestones in constitutional history, curtailing the sovereign power of the state in various ways, including by reference to the basic rights of the individual. This constitutional model certainly caught on as was evident by the constitutional arrangements secured in the Netherlands in 1798, Sweden in 1809, Spain in 1812, Norway in 1814, Belgium in 1831, Liberia in 1847, Sardinia in 1848, Denmark in 1849, and Prussia in 1850. In fact, it has been suggested that over 80 per cent of national

²¹ See Chapter 3.

²² Waldron (ed), *Nonsense upon Stilts: Bentham, Burke and Marx on the Rights of Man* (Routledge, 1987) 69.

²³ Burke, *Reflections on the Revolution in France* (Rivington, 1868) 46.

²⁴ See Chapter 3.

constitutions adopted between 1778 and 1948 provided a human rights guarantee in one form or another, and that between 1949 and 1975 the figure was 93 per cent.²⁵ That this upward trend continued was evident in the 1990s with the new constitutions of those states which were formerly part of the Soviet Union.

As we look back on the achievements secured in the eighteenth century via the French and US settlements, one should be careful to keep them in perspective. They were certainly landmarks, but it would be wrong to exaggerate the practical effects that they had at the time. Indeed one does not have to look far in French and US history to see that in practical terms the idea of human rights had made only relatively limited headway at this stage—at least, that is, compared to how we would view things today. The inferior position of women both in society generally and in law stirred women's rights campaigners such as Mary Wollstonecraft (*Vindication of the Rights of Women*, 1792). Moreover, at this stage the idea of judicial protection of human rights was virtually non-existent. The French Declaration had been incorporated as the first part of the formal French Constitution in 1791, but it was not enforceable by the courts at that time. As Lauren observed, the French Declaration, 'reflected far more vision than reality'. It 'emerged not out of long tradition or wide-spread experience or inclusive election, but rather out of... revolution and had to be nurtured in the face of overwhelming opposition.'²⁶

The USA was quite exceptional in that judicial protection of constitutional safeguards came in 1803 with the US Supreme Court's watershed decision in *Marbury v Madison*, holding that it had an inherent power of judicial review by which it could even declare acts of Congress unconstitutional.²⁷ Nonetheless, this was of limited use for individuals in human rights terms, for at this stage the Bill of Rights was an instrument that applied overwhelmingly at the federal, not the individual state, level. Of course, the individual state constitutions guaranteed rights, as noted already, but slavery was flourishing in many such states in the late eighteenth century and would continue to do so for decades into the nineteenth century. In fact, when the controversy about slavery was reaching its peak the contribution made by the US Supreme Court served to perpetuate the practice. In *Dred Scott v Sandford* in 1857, it ruled that the Bill of Rights protected the right of slaveholders to their property, which included slaves, and that, in effect, Congress had acted illegally by outlawing slavery in Northern states.²⁸ Neither slaves 'nor their descendants, were embraced... [by] the Constitution',²⁹ the Court held. That is, they had no protection under the Bill of Rights. It would take a civil war and further amendments to the Constitution to secure the abolition of slavery in the 1860s. And it would take the better part of the next century for the Supreme Court to finally start to use the Bill of Rights to attack grossly unfair and discriminatory practices suffered by the black population of certain states. The breakthrough case was *Brown v Board of Education*³⁰ of 1954 bringing an end to the 'separate but equal' doctrine previously upheld by the Court in *Plessy v Ferguson*.³¹

The point of this digression is not to single out the practice of the USA in any way. If this chapter were to attempt to provide even the broadest of overviews of the failures of other states to protect human rights over the same timeframe, it would no doubt run into dozens of pages. What has been said here, however, provides a very useful perspective on Section 3, which looks at the international protection of human rights. It helps us to understand how very recent the protection of human rights is by domestic courts (see Table 1.1) and by reference to bills of rights in the overall story of the history of human rights. In the

²⁵ Van Maarseveen and van der Tang, *Written Constitutions: A Computerized Comparative Study* (Oceana, 1978) 191–5.

²⁶ n 18, 32.

²⁷ 1 Cranch 137 (1803).

²⁸ 60 US 353 (1857).

²⁹ 60 US 353 (1857), Taney, J.

³⁰ 347 US 483 (1954).

