

rights of women; workers' and socialist movements; and the development of humanitarian laws of war – laid important foundations for the future of human rights. These developments were important in two particular respects. Firstly, they brought to the foreground what are now called economic and social rights, although it is a common mistake to believe that these had been ignored in previous eras (the right to subsistence is probably the oldest human-rights issue). Secondly, the international solidarity of non-governmental organizations was pioneered as technological advances made international travel and communication faster and easier.

The First World War was a humanitarian disaster, but it also advanced the causes of economic and social rights, the rights of women and minorities, and the right of national self-determination against imperialism. At the end of the war the League of Nations was established, and addressed questions of justice in the colonies, minorities, workers' rights, slavery, the rights of women and children, and the plight of refugees. The Covenant of the League made no mention of the Rights of Man. Japan proposed a clause upholding the principle of racial equality, but this was defeated on the initiative of the USA and the United Kingdom.

The League of Nations turned out to be a practical failure. It took the horrors of Nazism to revive the concept of the Rights of Man as human rights.

3

After 1945

The New Age of Rights

The UN and the human-rights revival

Since the General Assembly of the United Nations proclaimed its Universal Declaration of Human Rights on 10 December 1948, the concept of human rights has become one of the most pervasive in contemporary politics. Seen in historical perspective, this is astonishing. A concept, not long ago discredited, has made a remarkable revival; furthermore, although widely perceived as Western, it has become global. The period from the French Revolution to the Second World War was the dark age of the concept of human rights. We are now in its second age.

We saw in chapter two that, although the concept of the Rights of Man was largely discredited in the nineteenth century, concern with what we now call human-rights issues continued to develop in the campaigns against the slave trade, slavery, racial discrimination and colonialism, and for workers' rights, humanitarian laws of war, the protection of minorities, and the emancipation of women. An international treaty to abolish the slave trade was concluded in 1890, and a treaty to abolish slavery itself was drafted in 1926. The International Labour Organization (ILO) addressed workers' rights, and the League of Nations attempted to solve problems of refugees and minorities, although its minority treaties

applied only to a few countries and were largely unsuccessful (Donnelly 1989: 210; Thornberry 1991: 38–54).

The concept of human rights moved to the forefront of Allied discourse during the Second World War. On 6 January 1941, President Roosevelt, in his annual State of the Union address to Congress, presented his vision of a world based on 'four essential human freedoms': freedom of speech and expression, freedom of worship, freedom from want, and freedom from fear. 'Freedom', he declared, 'means the supremacy of human rights everywhere' (Franklin D. Roosevelt Presidential Library and Museum). In August 1941, Roosevelt met the British Prime Minister, Winston Churchill, to discuss their common purposes. This meeting produced an eight-point declaration that became known as The Atlantic Charter. It set out as a common aim, among other things, the establishment of a peace which would afford assurance 'that all the men in all lands may live out their lives in freedom from want and fear' (Avalon Project). In the Declaration by the United Nations on 1 January 1942, the Allied governments asserted that victory was essential 'to preserve human rights and justice' (Nickel 1987: 1; Morsink 1999: 1). President Roosevelt, in his State of the Union message of 11 January 1944, announced 'a second Bill of Rights' that included the rights to health, education, work, food, clothing, housing, and recreation (Newman and Weissbrodt 1996: 49–50).

The immediate cause of the human-rights revival, however, was the growing knowledge of Nazi atrocities in the Second World War. Neither Utilitarianism nor scientific positivism – the two philosophies that had undermined the concept of natural rights in the nineteenth century – was well suited to explain the evil nature of Nazism. The language of human rights seemed more appropriate. The Nuremberg trials of Nazi leaders created a favourable context for human-rights thinking, even though they were restricted to war crimes.

The United Nations Organization was set up to establish a new world order in accordance with the principles upon which the war had been fought. Support for a strong human-rights commitment came mainly from smaller countries, in Latin America, the West and the third world, and from non-governmental organizations (NGOs). Opposition came

mainly from the great powers, especially the USA and the USSR. Partly as the result of determined lobbying by NGOs, the UN's San Francisco conference of 1945 included a number of human-rights provisions in the UN Charter (Cassese 1992: 25–7).

The preamble to the Charter declares that one of the chief aims of the organization is 'to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small'. Article 1 states that one of the principal purposes of the UN is 'to achieve international co-operation ... in promoting and encouraging respect for human rights and fundamental freedoms for all'. Article 55 provides that the UN shall promote 'universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion'. Article 56 tells us that all members of the UN pledge themselves to take joint and separate action in co-operation with the UN for the achievement of the purposes set forth in Article 55. Article 68 required the Economic and Social Council to set up commissions in economic and social fields and for the promotion of human rights, and, on this basis, the Council set up the Commission on Human Rights that was to draft the Universal Declaration. Article 62 said that the Council 'may make recommendations for the purpose of promoting respect for, and observance of, human rights', and this was the basis on which it recommended to the General Assembly that it adopt and proclaim the Declaration (Robertson and Merrills 1996: 25–6; Morsink 1999: 2–4).

