

**The Implementation and Enforcement of International Human Rights
Law: Reflections on the Drafting History of the Universal Declaration of
Human Rights**

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1. Introduction

It is difficult to overstate the significance of the Universal Declaration of Human Rights for international human rights law. Since its proclamation by the General Assembly on 10 December 1948, the Declaration has served as a catalyst for the development of human rights law at national and international levels.¹ Reflecting the commitment embodied in the Charter of the United Nations to promote and encourage ‘respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion’,² no instrument of international law has had a greater influence on the normative content of international human rights law.

Although the impact of the Declaration on national and international law has been well publicised,³ less attention has been given to the measures envisioned for the implementation of the standards it proclaims. This chapter will examine the centrality of implementation and enforcement in the process which prepared the Universal Declaration of Human Rights as the first instalment of an ‘International Bill of Rights’. In doing so, it will draw on the *travaux préparatoires* of the Declaration to demonstrate the priority originally accorded to the issue. This chapter will then conclude with reflections on the importance of continuing work on the implementation and enforcement of international human rights law.

2. Provisions for Implementation

The implementation of human rights was a central concern of the process which led to adoption of the Universal Declaration of Human Rights. The body established to decide terms of reference for the initiative – the Nuclear Commission on Human Rights – referred explicitly to the issue of implementation in its report to the Economic and Social Council on 21 May 1946. Mindful of ‘the grave importance of the task entrusted to it by the Charter of the United Nations’,⁴ the report of the Commission stated:

With regard to the promotion and observance of human rights and fundamental freedoms, the Commission felt that practical and effective measures must be taken. Each Member State must feel bound to adopt, in accordance, with its system of government, measures to safeguard the observance and to provide against the violation of those rights and freedoms that are proclaimed in an international bill. But the Commission also felt the need for an international agency of implementation, entrusted with the task of watching over the general observance of human rights, in order to prevent the recurrence of acts as monstrous as those which formed the prelude of the Second World War.⁵

¹ William Schabas, *The Universal Declaration of Human Rights: The Travaux Préparatoires* (Cambridge: Cambridge University Press 2013), cxiii- cxv; Hannum Hurst, “The status of the Universal Declaration of Human Rights in national and international law,” *Georgia Journal of International and Comparative Law* 25 (1995): 287; William Schabas, *The Customary International Law of Human Rights* (Oxford: Oxford University Press 2021), 1-4; Zachary Elkins and Tom Ginsburg, “Imagining a World without the Universal Declaration of Human Rights,” *World Politics* 74 (2022): 327-366.

² Charter of the United Nations, 26 June 1945, 59 Stat. 1031, T.S. 993, 3 Bevans 1153, entered into force 24 October 1945, Article 1(3).

³ In promoting the Declaration, the official website of the United Nations states that the 'UDHR is widely recognized as having inspired, and paved the way for, the adoption of more than seventy human rights treaties, applied today on a permanent basis at global and regional levels (all containing references to it in their preambles).' Available at: <https://www.un.org/en/about-us/universal-declaration-of-human-rights>. The website of the Office of the High Commissioner refers to it being the 'most translated document in the world': Available at: <https://www.ohchr.org/en/human-rights/universal-declaration/universal-declaration-human-rights/about-universal-declaration-human-rights-translation-project>

⁴ E/38/Rev.1, p. 3.

⁵ E/38/Rev.1, pp. 4-5.

Under the heading ‘Provisions for Implementation’, the Nuclear Commission on Human Rights made the following recommendations:

1. It shall be considered that the purpose of the United Nations with regard to the promotion and observance of human rights, as defined in the Charter of the United Nations, could only be fulfilled if provisions were made for the implementation of the observance of human rights and of an international bill of rights.
2. Pending the eventual establishment of an agency of implementation the Commission on Human Rights might be recognized as qualified to aid the appropriate organs of the United Nations in the task defined for the General Assembly and the Economic and Social Council in Articles 13, 55, and 62 of the Charter, concerning the promotion and observance of human rights and fundamental freedoms for all, and to aid the Security Council in the task entrusted to it by Article 39 of the Charter, by pointing to cases where violation of human rights committed in one country may, by its gravity, its frequency, or its systematic nature, constitute a threat to the peace.⁶