³¹ 163 US 537 (1896).

Table 1.1 Human rights on the domestic plane: key dates

1215	Magna Carta
1689	English Bill of Rights
1776	US Declaration of Independence Virginia Declaration of Rights
1789	French Declaration of the Rights of Man and Citizen US Constitution
1791	US Bill of Rights

UK, for example, there existed a long tradition of Parliament and the courts protecting the rights of individuals by various statutes and under the common law. But only in 2000, with the entry into force of the Human Rights Act 1998, did the UK obtain something akin to a modern bill of rights encompassing judicial protection of a select number of human rights against the acts of public authorities, albeit not against parliamentary acts.³² In France, the 1958 Constitution refers in its preamble to the French people's commitment to the Declaration of 1789, but only a limited challenge to the authority of the legislature is possible via the *Conseil Constitutionnel*.³³ Finally, the USA is without doubt the most celebrated exponent of the judicial protection of human rights. Yet only since around 1925 has the Supreme Court begun to use the Bill of Rights more widely to protect the rights of individuals against encroachments by the individual states themselves. Indeed, the story of human rights protection by the Supreme Court is overwhelmingly a post-Second World War phenomenon.³⁴

The perspective we might take with us as we turn to the story of the *international* protection of human rights is therefore this: how incredibly grand the idea of an International Bill of Rights must have been in the 1940s when it was first proposed.

3 HUMAN RIGHTS ON THE INTERNATIONAL PLANE BEFORE THE SECOND WORLD WAR

Even if within domestic law there was a greater recognition of individual human rights by the start of the twentieth century, this was certainly not the case for international law. Prior to the 1940s there was no real conception in international law of the idea that one state had a right to interfere in the sovereign affairs of another state as regards how it treated its own citizens. International law was virtually a blank canvas as far as the protection of human rights was concerned. We say this from the perspective of a basic definition of human rights as the rights owing to human beings by nature of their humanity. Historically, international law could touch on or address the plight of human beings only in very limited ways.

³² See Human Rights Act 1998, ss 3 and 4.

³³ For important recent developments see Hunter-Henin, 'Constitutional Developments and Human Rights in France: One Step Forward, Two Steps Back' (2011) 60 *ICLQ* 167.

³⁴ In 1935–6 only two of the 160 signed written opinions of the Supreme Court covered 'basic human freedoms', but by 1979–80 the ratio had increased to 80 out of 149. See Abraham and Perry, *Freedom and the Court* (OUP, 1998) 5.

For example, the inkling of the idea of certain minimal rights for certain human beings was present in customary international law in the guise of the doctrine of 'diplomatic protection', or the treatment of aliens. This doctrine has deep historical roots. It basically requires a state to treat foreigners in accordance with an 'international minimum standard' of protection,³⁵ at least as regards life, liberty, property, and protection from manifest denial of justice, regardless of how the state treats its own nationals. The point to note, then, is that the protection concerned is not afforded to the individuals as human beings, but because they are nationals of a foreign state. Moreover, it falls to that foreign state, not the individual, to pursue the enforcement of any claims. In the absence of such support, historically the foreigners concerned had no one to speak for them. As such they were placed in the same position as the nationals of the host state, for the traditional, pre-war position of customary international law was that it simply had nothing to say about the way that a state could treat its own nationals.

3.1 INTERNATIONAL HUMANITARIAN LAW AND THE ABOLITION OF THE SLAVE TRADE

Of course, states could enter into legal relations with each other motivated by a desire to relieve human suffering in certain ways. In this regard an apparently compassionate dimension to international law had been evident in the nineteenth century, first with the movement towards the abolition of the slave trade and, second, with the first steps that were taken in the field of international humanitarian law.

The second of these is addressed in Chapter 23 and all that need be said here is that the nineteenth century saw increasing international activity which expressed a concern with the plight of the individual subjected to the ravages of war—prisoners of war and soldiers above all. The founding father of this movement was Henry Dunant, who was so shocked by scenes of the wounded and vanquished he witnessed at the Battle of Solferino (1859) that he later helped to establish the International Committee of the Red Cross. The Geneva Conventions of the mid-nineteenth century soon followed, while the Hague Conventions were opened for signature at the start of the twentieth century. Perhaps the most significant achievements of this sector of international law from the perspective of human rights, however, were secured with the Geneva Conventions of 1949 and the Additional Protocols thereto.