These provisions were qualified by Article 2, paragraph 7, which says that nothing in the Charter shall authorize the UN to intervene 'in matters which are essentially within the domestic jurisdiction of any state'. The question as to whether violations of human rights are such matters has been one of the most controversial in the law and politics of human rights. The UN's persistent concern with apartheid in South Africa shows how Article 2 (7) has, from the earliest days of the UN, been no barrier to international action if there is sufficient will and unity in the international community. The General Assembly has not been much inhibited by Article 2 (7) in discussing human-rights issues, and 2 (7) has not

prevented the establishment of UN procedures to investigate human-rights violations, although it may have been a barrier to their effectiveness (Cassese 1992; Robertson and Merrills 1996: 31).

The Universal Declaration of Human Rights

Since the Universal Declaration of Human Rights is sometimes treated as a quasi-sacred text by its supporters, and as a clumsy piece of bad philosophy by its critics, it is worth noting how it was made. A Canadian lawyer, John Humphrey, produced a first draft, based on a comparative survey of national constitutions. The Commission on Human Rights then held 81 meetings over almost two years. The Commission approved the final draft almost unanimously. Then the General Assembly Third Committee on Social, Humanitarian, and Cultural Affairs held more than 100 meetings between September and December 1948. In this process, 1,233 individual votes were cast. The Third Committee adopted the Declaration by a vote of 29 to 0 with seven abstentions. The General Assembly adopted the Declaration on 10 December 1948, with 48 states voting for, none against, and eight abstaining (six Communist states, Saudi Arabia and South Africa). Thus, most UN members endorsed most of the Declaration, but those states were mainly from Europe, North and Latin America, with a few states from Africa and Asia.

Some states that played leading roles in drafting and approving the Declaration had colonial empires, and much of the world's population lived under colonial rule. Since the adoption of the Declaration, UN membership has more than trebled, with new members coming overwhelmingly from Africa and Asia. This has raised the question as to the applicability of the Declaration to these countries. In this connection, it is worth noting that even in 1948 the UN included capitalist and socialist states, rich and poor countries such as the USA and Ethiopia, and societies that were predominantly Christian, Muslim, Hindu and Buddhist. The Western states may have been dominant, but 'third-world' states

strongly supported the human-rights project as a means to fight colonialism and racism, and to promote social justice. Some of the most innovative features of the Declaration – for example, racial and gender equality, economic and social rights – were promoted by states other than the dominant Western powers, which, in various ways, viewed them with misgivings. The common view that 'the West' imposed human rights on the rest is not only historically inaccurate but also exaggerates the West's commitment to human rights (Morsink 1999; Cassese 1992; Waltz 2001: 65, 70–2).

It is important not to confuse the nature or motives of those responsible for the Declaration with their reasons. The Universal Declaration was intended to prevent a repetition of atrocities of the kind that the Nazis had committed. This is expressed particularly in the second paragraph of the preamble, which states that 'disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind'. The Commission on Human Rights, aware of the religious, philosophical and ideological diversity of UN members, displayed little interest in the philosophical foundations of human rights. Nevertheless, given that Nazism violated human rights in theory and practice, the adoption of the concept of human rights by the UN in opposition to Nazi ideology clearly implied the commitment to some kind of neo-Lockean political theory. The substitution of the term 'natural rights' by that of 'human rights' may have been intended to eliminate the controversial philosophical implications of grounding rights in nature (Morsink 1999: 283, 294–6, 300–2). The Declaration set aside the traditional, but controversial, foundation of natural rights, without putting any new foundation in its place. Its strategy was to seek agreement on *norms* (rules) without seeking agreement on fundamental values and beliefs (Nickel 1987: 9). The concept of human rights is, however, sufficiently similar to the Lockean concept of natural rights to be located in the Western liberal tradition. This makes it doubly controversial: because it is Western, and because it is liberal. However influential the concept of human rights may be, and however appealing to many people, it is philosophically ungrounded (Waldron 1987: 151, 166–209). The problem of 'grounding' any concept philosophically is, however, notoriously difficult,

and concepts may still be morally and politically useful, even though they are philosophically controversial. The actions of those who heroically resisted the Nazis may have been philosophically ungrounded, but no worse for that.

The Declaration allegedly reveals a Western bias in its emphasis upon rights rather than duties, individual rather than collective rights, civil and political rather than economic, social and cultural rights, and in its lack of explicit concern with the problem of imperialism (Cassese 1992: 31). The Declaration did, however, include the economic and social rights – such as the rights to work, health and education – that had been won in several industrial countries in the nineteenth and early twentieth centuries. Donnelly has challenged the view that the Declaration prioritized civil and political rights (Donnelly 2007b: 38).

The Declaration was not intended to impose legal obligations on states, but rather to set out goals for which states were expected to strive (Robertson and Merrills 1996: 28–9). It was, nonetheless, the first declaration of moral and political principles that could make a *prima facie* plausible claim to universality (Morsink 1999: 33). Locke's theory and the French revolutionary Declaration may have been universal in principle, but the UN Declaration was endorsed by political powers with global reach. Whatever its philosophical limitations, the Declaration has had great legal and political influence. Before the Second World War there was almost no international law of human rights. There are now approximately 200 international legal human-rights instruments, of which 65 acknowledge the Universal Declaration as a source of authority. The Declaration is also the source of an international movement, and of numerous national movements, of political activists who struggle against oppression, injustice and exploitation by reference to this document (Morsink 1999: xi–xii, 20).