The above recommendations highlighted the necessity of, and legal basis for, the adoption of provisions on implementation. Article 13 of the Charter provides a role for UN General Assembly ‘in the realization of human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion’. Under the heading of ‘International Economic and Social Cooperation’, Article 55 refers to the role of the United Nations in the promotion of ‘universal respect for, and observance of, human rights and fundamental freedoms’. Article 62 refers to the functions and powers of the Economic and Social Council and stipulates that these include the promotion of ‘respect for, and observance of, human rights and fundamental freedoms for all’. The reference to Article 39 links the issue of implementation of the observance of human rights with international peace and security.

Each of these provisions is significant for their positioning of human rights within the legal regime established by the Charter. However, the reference to Article 39 is noteworthy for advancing implementation as an institutional priority, given that the primary function of the United Nations as an international organisation is ‘to maintain international peace and security’.⁷ Article 39 is positioned under Chapter VII of the Charter. Resolutions adopted by the UN Security Council under Chapter VII are binding on all states and have the status of international law. In the context of the United Nations, there is no higher authority for the implementation or the enforcement of human rights. Moreover, the reference to Article 39 further implies a role for the UN Security Council in combating human rights violations.

3. ECOSOC’s instruction to the Commission on Human Rights: The submission of ‘ways and means for the effective implementation of human rights and fundamental freedoms’

The position recommended by the Nuclear Commission on Human Rights was supported by the Economic and Social Council. In a resolution adopted on 21 June 1946, the Council decided the following under the heading of ‘Provisions for Implementation’:

Considering that the purpose of the United Nations with regard to the promotion and observance of human rights, as defined in the Charter of the United Nations, can only be fulfilled if provisions are made for the implementation of human rights and of an International bill of rights, the Council requests the Commission on Human Rights to submit at an early date suggestions regarding the ways and means for the effective implementation of human rights and fundamental freedoms, with a view to assisting the Economic and Social Council in

⁶ E/38/Rev.1, p. 7.

⁷ Charter of the United Nations, 26 June 1945, 59 Stat. 1031, T.S. 993, 3 Bevans 1153, entered into force 24 October 1945, Article 1(1).

working out arrangements for such implementation with other appropriate organs of the United Nations.⁸

The resolution adopted by the Economic and Social Council established the context for the Commission's work on the implementation and enforcement of human rights. The first session of the Commission on Human Rights took place six months following the resolution of the Economic and Social Council from 27 June 1947 to 10 February 1947.

The representative of India, Mrs Hansa Jivraj Mehta, emphasised repeatedly the importance of implementation. She considered that the outcome of their work 'should be a simple and forthright document which could be easily understood, with the assurance that there would be adequate machinery for its enforcement whenever human rights were violated in States Members of the United Nations.'⁹ Mehta proposed that:

[T]he Commission on Human Rights should compile a list from every country in the world of legal and administrative measures tending to decrease human rights within the meaning of the principles of the Charter. The most important consideration before the Commission should not be merely the enunciation of principles in terms of a bill of human rights, but the improvisation of adequate machinery to implement those principles.¹⁰

In the final meeting of the first session of the Commission, on 4 February 1947, the representative of India stressed that 'a mere declaration would not be sufficient and that provision would have to be made for means of implementation.'¹¹ While these statements are significant and reflect positions articulated in subsequent discussions, the first session of the Commission on Human Rights devoted relatively little time to the problem of implementation.¹² Be that as it may, the following decision was recorded in the Commission's report to the Economic and Social Council:

That, while recognizing that the Commission was not at present in a position to formulate precisely its views concerning the means of ensuring observance of the rights to be included in the international bill of human rights, the drafting group be invited to explore this field and to study the Australian proposal (document E/CN.4/15) and any other documents which had been or might be submitted to it, so that the Commission at its second session might be able to work out proposals on this subject in fulfilment of the duties assigned to it by the Council.¹³

The last sentence, referring to 'the duties assigned to it by the Council', was followed by a footnote citing the Second Session of the Economic and Social Council, which had adopted the resolution mentioned earlier requesting 'the Commission on Human Rights to submit at an

⁸ E/56/Rev.2, p 3.