The nineteenth century also saw remarkable progress in the abolition of the slave trade. Slavery became illegal in England in 1771 after *Somerset's case*.³⁶ The UK and the USA subsequently passed legislation at the start of the nineteenth century to outlaw the trade of slaves within their own jurisdictions, which included the British colonies. Yet international action was required to abolish the trade altogether, and here progress was slow. Despite the campaigning efforts of figures such as William Wilberforce, the best that could be achieved by the major European states at the Congress of Vienna (1815) was a mere declaration expressing a commitment to the abolition of the slave trade. There then followed more than half a century in which the British made great diplomatic efforts to secure dozens of bilateral treaties with trading nations principally in the European and Latin American regions, and other agreements with native chiefs from the African coast. In each instance there was an agreement to abolish the slave trade but also, where relevant, various measures of enforcement were provided for. Typically, the treaties provided for the inspection of ships if there was a suspicion that a merchant vessel was engaging in

³⁵ See Shaw, *International Law* (CUP, 2008) 824–5.

³⁶ 20 State Trials 1.

illicit activity. The abolition of the slave trade was therefore one of the earliest, if not the first, human rights related British foreign policy initiatives. This period also witnessed the establishment of Anti-Slavery International, the oldest human rights NGO in the world; its origins go back to 1839.³⁷

The list of states committed to abolishing the trade slowly grew, but a sufficient global consensus on abolition of the slave trade did not emerge until the last decades of the nineteenth century. Only in 1885 did the Conference on Central Africa, held in Berlin, see in its General Act a commitment by states 'to help in suppressing slavery, and especially the slave trade' and their recognition that 'trading in slaves is forbidden in conformity with the principles of international law as recognized by the Signatory Powers'. Five years later, negotiations in Brussels saw the conclusion of the 1890 General Act, which included an Anti-Slavery Act ratified by 18 states stipulating specific measures for countering slavery and the slave trade. By this stage the great majority of states had made slavery illegal in their own jurisdictions. The experience of the USA, with President Lincoln's Emancipation Proclamation of 1863, is known best. Yet even after the US Civil War, Cuba and Brazil maintained domestic slavery into the 1880s.

In the twentieth century, the international abolition of the slave trade and slavery was taken up by the League of Nations, the key international organization established after the First World War with the principal objective of maintaining peace and stability in the world. There followed the International Convention on the Abolition of Slavery and the Slave Trade of 1926. The declared aim of this treaty was 'the complete suppression of slavery in all its forms and of the slave trade by land and sea'. There have been further international agreements since.

The international effort toward the abolition of the slave trade and slavery provides some interesting general lessons for students of international human rights law. The abolition of the trade evidenced why international law, in the form of bilateral treaties, was needed to improve the protection of individuals when the activities of more than one state were involved. But it also demonstrated that general international agreements may only follow a consensus being reached across a sufficient number of states, and that this may take a considerable time to achieve. The abolition of slavery itself inevitably required action on the part of the individual states—in some cases prompted, no doubt, by the growing body of international opinion encouraging them to do so. State practice in this field became so clearly defined that the prohibition of slavery became part of customary international law. Hence an absolute prohibition on 'slavery and servitude' passed without controversy into the main post-Second World War human rights documents, with images of Nazi concentration camps still fresh in the mind.³⁸ Finally, however, it would be wrong to assume that such documents have in themselves magically abolished slavery and servitude (and forced labour) in all its forms.³⁹ The creation of international standards for the protection of human rights may be one thing; their actual implementation and enforcement is another.

³⁷ For further details see <<http://www.antislavery.org>>.

³⁸ See UDHR, Art 4. See also International Covenant on Civil and Political Rights, Art 8; European Convention on Human Rights, Art 4; American Convention on Human Rights, Art 6; African Charter on Human and Peoples' Rights, Art 5.

³⁹ Slavery persists today, in modern forms, see <<http://www.antislavery.org>>, including in connection with human trafficking. On 'slavery' and 'forced and compulsory labour' see Chapter 12.