Article 1 announces that all human beings are born free and equal in dignity and rights. They are endowed with reason and conscience, and should act towards one another in a spirit of brotherhood. Notwithstanding the echoes of Locke and the French Revolution, this is not unreconstructed natural-rights theory, but a liberal riposte to Fascism (Morsink 1999: 38). Article 2 says that everyone is entitled to all the

rights and freedoms set forth in the Declaration 'without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status'. This is both an explicit statement of the egalitarian implications of the concept of human rights, about which classical natural-rights thinkers had been so evasive, and a direct rejection of Nazi racist ideology (Morsink 1999: 39). Article 2 is elaborated by Article 7, which states that all are equal before the law, and are entitled to equal protection of the law without any discrimination.

Articles 3–5 deal with what are sometimes called 'personal integrity rights'. Article 3 restates the classic rights to life, liberty and security of person. Article 4 forbids slavery, servitude and the slave trade. Article 5 forbids torture and 'cruel, inhuman or degrading treatment or punishment'. Torture is widely condemned in the contemporary world, and widely practised, but the interpretation of the phrase 'cruel, inhuman or degrading treatment or punishment' has proved to be controversial.

Articles 6–12 deal with legal rights. These provisions are not controversial in general, although their particular applications may be, but the balance between legal rights, on the one hand, and social and economic rights, on the other, has been criticized for being excessively influenced by the Western history of rights as legal protections for private individuals against the state rather than as positive contributions to the life of dignity.

Article 14 says that everyone has the right to seek and to enjoy in other countries asylum from persecution. This article was influenced by Nazi treatment of the Jews, but the right of asylum has become one of the most important and controversial of human rights in recent times, as gross violations of other human rights have generated massive refugee flows, and many countries that claim to be champions of human rights are reluctant to defend the Article 14 human rights of foreigners.

Article 16 states that men and women of full age have the right to marry and to found a family without any limitation due to race, nationality or religion. They are entitled to equal rights as to marriage, during marriage and at its dissolution. Marriage shall be entered into only with the free and full

consent of the intending spouses. This is the liberal view of marriage, and was a reaction against Nazi racial marriage laws. However, since the family is often at the centre of religious ethics, considerable tension has developed between this liberal conception of marriage rights and others, especially those that endorse 'arranged' marriages. Article 16 (3) asserts that the family 'is the natural and fundamental group unit of society and is entitled to protection by society and the state'. This unusual example of a collective right in the Declaration was understandable in the light of Nazi family policy. However, families, like all collective bodies, can be violators of human rights, for example through domestic violence against women and the abuse of children, so that 16 (3) is more problematic than it first seemed to be.

Historically, the concept of rights had been closely associated with that of property. The socialist movement that arose in the nineteenth century had made that association problematic. Article 17 of the Declaration states that everyone has the right to own property alone and in association with others, and that no one shall be arbitrarily deprived of his property. This is a relatively weak right to property, and is compatible with a wide variety of property systems.

Article 18 says that everyone has the right to 'freedom of thought, conscience and religion' and 'to manifest his religion or belief in teaching, practice, worship and observance'. This has been, historically, one of the most fundamental liberal rights, but it carries the potential problem that some religions may not respect some other human rights, and thus there can be a conflict between Article 18 and some other Declaration rights. Similarly, Article 7, which proclaims equality before the law, includes the right to equal protection against incitement to discrimination. This might conflict with Article 19, which says that everyone has the right to freedom of expression. This gives rise to the question as to whether so-called 'hate speech' – speech expressing hatred or contempt for specific groups – can be made illegal without violating the right to freedom of expression.

It is commonly said that the Universal Declaration was innovative in including economic and social rights, which are largely missing from earlier rights declarations. We saw in the last chapter, however, that the idea of economic rights

is much older than it is usually thought to be. The right to subsistence emerged in late medieval Christian thought. In the nineteenth century the working-class movement demanded, and secured, a number of economic and social rights, although debates about these were not typically conducted in natural-rights terms. Before the Second World War, the International Labour Organization, established in 1919, worked for fair and humane conditions of labour. The ILO did not, however, apply the term 'human rights' to its work until after the Second World War. Only a few ILO conventions are officially classified as human-rights treaties. These deal with freedom of association, the right to organize trades unions, freedom from forced labour and freedom from discrimination in employment. In recent years, the ILO has increasingly emphasized the importance of civil and political rights for the protection of labour rights. Some commentators have argued that all the ILO's work concerns human rights, for it seeks to implement the right to fair conditions of work that is included in the Universal Declaration (Leary 1992: 582–4).

Economic, social and cultural rights were anticipated by the UN Charter. Article 55 says that the UN shall promote higher standards of living, full employment, conditions of economic and social development, and international cultural co-operation to create the conditions of stability and well-being necessary for peaceful and friendly relations among nations. Economic, social and cultural rights were included in the Declaration because they were thought to be necessary to prevent a resurgence of Fascism and to promote the goals of the UN. The recognition of these rights represented a marriage between the tradition of liberal rights and that of socialism.

Article 22 says that everyone is entitled to realization of the economic, social and cultural rights indispensable for his dignity and the free development of his personality, 'through national effort and international co-operation' and 'in accordance with the organization and resources of each state'. Article 25 states that everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security

in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control. Article 22 makes the realization of economic, social and cultural rights dependent on the resources of each state, whereas Article 25 does not. Critics of economic and social rights argue that many states lack the resources to implement these rights, and therefore they cannot have a duty to do so. It follows that there cannot be human rights to these resources. The inclusion of the right to 'periodic holidays with pay' in Article 24 is often ridiculed because it universalizes a right that is relevant only to limited social conditions. This shows the difficulty in distinguishing between *human* rights and other rights.