⁹ E/CN.4/SR.2, p. 2.

¹⁰ E/CN.4/SR.2, p. 4.

¹¹ E/CN.4/SR.14, p. 7.

¹² This was noted in the following document released by the Drafting Committee on an International Bill of Human Rights during its first session: Memorandum on Implementation Prepared by the Secretariat at the Request of the Committee, E/CN.4/AC.1/12, 19 June 1947, p. 3.

¹³ E/259(SUPP), p. 3. The Australia proposal concerned the creation of International Court of Human Rights. An excerpt from the draft resolution proposed by Australia (E/CN.4/15):

1. There is hereby established an International Court of Human Rights. The Court shall be constituted and shall function in accordance with the Articles contained in this Part and in the Statute of the Court.
2. The Court shall have jurisdiction to hear and determine all disputes concerning the rights of citizenship and enjoyment of human rights and fundamental freedoms provided for in the Declaration of Human Rights. Subject to such conditions as shall be contained in the Statute of the Court, the Jurisdiction of the Court shall be both original and appellate, and shall extend to questions of Interpretation arising in such disputes as are brought before administrative tribunals or administrative authorities.

early date suggestions regarding the ways and means for the effective implementation of human rights and fundamental freedoms'.¹⁴

4. Methods of Enforcement considered by the Drafting Committee:

The Commission on Human Rights created a Drafting Committee and instructed it to report monthly on its progress and 'to mail the final preliminary draft of the bill to the members of the Commission by 25 June 1947'.¹⁵ In addition to the draft international bill of human rights, the Drafting Committee included a 'Memorandum on Implementation' as an annex to the report on its first session, from 9 June 1947 to 25 June 1947.¹⁶ The first paragraph of the Memorandum reproduced text from the resolution adopted by the Economic and Social Council which stated that 'the purpose of the United Nations with regard to the promotion and observance of human rights, as defined in the Charter of the United Nations, can only be fulfilled if provisions are made for the implementation of human rights and of an International bill of rights'.¹⁷ However, the priority accorded to the issue by the Drafting Committee did not reflect that of the Economic and Social Council. The approach taken by the Drafting Committee in June 1947 is summarised as follows:

19. The Drafting Committee found it necessary from time to time to take into account possible methods of enforcement, particularly when considering the problem of a Draft Convention and the United Kingdom proposals. It devoted one meeting specifically to the question of implementation, taking as a basis for discussion a paper prepared by the Secretariat (Paragraphs 1-13 of Annex H of this Report).

The Drafting Committee acted on the assumption that the international community must ensure the observance of the rights to be included in the International Bill of Human Rights. However, a wide range of views was expressed as to the precise manner in which this objective could be achieved.

The following is a summary of the principal observations made by one or more individual members of the Drafting Committee during the discussion:

- (a) that a Declaration of Human Rights and Fundamental Freedoms in a resolution of the General Assembly would in itself have considerable moral weight; but
- (b) that a more effective method for establishing human rights would be to embody them in a Convention in which the signatories would recognize them as international law;
- (c) that the signatories of such a Convention should also accept the obligation to ensure that these rights be enforceable by domestic laws in domestic courts; (it was clear from the discussion that in this connection the position of federal States, of States without written constitutions and of States where law has not been codified would require special study),
- (d) that among possible deterrents against violation of a Convention are publicity and international censure which might be achieved by
 - (i) petitions by individuals and groups to the United Nations,
 - (ii) extension of the powers of the Human Rights Commission or creation of new machinery within the framework of the United Nations to receive, sift, examine and deal with communications alleging the violation of human rights,
 - (iii) requests by the Secretary-General to Member Nations for reports on their observance of human rights,
 - (iv) discussion in the General Assembly;

¹⁴ E/56/Rev.2, p 3.