3.2 THE PROTECTION OF MINORITIES AND THE LEAGUE OF NATIONS

Resuming our analysis of the position of international law with respect to human rights before 1945, the protection of minorities should now be discussed. Here we need to recall the pre-Second World War stance of international law whereby, in effect, states had free rein to abuse their own citizens behind their own borders. Indeed, stories of oppression directed toward national and religious minorities in particular fill many pages of our history books.

The first, rather sporadic, efforts to provide a level of protection for religious minorities may be traced back to the end of the Thirty Years War with the Treaty of Westphalia (1648) and, subsequently, those of Utrecht (1713) and Berlin (1878).⁴⁰ But it was not until the early twentieth century that international law saw a much more organized, institutionalized approach to the minorities issue. It was prompted by the end of the First World War and in particular the significant redrawing of the political map of parts of Europe. This involved, for example, the restoration of Poland and for some states, Germany in particular, a rather radical redrawing of their boundaries. Given how mixed the population was in parts of Europe, no matter how those boundaries were (re)shaped, the result was that a significant number of minorities found themselves displaced. As Tomuschat has described it, 'ethnic Hungarians found themselves all of a sudden in Romania or Czechoslovakia, ethnic Germans became Polish citizens, and, on the other hand, ethnic Poles continued to live in Germany'.⁴¹

President Wilson is reported to have said at the Paris Peace Conference of 1919, '[n]othing... is more likely to disturb the peace of the world, than the treatment which might in certain circumstances be meted out to the minorities'.⁴² It being recognized then that Europe's peaceful future could be jeopardized by the abuse of minorities by the dominant majority, arrangements were made to try to safeguard against this. As part of the various peace settlements ending the First World War, nine states⁴³ were required to enter into specific treaty obligations for the protection of minorities and, between 1921 and 1923, a further five⁴⁴ were required to settle upon similar arrangements as a condition of their membership of the League of Nations. The arrangements were complex and here we will identify only three main aspects.⁴⁵

First, the individual peace treaties required that as part of their constitutional arrangements respective states should provide basic guarantees of protection as to life, liberty, and equality before the law for all inhabitants within their borders. There were also more specific guarantees which were particularly relevant for minorities including, for example, provisions guaranteeing the enjoyment of freedom of religion, use and recognition of minority languages, and various freedoms in the field of education. Second, when the League of Nations was set up, the Council of the League of Nations was mandated to make

⁴⁰ See Ezejiolor, *Protection of Human Rights under the Law* (Butterworths, 1964) 35–8.

⁴¹ Tomuschat, *Human Rights: Between Idealism and Realism* (OUP, 2008) 18.

⁴² Ezejiolor, n 40, 38.

⁴³ The treaties were concluded between 1919 and 1923. Czechoslovakia, Greece, Poland, Romania, and Yugoslavia entered into specific minority treaty arrangements with the Principal and Allied Powers. For Austria, Bulgaria, Hungary, and Turkey special chapters were inserted into the General Peace Treaties. Additionally special chapters were inserted into the German Polish Convention concerning Upper Silesia, and for the Memel Territory.

⁴⁴ Declarations undertaking to protect the rights of minorities were made by Albania, Estonia, Finland, Latvia, and Lithuania.

⁴⁵ The classic account is De Azcarate, *League of Nations and National Minorities* (trans Broke) (Carnegie, 1945). See also Simpson, *Human Rights and the End of Empire* (OUP, 2001) 121–45.

arrangements for the supervision of the aforementioned obligations at the international level. The states which were subjected to the treaty arrangements acknowledged that the guarantees constituted 'obligations of international concern' for the League of Nations, albeit only insofar as they affected persons belonging to racial, religious, or linguistic minorities, and therefore not for individuals forming part of the majority population. Third, oversight and possible measures of implementation with respect to the aforementioned obligations were envisaged. Arrangements were put in place to allow members of the minorities to directly petition the Council of the League about actual or potential infractions of the obligations.⁴⁶ If a petition was not settled, then the Permanent Court of International Justice was given competence to adjudicate upon the dispute. In fact, this occurred on only one occasion in a dispute concerning Germany and Poland regarding minority schools in Upper Silesia.⁴⁷ However, the Court could also deliver advisory opinions upon a request from the Council, and there were a small number of these, the most well-known of which concerned the treatment of Greek minorities in Albania.⁴⁸

Details of the successes and failures of these minority treaties can be found elsewhere.⁴⁹ Our concern here is to reflect on their significance from an historical perspective. So what should we say about these treaties today?