The League of Nations had had a minority-rights regime, but the UN decided not to include minority rights in the Universal Declaration, although it did set up a Sub-commission on the Protection of Minorities. The only concession in the Universal Declaration to minority concerns, apart from the prohibition of discrimination, was Article 27, which says that everyone has the right 'to participate in the cultural life of the community'. This is, however, ambiguous as to whether 'the community' is the national community or includes minority communities, and it is therefore not very helpful to minorities.

Article 29, paragraph 1, states that everyone 'has duties to the community in which alone the free and full development of his personality is possible'. Paragraph 2 allows the limitation of human rights in order to secure the rights of others and to meet 'the just requirements of morality, public order and the general welfare in a democratic society'. This article is extremely vague. The Declaration is vulnerable to the objection that the concept of human rights under-values the importance of duties. This objection can be overcome, but only with a careful argument. The Declaration gives little help in developing such an argument.

The Universal Declaration has attracted criticisms on various grounds from philosophers, social scientists and politicians. We should remember that it was intended to be a manifesto, and neither a philosophical treatise nor a social policy for the world. It was written for a popular audience in relatively simple terms, and it is therefore necessarily over-

simplified as a guide to policy-making (Morsink 1999). The test of its value is to be found in its consequences, and it is to these that we now turn.

From theory to practice

The Cold War

The Universal Declaration of Human Rights is only a declaration. It makes no provision for its implementation. It allocates rights to everyone. It says little about who is obliged to do what to ensure that these rights are respected. In 1948 the UN was committed to state sovereignty and human rights. It could not decide what was to be done if sovereign states violated human rights. At that time virtually all governments said that the Declaration was not legally binding. No human-rights violations except slavery, genocide and gross abuses of the rights of aliens were illegal under international law. The UN established a Commission on Human Rights, but it was composed of the representatives of governments, and NGOs had limited access to it. The Commission's mandate was largely confined to drafting treaties and other legal texts. In 1947 the Economic and Social Council declared that the Commission had no authority to respond to human-rights violations in any way. A procedure was established to channel the thousands of complaints that the UN received each year, which the head of the organization's human-rights secretariat described as 'the world's most elaborate wastepaper basket' (Alston 1992: 128–9, 140–1; 1994: 375–6). From 1948 until the late 1960s the ability of the UN or the 'international community' to take effective action to protect human rights was extremely limited (Alston 1992: 139).

The Cold War reinforced the reluctance of states after 1948 to submit to the international regulation of human rights, and, consequently, notwithstanding the Universal Declaration, human rights returned to the margins of international politics in the 1950s. The two main Cold-War protagonists, the USA and the USSR, used the concept of human rights to score propaganda points off each other, while

directly or indirectly participating in the gross violation of human rights. Plans to introduce binding human-rights treaties were delayed until the mid-1960s.

In the 1950s and 1960s the world-wide decolonization movement created many new member states of the UN with new priorities and issues for the human-rights agenda: decolonization, the right to self-determination, and anti-racism. The Convention on the Elimination of Racial Discrimination was adopted by the General Assembly in 1965. The arrival of new states at the UN thus injected a new activism, although it was very selective: South Africa, Israel and Chile received particular attention. The new anti-colonialist and anti-racist agenda helped to diminish the apparent 'Western' bias of human rights, while, at the same time, the selectivity of the new human-rights politics threatened the universality of the concept.

Even this selective activism, however, advanced the cause of universalism, because it set precedents that were broadened later. For example, in 1965 the Special Committee on Decolonization asked the Commission to respond to the petitions that the Committee had received about the situation in southern Africa. The Council then asked the Commission to consider violations 'in all countries'. In 1966 the General Assembly asked the Economic and Social Council and the Commission on Human Rights 'to give urgent consideration to ways and means of improving the capacity of the United Nations to put a stop to violations of human rights wherever they might occur' (Robertson and Merrills 1996: 79). This led to the adoption of two new procedures. In 1967, Resolution 1235 of the Economic and Social Council authorized the Commission to discuss human-rights violations in particular countries. In 1970, Resolution 1503 of the Council established a procedure by which situations that appeared to reveal 'a consistent pattern of gross and reliably attested violations of human rights' could be pursued with the governments concerned in private (Donnelly 1989: 206). The post-colonial states had wanted the Commission to deal with racism. The Communist states thought that this would embarrass the West. The West did not want to appear to condone racism, but neither did it want racism to dominate international human-rights debates. Thus Cold-War

and third-world politics generated new procedures and wider powers for the UN Commission on Human Rights.

The work of the Commission under its 1235 powers was very selective in the 1970s. It was, for example, very concerned with South Africa, Israel's occupied territories, and Chile, but did not respond to gross human-rights violations in East Pakistan (now Bangladesh), Uganda, the Central African Empire, Cambodia, East Timor, Argentina, Uruguay, Brazil and many other places. In the 1980s the 1235 work of the Commission broadened considerably. The Commission was criticized for lack of political balance, but its scope became much wider than it had been, and much wider than it could have been before the adoption of 1235. Its response time was slow, and potential sanctions were remote. The 1235 procedure was an advance in the implementation of UN human-rights standards, but it worked unevenly, and remained marginal to the world's human-rights problems (Donnelly 1989: 208; 1998: 9; 1999: 76, 101; Alston 1992).