An extreme view might be that the treaties were not really about human rights at all, given that they applied only to certain geographical areas and that the petitions system developed by the League of Nations depended on status (belonging to a national minority). A sceptic would also point out that the motive for the creation of the treaties was not so much the protection of the minorities for humane reasons, but for the broader aim of regional stability.

A less cynical perspective would point to the significant advances made by the treaties. For the first time, international law imposed on the sovereign states concerned certain obligations to treat their inhabitants in certain ways—a stark contrast to the 'blank canvas' position noted already. Equally radical for its time was the idea of institutionalized oversight of such obligations, especially the notion that individuals could petition international organs, potentially challenging the actions of their own national authorities. In this way the treaties started to challenge the orthodox view that individuals simply could not be the subjects of international law. Such notions had underpinned Oppenheim's confident dismissal, in 1905, of the contention that 'the law of nations' guaranteed individuals 'at home and abroad the so-called rights of mankind' (alleged to be 'the right of existence, the right to protection of honour, life, health, liberty and property, the right of practicing [*sic*] any religion one likes, the right of emigration, and the like'). Such rights, it had been argued, 'cannot enjoy such guarantee, *since the Law of Nations is a law between States, and since individuals cannot be subjects of this Law*'.⁵⁰

Such a view had prevailed as far as most states were concerned when the Covenant of the League of Nations was concluded in 1919. As its preamble recited, the main aim of that organization was 'to promote international co-operation and to achieve international peace and security'. Talk that all states should protect minorities along the lines of the

⁴⁶ Such arrangements were the product of procedures settled upon by the League itself. Only the treaty concerning Upper Silesia actually conferred a right of petition, although Finland was also obliged to forward petitions in relation to the Åland Islands.

⁴⁷ *Rights of Minorities in Upper Silesia*, PCIJ Rep Series A No 15 (1928).

⁴⁸ *Minority Schools in Albania case*, PCIJ Rep Series A/B No 64 (1935).

⁴⁹ See n 45 and MacCartney, 'League of Nations' Protection of Minority Rights' in Luard (ed), *The International Protection of Human Rights* (Thames and Hudson, 1967) 22, 34–7.

⁵⁰ Oppenheim, *Treatise on International Law, Vol I, Peace* (1905) 346 (emphasis added).

minority treaties was quickly dismissed; therefore no guarantees for the protection of individuals generally were imposed on states after the First World War. Quite simply, outside the discrete context of the minority treaties, the notion that international bodies could or should have an influence on how the state treated its own nationals was not developed at the general level at this stage. Hence, governments and the League of Nations made little attempt to intervene in what would today be seen as the human rights abuses that occurred in countries such as Germany, the Soviet Union, and Italy in the lead up to the Second World War. As Luard once put it, this was not because people did not care, rather:

The assumptions of national sovereignty were almost everywhere still accepted. Regulations restricting freedom of the press, of speech and assembly, imprisonment for political offences, persecution on racial grounds, all these things were deplored and denounced. But it was widely accepted that they were ultimately the sole responsibility of the legal government of the territory in question: and not therefore matters over which foreign individuals or governments could legitimately take action.⁵¹

4 HUMAN RIGHTS ON THE INTERNATIONAL PLANE AFTER THE SECOND WORLD WAR

And here, over an acre of ground, lay dead and dying people. You could not see which was which, except perhaps by a convulsive movement, or the last quiver of a sigh from a living skeleton, too weak to move. The living lay with their heads against the corpses, and around them moved the awful ghostly procession of emaciated, aimless people, with nothing to do, and no hope of life, unable to move out of your way, unable to look at the terrible sights around them... Babies had been born here, tiny wizened things that could not live. A mother, driven mad, screamed at a British sentry to give her milk for her child, and thrust the tiny mite into his arms and ran off, crying terribly. He opened the bundle, and found the baby had been dead for days. This day at Belsen was the most horrible of my life.⁵²

These were the words of Richard Dimbleby reporting for the BBC at the time of the liberation of the Nazi concentration camp in Belsen. Such human rights atrocities, and countless others committed during the Second World War, were a galvanizing force that would help to ensure a new approach for international law after 1945 as regards the rights of the individual. They would prompt the first steps towards a modern international law of human rights.

The first proposals for an international code of human rights can be traced at least as far back as 1929, when in New York the Institute of International Law adopted 'An International Declaration of the Rights of Man'. Soon after the outbreak of war, the British author HG Wells campaigned for a Declaration of Rights; his book *HG Wells on the Rights of Man* sold well in the UK and 'in an act of utter optimism'⁵³ the war ministry had German translations dropped on the advancing German forces on the continent. Also dropped were leaflets from the White Rose Movement—a body made up of a small group of students and some academics at the University of Munich. In 1942–3 they courageously

⁵¹ Luard, 'The Origins of International Concern over Human Rights' in Luard, n 49, 21. The League of Nations did take some notable steps in the fields of anti-slavery law, refugee law, and trafficking in drugs.

⁵² Richard Dimbleby, BBC News (13 May 1945), available at: <http://news.bbc.co.uk/1/hi/in_depth/4445811.stm>.

⁵³ Robertson, *Crimes Against Humanity* (Penguin, 2006) 28.

produced and distributed a series of leaflets in defiance of the Nazi regime, calling for democracy in Germany and for the protection of certain fundamental rights in a new Europe. Six of the student authors and one academic were captured by the Gestapo in 1943; they were summarily tried and executed.⁵⁴

Back in January 1941, in his message to Congress, US President Roosevelt spoke of a world founded on ‘four essential human freedoms’ (‘freedom of speech and expression’, ‘freedom of every person to worship God in his own way’, ‘freedom from want’, and ‘freedom from fear’). Later that year, on 14 August, Roosevelt and the British Prime Minister Winston Churchill proclaimed the Atlantic Declaration; they hoped to see a world where ‘the men *in all lands* may live out their lives in freedom of fear and want.’⁵⁵ This was followed in 1942 by the Declaration of the United Nations (UN). Not to be confused with the UN Charter of some three years later, the Declaration of 1942 was signed by 47 alliance states all prepared to subscribe to the principle that ‘complete victory over their enemies [was] essential to defend life, liberty, independence and religious freedom, and to preserve human rights and justice in their own lands as well as in other lands.’ ‘Human rights’ and democracy therefore became one of the moral bases upon which the Second World War was fought; Churchill even spoke of a time when the world’s struggle ended with ‘the enthronement of human rights.’⁵⁶ Passages such as these were quoted by Lauterpacht in his 1945 book, referred to in Section 1, as he looked forward to the post-war world.

So what happened when the conflict finally ended? To what extent were these lofty ambitions realized in the war-shattered world?

4.1 CRIMES AGAINST HUMANITY

A very important step was taken in 1945 when the victorious powers decided that the major war criminals of the German Third Reich should be brought to justice. The Four-Power Agreement of 8 August 1945 provided for the establishment of the International Military Tribunal for the Prosecution and Punishment of Major War Criminals of the European Axis (Nuremberg Tribunal). The crimes in question were primarily those of planning and waging a war of aggression and the committal of war crimes, but they also included ‘crimes against humanity’. The Nuremberg Tribunal eventually interpreted these crimes in a rather restrictive way. Nonetheless, the concept of such crimes was very significant for international human rights law, for it realized the possibility of international accountability and punishment for appalling crimes committed against individuals. More detailed discussion of the Nuremberg Tribunal can be found in Chapter 24.

4.2 THE UN CHARTER

The main focus of the immediate post-war story for international human rights law concerned the attempts made to create legal instruments protecting human rights. Of course, this meant securing agreement on what that concept actually covered. The framing of the UN Charter in San Francisco in 1945 was the obvious starting point in this endeavour. Its preamble stated that the peoples of the UN were:

determined to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and to reaffirm faith in fundamental human

⁵⁴ See Dumbach and Newborn, *Sophie Scholl and the White Rose* (Oneworld, 2006).

⁵⁵ 35 AJIL (1941), Supplement, 191, principle six (emphasis added).

⁵⁶ *The Times* (30 October 1942), quoted by Lauterpacht, n 1, 6.

rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small.