The 1503 procedure enabled individuals to petition the UN about human-rights violations, but offered them no redress. The Commission named countries that it had considered, and might, therefore, put some pressure on governments by publicity. However, the procedure could be brought fully into effect only at least two years after receipt of the complaint. Stalling tactics by governments, and the internal politics of the Commission itself, could delay action much longer. As a consequence, Resolution 1503 has had little impact on situations of gross human-rights violations (Alston 1992; Robertson and Merrills 1996: 79-89; Donnelly 1998: 9, 53-4). There is a consensus that the 1503 process has been slow, complex, secret and vulnerable to political influence. There is a difference of view among experts as to whether it has done more harm than good (Donnelly 1989: 208; Alston 1992: 150-5).

In 1966 two international treaties – the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights – were adopted unanimously, and opened for signature and ratification. They entered into force in 1976 when the necessary 35 ratifications had been received. The 1966 Covenants leave out the right to property, but include the right to

self-determination. The Universal Declaration and the two Covenants, together known as the International Bill of Rights, constitute the core of international human-rights law. By 3 September 2010 each Covenant had been ratified by more than 80 per cent of the 192 UN states. The fact that Western NGOs were strongly represented in the drafting process, whereas civil-society organizations from many non-Western societies were not, raises questions about the cultural legitimacy of international human-rights law.

The Human Rights Committee was established in 1976. It is supposed to consist of independent experts whose task is to monitor compliance with the Covenant on Civil and Political Rights. The states that are parties to the Covenant are obliged to submit reports on what they have done to implement the rights in the Covenant. The Committee can also receive complaints from states under the Covenant, and individual complaints under its Optional Protocol. NGOs have played an increasing role as sources of information. Co-operation with the Committee by states is variable, but the Committee has brought about legislative changes in some countries, and can contribute to human-rights improvements through discussion, debate and advice. In a few cases, individual complainants have benefited from a decision of the Committee (Donnelly 1989: 208–10, 1998: 57–9; Opsahl 1992; Robertson and Merrills 1996: 45–6, 66, 71). There are also committees that monitor the implementation of the five other 'core' UN human-rights treaties: those on economic, social and cultural rights, racial discrimination, discrimination against women, the convention against torture, and children's rights. There are differences of detail in the resourcing, working methods and effectiveness of these committees, but their achievements have been limited. The main obstacles to their greater effectiveness have been the inability or unwillingness of some governments to co-operate with them, and the unwillingness of governments generally to provide them with adequate resources (Alston and Crawford 2000).

During the 1970s, new initiatives to implement human rights were taken in the foreign policies of certain states. In 1975 US foreign aid policy was required to take account of the human-rights practices of recipient countries. When Jimmy Carter became President in 1977, he introduced

human rights into his foreign policy. This was an innovation, although the policy was implemented unevenly in practice (Donnelly 1998: 10). Meanwhile, human-rights NGOs were increasingly making an impact. Amnesty International, for example, was awarded the Nobel Peace Prize in the year in which Carter became President. The UN adopted the Convention on the Elimination of Discrimination Against Women in 1979, the Convention against Torture in 1984, and the Convention on the Rights of the Child in 1989. New 'thematic' procedures evolved. A Working Group on Enforced or Involuntary Disappearances was established in 1980 in response to events in Argentina and Chile. A special rapporteur on summary or arbitrary executions was appointed in 1982. In 1985 a special rapporteur on torture was appointed. Other special rapporteurs have dealt with religious intolerance and human-rights violations by mercenaries, and a Working Group on Arbitrary Detention was set up in 1991. Almost all the early thematic procedures applied only to civil and political rights, but, more recently, special procedures have been introduced for human rights and extreme poverty (1998), structural adjustment and foreign debt (2000), and for the rights to education (1998), food (2000), housing (2000) and health (2002). Special rapporteurs were appointed to study the human-rights situations in a growing number and increasingly diverse range of countries. By 2007, 22 experts were reporting to the Commission as special representatives or rapporteurs. These represented procedural advances in the UN implementation of human rights, but they have been thinly staffed, poorly funded, and not often successful in remedying human-rights violations. They remain marginal to the protection of human rights world-wide (Alston 1992: 180–1).

Developments in the UN were overshadowed by the impact of the Cold War, which was overwhelmingly adverse for human rights. The Communist states were gross violators of human rights, while the Western powers, led by the USA, supported regimes around the world that committed grave human-rights violations. Ironically, however, the instability of the Cold-War 'balance of power' created an opening for human-rights progress. In the early 1970s the Communist bloc sought agreements with the West on security and

economic matters. The West demanded human-rights guarantees in return. In 1973 the Conference on Security and Co-operation in Europe (CSCE) was convened, later to become the Organization for Security and Co-operation in Europe (OSCE). This led to the Helsinki Final Act of 1975, in which the Communist states accepted a range of human-rights commitments. In the following years, Helsinki-based human-rights NGOs were established in the USSR, but were severely persecuted. In 1977 the human-rights group, Charter 77, was set up in Czechoslovakia. The short-term, practical effects of these events appeared slight, but they increased the intensity of international debates about human rights, and such groups later played a role in the dismantling of the Communist system in Eastern Europe (Donnelly 1998: 78–82; Forsythe 2000: 124–5).

The admission to the UN of a large number of poor, non-Western states introduced a new emphasis on economic rights into international debate. In 1974 a number of texts concerning the so-called New International Economic Order were approved. These texts sought to draw attention away from human-rights violations in individual states to the structural causes of human-rights violations in global economic inequality. This third-world approach to human rights led to a controversial conceptual development: the so-called 'third generation' of human rights. According to this new thinking, civil and political rights were the first generation of 'liberty' rights; economic and social rights were the second generation of 'equality' rights; and there was now a need for a third generation of 'solidarity' rights. These were the rights to development, peace, a healthy environment and self-determination. In 1986 the General Assembly adopted a Declaration on the Right to Development.

'Third-generation' rights have been criticized on several grounds, including the following: 1) the language of 'generations' is inappropriate, because generations succeed each other, but so-called generations of human rights do not; 2) the concept of 'generation' presupposes a questionable history of human rights: the supposed first two generations were both recognized in the Universal Declaration; 3) it is not clear whether the holders of these rights are individuals, peoples, states or some combination of these; 4) it is not clear what

the bearers of these rights have a right to; 5) it is not clear who the corresponding duty-bearers are, nor what their duties are; 6) these rights-claims provide cover for authoritarian governments to violate established human rights; 7) what is valid in third-generation rights is already contained in established human rights: for example, the right to development is covered by taking economic and social rights seriously (Donnelly 1993).

In the 1980s and early 1990s the theme of 'cultural relativism' became more salient in UN debates about human rights. In 1984 the Islamic Republic of Iran announced it would not recognize the validity of any international principles that were contrary to Islam. In the run-up to the UN World Conference on Human Rights that was held in Vienna in 1993 there was much talk of a conflict between 'Asian values' and human rights. The final declaration of the Vienna conference reaffirmed the universality of human rights, but conceded that human rights 'must be considered in the context of a dynamic and evolving process of international norm-setting, bearing in mind the significance of national and regional particularities and various historical, cultural and religious backgrounds'.

After the Cold War

Although the end of the Cold War brought some immediate human-rights improvements, such as the establishment of civil and political rights in former Communist societies, the new world order produced complex human-rights patterns. Both the General Assembly and the Commission on Human Rights became more active. The challenge to Western domination of the human-rights agenda by the poorer states of the so-called South weakened. The UN goals of peace-keeping and human-rights protection became increasingly combined. The Secretary-General's office negotiated a human-rights agreement between government and rebels in El Salvador, which involved intrusive monitoring by UN civil and military personnel. Similarly, in Haiti and Liberia, the UN became involved in monitoring respect for human rights as part of political settlements. In Namibia and Cambodia, the UN had

a more comprehensive role in protecting human rights in the context of overall political re-organization. Initiatives by the Secretary-General or mandates from the Security Council provided bases for UN supervision of elections in Nicaragua, Haiti, El Salvador, Namibia, Angola, Cambodia and elsewhere. In 1991 Operation Desert Storm reversed the Iraqi military occupation of Kuwait, and was followed by military interventions in northern Iraq to create a 'safe haven' for the persecuted Kurds, and in southern Iraq in an attempt to defend the Shi'a population. In the following year the UN intervened in the civil war in Somalia to end the fighting and provide humanitarian assistance. It was more successful in the latter operation than in the former, but the intervention was problematic for the UN, the intervening states, especially the USA, and the intended beneficiaries.

If the intervention in Somalia had only limited success, the wars in the former Yugoslavia presented an even more complex challenge. The dissolution of the former Yugoslavia left a Serb minority in Croatia, three minority populations in Bosnia-Herzegovina (Serbs, Croats and Muslims), and an oppressed ethnic Albanian minority in Kosovo. Serbia launched a war against Croatia, ostensibly to protect the Serb minority, and intervened in Bosnia on behalf of the Bosnian Serbs. The war in Bosnia involved 'ethnic cleansing' (forcible moving of populations in order to create ethnically homogeneous territories) and other gross human-rights violations, including massacres and mass rapes. The UN, and particularly the major powers, were reluctant to intervene militarily, partly because of their experience in Somalia and partly because of the perceived military and political difficulties. Considerable success was achieved in delivering humanitarian assistance, but the UN's failure to prevent gross human-rights violations was catastrophic. In 1999 NATO intervened militarily in Serbia – when the UN could not because of Russian and Chinese opposition in the Security Council – in order to prevent violations of the human rights of ethnic Albanians in Kosovo. The immediate effects were worse violations against the Albanians, considerable war casualties among Serb civilians, and, after the NATO military victory, reprisals by Albanians against Serbs. The brutal and corrupt regime of the Serbian President, Slobodan

Milošević, was overthrown, and Milošević himself arrested and charged with crimes against humanity, war crimes and genocide by the International Criminal Tribunal for the Former Yugoslavia. He died before the tribunal could reach a verdict. The legality of the NATO intervention was dubious, and controversial, even among human-rights observers. After several years of UN administration, Kosovo declared independence in February 2008. In July 2010 the International Court of Justice ruled that Kosovo's declaration of independence did not violate international law. At that time 69 countries, including the USA and most European Union states, had recognized Kosovo's independence, but most UN states, including Russia and Serbia, had not.