Therefore, with the framing of the UN Charter human rights had finally become a subject of official concern for the international community. Nonetheless, Article 2(7) UN Charter, the 'domestic jurisdiction' clause,⁵⁷ cast something of a shadow over this, while the six references to 'human rights' in the main body of the Charter itself did not appear to commit member states to very much.⁵⁸ At most, members of the UN would be required to 'promote' human rights in accordance with Article 55(c) read with Article 56. There had been proposals to go further than this; Chile and Cuba, for example, had been prepared to accept provisions in the Charter to guarantee *specified* rights, and there had been a Panamanian proposal to include a bill of rights in the Charter. But this was all far too ambitious for the majority of states, which thwarted such proposals given the radical implications they had for state sovereignty. This was an inauspicious beginning. However, there remained hope that a more faithful consummation of the place of human rights in the new world order would follow. After all, President Truman's address to the San Francisco conference, which had concluded the Charter, had spoken of an International Bill of Rights 'acceptable to all the nations involved' to follow soon, one which would be 'as much part of international life as our own Bill of Rights is a part of our Constitution.'⁵⁹

4.3 THE UNIVERSAL DECLARATION OF HUMAN RIGHTS

In 1946 the UN Commission on Human Rights was instituted and given the task of working on an International Bill of Rights. The task, to create a human rights instrument applicable to all states and peoples across the globe, threw up a series of difficult philosophical and political questions.⁶⁰

Even before the Commission began its work, the politics of international human rights protection had become apparent, but by 1947 'human rights' was rapidly becoming an ideological weapon in the war of words between East and West.⁶¹ So the idea of an International Bill of Rights was an attractive one in principle, but there were major difficulties when it came to putting in place concrete measures, especially international legal obligations.

The Commission quickly decided that the International Bill should have three parts: a declaration, a convention containing legal obligations, and 'measures of implementation', that is, a system of supervision and control. A drafting committee of eight members (from Australia, Chile, China, France, Lebanon, the UK, the USA, and the Soviet Union) was appointed to formulate the declaration. Its chair was Eleanor Roosevelt. The Universal Declaration of Human Rights (UDHR) was subsequently formulated from an initial outline produced by John Humphrey, as well as a British draft.⁶² Following many sessions of the drafting committee and approval by the plenary Commission, on 10 December 1948, the UDHR was proclaimed by 48 states in the UN General Assembly. Indeed, the years 1948–9 proved to be remarkable ones for human rights standard-setting (see Table 1.2 for

⁵⁷ Art 2(7) reads (in part): 'Nothing contained in the present Charter shall authorize the United Nations to intervene in matters that are essentially within the domestic jurisdiction of any state.'

⁵⁸ See Arts 1, 13, 55, 56, 62(2), 68, and 76. See also the preamble to the Charter.

⁵⁹ UN Information Organisation, Documents of the UN Conference on International Organisation (1945), Vol I, 717, cited by Sohn, *The United Nations and Human Rights* (Oceana Publications, 1968) 55.

⁶⁰ Lauren, n 18, 219. ⁶¹ Lauren, 228.

⁶² See Humphrey, *Human Rights and the United Nations: A Great Adventure* (Transnational Publishers, 1984) 42–3.

Table 1.2 Human rights on the international plane: key dates

1941	Roosevelt's Four Freedoms speech
1942	Declaration of the UN
1945	UN Charter
1948	Universal Declaration of Human Rights Convention on the Prevention and Punishment of the Crime of Genocide
1949	Four Geneva Conventions
1966	ICCPR and ICESCR opened for signature
1976	ICCPR and ICESCR enter into force

key dates). The Convention on the Prevention and Punishment of the Crime of Genocide⁶³ was opened for signature on 11 December 1948 and the four Geneva Conventions in 1949.

The UDHR had been accepted by the General Assembly without any dissenting votes, although there had been eight abstentions from the six communist states which were then members of the UN (Byelorussian SSR, Czechoslovakia, Poland, Ukrainian SSR, USSR, and Yugoslavia), plus Saudi Arabia and South Africa. The 48 states had nevertheless backed the UDHR as a 'common standard of achievement for all peoples and all nations'. Eleanor Roosevelt famously told the General Assembly that the Declaration 'might well become the *Magna Carta* of all mankind'. Yet as she herself was quick to acknowledge, in her capacity as a US representative, the basic character of the UDHR had to be kept in mind. It was not, she stressed, a treaty; it did not purport to be a statement of law or of legal obligations'. Similarly, most of the delegates at the General Assembly were ready to applaud the UDHR, but quick to deny that it had legal force. In fact the emphatic and repeated denials that the UDHR had legal force were probably part of the efforts that were necessary for its acceptance by the 48 states in the first place.⁶⁴

Writing less than two years after the UDHR had been proclaimed, Lauterpacht dismissed it as being of 'controversial moral authority'.⁶⁵ He was not alone in his criticism of the Declaration. Events, it seemed, had confirmed that states had failed to rise to the challenge foreseen by Lauterpacht in his 1945 book. From the perspective of 1950, Lauterpacht's disappointment can be appreciated. No International Bill of Rights was secured in the 1940s. Moreover, in 1950 the prospects for the remainder of the bill looked bleak. It took until 1954 for the UN Commission to complete the drafts of what would become the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). However, they would not be opened for signature until 1966 and it would take until 1976 before they entered into force for the 35 states that were prepared to ratify them. The drafting history of the two Covenants reveals the many compromises and amendments that were necessary to secure their acceptability to the members of the UN, especially as the size of that organization grew significantly in the post-colonial era. A similar point may be made about the relatively weak enforcement regimes that were eventually agreed for both treaties. They revealed how unrealistic it had been in the mid-1940s to assume that classic features of state sovereignty could be pushed aside easily when it came to establishing an effective International Bill of Rights.

⁶³ See Chapter 24.

⁶⁴ Moskowitz, *Human Rights and World Order* (Stevens and Sons, 1959) 79.

⁶⁵ Lauterpacht, n 3, 279. He was highly critical of the leading nations for their limited achievements. See Lauterpacht, 397–408.

5 CONCLUSION

More than 60 years on from when Eleanor Roosevelt unveiled the UDHR, it seems that her description of it as a possible Magna Carta for mankind was most apt. After all, as already noted, the document of 1215 was but the start of the story of the domestic protection of human rights. Can the same comment not be made for the UDHR today with respect to the international protection of human rights?

As the subsequent chapters in this book will reveal, the rights protected by the UDHR, and the two Covenants more generally, which today have been ratified by a large majority of states, have become part of a body of international law the scope, breadth, and general significance of which would have been impossible to predict in the late 1940s. And if these are the achievements of only the last 60 years, then what further progress can we expect in this century and beyond?

Of course, none of this is to suggest that things are anywhere near perfect today. We know that serious human rights violations occur across the globe every day. We may nevertheless compare the situation now with that existing before 1945. Today, there are international legal obligations that restrain how a sovereign state may treat individuals within its jurisdiction. This is now a matter for legitimate international concern, and international human rights law represents the standard by which the conduct of states may be judged. Today, even the most authoritarian of regimes would not publicly oppose the principle that their citizens have certain fundamental rights, even though the actions of many such governments may not always faithfully uphold such ideals. Certainly much more needs to be done to see the proper enforcement of the international standards that have been created. But here we may recall the words of Lauterpacht; the history of human rights law, both at the domestic and the international level, confirms that '[t]he vindication of human liberties does not begin with their complete and triumphant assertion at the very outset'. Rather, 'it commences with their recognition in *some* matters, to *some* extent, for *some* people, against *some* organ of the State.'⁶⁶ The story of the history of human rights is, therefore, most certainly an ongoing one.

FURTHER READING

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- SIMPSON, *Human Rights and the End of Empire* (Oxford University Press, 2001) especially chs 2–5.
- TOMUSCHAT, *Human Rights: Between Idealism and Realism* (Oxford University Press, 2008) ch 2.

⁶⁶ Lauterpacht, n 1.

USEFUL WEBSITES

Avalon Project: Documents in Law, History and Diplomacy (many of the 'constitutional' documents referred to in this chapter are available on this site): <<http://avalon.law.yale.edu>>

Official UN website on the UDHR, with links to audiovisual materials on the UDHR: <<http://www.ohchr.org/EN/UDHR/Pages/introduction.aspx>>

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