The establishment of international criminal tribunals, both for the former Yugoslavia and for Rwanda following the genocide of 1994, were further innovations by the UN. In 1998, 120 states adopted the Rome Statute establishing the International Criminal Court. The Statute entered into force in 2002. The success of this combination of law and politics remains controversial and is still uncertain.

The UN has had for a long time a small and poorly funded programme of technical assistance for human rights, for example in legal institution-building. In the early 1990s this was somewhat expanded. Some observers prefer this constructive assistance for human rights to more adversarial pressure, while others believe that such programmes achieve little, and can divert attention from human-rights violations. The UN also acts to mitigate the effects of human-rights violations through the High Commissioner for Refugees (UNHCR). Although UNHCR does extremely valuable work, it acts typically after gross human-rights violations have taken place, and the problem of refugees is, despite its efforts, becoming worse, not better.

The Vienna conference of 1993 reaffirmed the universality, indivisibility and interdependence of human rights. It also emphasized the special vulnerability of certain groups such as women, children, minorities, indigenous populations, disabled persons, migrant workers and refugees. Among the consequences of these concerns were the appointment in 1994 of a Special Rapporteur on Violence Against Women, the International Convention on the Rights of Migrant

Workers, which entered into force in 2003, and the Convention on the Rights of Persons with Disabilities, which entered into force in 2008. The conference also opened the way for the appointment of a High Commissioner for Human Rights.

9/11 and after

On 11 September 2001 the militant Islamist group, Al-Qaeda, carried out an attack, using hijacked civilian airliners as missiles, on the World Trade Center in New York, and the Pentagon in Washington, DC. Another plane was brought down by its passengers in Pennsylvania. Some 3,000 people were killed.

Al-Qaeda had been formed by Osama bin Laden, son of a wealthy Saudi Arabian businessman, during the resistance to the Soviet invasion of Afghanistan. After the withdrawal of Soviet troops from Afghanistan, bin Laden turned his attention to his own government, and its superpower ally, the USA. He appears to have been particularly angered by the willingness of Saudi Arabia to allow US troops to use that country, the homeland of Islam, as the base for its invasion of Kuwait to expel the occupying Iraqi forces in the Gulf War of 1991. Al-Qaeda is a loose network rather than a disciplined organization, and its supporters have various ideologies. Bin Laden's ultimate goal, however, is the reversal of Western intrusions into 'Muslim lands' that took place after the dismantling of the Ottoman Empire after the First World War.

The USA, and some of its allies, responded to 9/11 by helping the Northern Alliance to overthrow the Taliban regime in Afghanistan, which had been sheltering Al-Qaeda. In March 2003 the USA invaded Iraq on the ground that its President, Saddam Hussein, had 'weapons of mass destruction' in violation of Security Council resolutions, that he was supporting terrorism, and that he was a dictator whose removal from power was justified. The US administration hinted that Saddam Hussein was somehow linked to 9/11. The war was extremely controversial, because no weapons of mass destruction were found, no links with Al-Qaeda were established, and the result of the invasion was extremely

bloody conflict in Iraq. Although Iraq acquired a democratically elected government, both its stability and its commitment to human rights are uncertain.

The 'war on terrorism' was not only military. A number of countries passed anti-terrorism laws that were criticized by human-rights groups, and sometimes by courts. The most notorious human-rights issues arising from the 'war on terrorism' were the detention without trial of several hundred suspected terrorists at Guantánamo Bay in Cuba, and allegations of torture and/or inhumane treatment of prisoners in Afghanistan, Iraq, Guantánamo, and by 'extraordinary rendition' to countries where torture is common. The USA and its allies supported governments with poor human-rights records in exchange for their collaboration in the 'war on terrorism'. At the same time, the US Congress and NGOs continued to criticize the human-rights records of their country's anti-terrorism partners.

There is a growing concern that 'globalization' is a threat to human rights. Concern for 'globalization' has shifted the human-rights agenda somewhat in favour of economic and social rights, and has raised questions about the human-rights obligations of non-state actors, such as multinational corporations. Another human-rights problem associated with globalization is that of the increasing numbers of asylum-seekers and the reluctance of the governments into whose jurisdiction they flee to respect their rights in full. A related issue is that of climate change. The connections between climate change and human rights are not yet well understood, but it is possible that climate change has already had an impact on economic and social rights, civil conflict and refugee flows. These issues are analysed further in chapter eight.

In March 2006 the UN General Assembly decided to abolish the Commission on Human Rights and replace it with a Human Rights Council. The origin of this reform was widespread dissatisfaction with the Commission on the grounds that some of its members represented governments with very bad human-rights records, that the Commission had become too politicized, and that it had lost credibility as a human-rights institution (Lauren 2007: 308–9). In formal, bureaucratic terms, this was a 'promotion' for the

main UN human-rights body, as, instead of reporting to the Economic and Social Council (ECOSOC), it would report directly to the General Assembly, and become an equal with ECOSOC in the UN hierarchy. A number of other reforms were instituted: whereas the Commission met for only six weeks each year, the Council will have at least three sessions, meet for at least ten weeks, and be able to convene additional sessions; candidates for membership are supposed to have contributed to the promotion and protection of human rights, and are invited to make pledges to continue to do so on the Council; membership has been reduced from 53 to 47; the Council is required to review periodically the human-rights record of *all* states (the Universal Periodic Review); any member that commits gross and systematic violations of human rights can be suspended by the General Assembly.

It is too early to evaluate this reform with confidence. Some argue that the Council has achieved some progress by, for example, excluding some of the worst violating states and subjecting all states to the Universal Periodic Review. Others emphasize the fact that some serious violators are elected to the Council, it remains biased and has failed to address some gross violations. A key problem is that UN member states have stronger loyalties to their regions than to human rights, and consequently violating states are voted onto the Council by fellow regionals. The Council's limits were indicated when the Democratic People's Republic of Korea accepted none of the Universal Periodic Review's 167 recommendations on human rights in that country (International Service for Human Rights 2010). The Council certainly has its critics who claim that it 'plays politics' and protects human-rights violators. The change from the Commission to the Council has not solved the problem that the UN is an association of states that have varied human-rights commitments and interests.

Conclusion

Since 1945 the UN has done a lot of 'standard-setting', institution-building and human-rights promotion. The

concept of human rights is one of the most influential of our time, and many poor and oppressed people appeal to it in their quest for justice. The capacity of the UN to implement its own standards is still modest, however. The concept of state sovereignty and the realities of international power politics still make the implementation of human-rights standards uneven, and generally weak. There is widespread lip-service to human rights by governments, and also much hypocrisy. This may nevertheless have the advantage that human-rights violators can be shamed into making human-rights improvements. Lip-service may, however, be a substitute for action. There is an important role for NGOs in converting lip-service into effective action.

It is difficult to evaluate the success of the UN human-rights project precisely. Its achievements have clearly been limited, but it may be that the combined effect of UN agencies, governmental policies and NGOs has improved the human-rights situations in many countries, although gross human-rights violations are still common. The failure of the UN to respond effectively to the situation in Rwanda, despite the fact that it received early warning of the genocide, shows that its limitations can still lead to disaster. The UN carried out a human-rights revolution in world politics, but it is a long revolution in its early stages, and success is not guaranteed. The international politics of human rights is part of international politics. This means that it is characterized by a considerable amount of self-interest, pragmatism and short-term crisis management, rather than systematic implementation of principles (Forsythe 1995: 309–10).

The UN has also failed to sustain its own commitment to the indivisibility of human rights. Economic, social and cultural rights have been neglected in the main UN agencies, especially the General Assembly and the Commission, although in recent years there are signs that they are being taken more seriously. The International Labour Organization has done much to convert economic and social rights into relatively precise standards, but it is somewhat marginal in the UN human-rights system and its global impact on human rights is limited (Leary 1992: 619; Donnelly 1998: 62–4).

The international human-rights regime has been strong on declarations and weak on implementation and enforcement.

This reflects the interests of the principal international actors: *states* (Donnelly 1989: 211–12). Nevertheless, the regime has some prestige in world politics that gives it some influence. It can improve human rights if a strong alliance of states exerts pressure on an offending state with an interest in conforming to the demands of the international community (Donnelly 1998: 82–4). The regime is political, not philosophical. It responds pragmatically to circumstances, and consequently operates inconsistently. The relatively coherent ideals of the Universal Declaration are, therefore, in practice unevenly implemented. The legal institutions of the UN may be more impartial, but are procedurally restricted and diplomatically cautious. The political organs have more freedom of action, but may be more selective.

We should not forget that the very existence of an international human-rights regime is astonishing, given the controversial philosophical history of the idea of human rights and the realities of international power politics. We should remember, too, that, in addition to the international regime, there are regional regimes in Europe, America and Africa. These vary greatly in their effectiveness: the European being relatively strong, and the African very weak. In addition, there are, of course, human-rights provisions in the constitutions and laws of many states. Many of these are impressive on paper, but bear little relation to what happens in the streets and the fields.

The concept of human rights is a concept whose time has come. But what is it precisely that has come? How should we evaluate it in the light of (a) the criticisms that were made of its historical predecessors; and (b) its uneven record of success in practice? In the next chapter we shall examine theories of human rights that have attempted to clarify and justify the concept, and that have offered relatively precise answers to these questions.

4

Theories of Human Rights

Why theory?

The revival of human rights by the UN ignored the criticisms that had been made of the earlier concept of natural rights. Its practice of human-rights declarations, promotion, standard-setting and institution-building has been carried out by diplomats and lawyers, prompted and assisted by activists. They have not been much concerned with the theoretical justification of this practice. They may have considered theoretical justification unnecessary. Human-rights practice was addressed mainly to obvious human wrongs – such as racism, colonialism and political oppression – and it might be tempting to follow the American Declaration of Independence and to consider the truth of human rights to be ‘self-evident’. This is quite unsatisfactory, however, because the concept of human rights is clearly controversial and in need of justification. The history of the concept shows why this is so.

Since the classical concept of natural rights had been based on Christian natural-law theory, the secularization of the concept called its foundations into question. When the validity of the concept could no longer be guaranteed by the will of God, the Rights of Man were said to be derived from reason and/or nature. However, this derivation was very controversial. The critics of the Rights of Man – such as Burke, Bentham and Marx – could appeal to reason and