¹⁵ E/259(SUPP), p. 3.

¹⁶ E/CN.4/21, 1 July 1947.

¹⁷ E/56/Rev.2, p 3.

- (e) that an International Court of Human Rights, along the lines of the Australian proposal, be established for the adjudication of cases of alleged violation of human rights;
- (f) that any State persistently violating human rights should be expelled from the United Nations.

None of the above suggestions was approved by the Drafting Committee as such; indeed strong objections were voiced against many of them. The Drafting Committee merely transmits them to the Commission on Human Rights for its information.¹⁸

The Memorandum on Implementation annexed to the report of the Drafting Committee had been prepared by the Division of Human Rights of the Secretariat 'at the request of the Drafting Committee'.¹⁹ The document is impressive in terms of scope. It provides questions for discussion and an overview of the suggestions made by states for the implementation and enforcement of human rights. These included the establishment of an International Court of Human Rights, the extension of the jurisdiction of the UN Security to take enforcement measures under Chapter VII of the UN Charter, the direct applicability of the Bill in national legal systems without further implementation by national legislation or transformation into national law, the establishment of UN local agencies in various countries with jurisdiction to supervise and enforce human rights, the establishment of a special organ of the United Nations with jurisdiction and the duty to supervise and enforce human rights *motu proprio*, and the right of individuals to petition the United Nations, initiating a procedure for the enforcement of human rights. As there was no consensus in the Drafting Committee on which measures to prioritise as the basis for implementation, the matter was left to the second session of the Commission on Human Rights.

5. The Commission on Human Rights

5.1 Measures for Implementation

The Commission on Human Rights met for its second session from 2 December 1947 until 17 December 1947.²⁰ The report of the Commission on its second session included the following decision:

- (a) to apply the term "International Bill of Human Rights", or for brevity, "Bill of Rights", to the entirety of documents in preparation; the Declaration, the Convention and the Measures of Implementation;
- (b) to use the term "Declaration" for the articles in Annex A of this Report;
- (c) to call the Convention on Human Rights embodied in Annex B, "The Covenant on Human Rights"; and
- (d) to refer to the outcome of the suggestions embodied in Annex C as "Measures for Implementation", regardless of whether these measures will eventually form part of the Covenant or not.²¹

The decision to include 'Measures for Implementation' as part of the concept of the 'International Bill of Rights' was consistent with the terms of reference decided by ECOSOC for the work for the Commission in its resolution of 21 June 1946, which included 'Provisions for Implementation'.²² It also reflected the assumption expressed by the Drafting Committee

¹⁸ E/CN.4/21, pp. 6-7.

¹⁹ E/CN.4/21, p. 87.

²⁰ The final meeting of the second session ended at 12:25AM on 17 December 1947. E/CN.4/SR/42, p. 17.

²¹ E/600, 17 December 1947, p. 5.

²² E/56/Rev.2, p 3.

that ‘the international community must ensure the observance of the rights to be included in the International Bill of Human Rights’.²³

5.1 Working Group on Implementation

The Commission on Human Rights established three working groups to focus on the three aspects of the task entrusted to it: Drawing up a draft Declaration, preparing a draft Convention or Conventions, and the question of implementation.²⁴ Each working group had six members. The members allocated to the Working Group on Implementation consisted of representatives from Australia, Belgium, India, Iran, the Ukrainian Soviet Socialist Republic and Uruguay.²⁵

Basing its discussions on the Memorandum on Implementation drafted by the Secretariat (annexed to the report of the Drafting Committee),²⁶ the Working Group met seven times and produced a report addressing point by point the questions and suggestions contained in the Memorandum. While the report of the Working Group evidences more systematic consideration of the matter, no position was advanced on how to approach the question of implementation. The following statement, included under the heading ‘The View of the Group as to its Mandate’, makes this clear:

The Group had no difficulty in agreeing that in view of the limited time at its disposal it would be impossible for it to submit to the Plenary Commission texts of articles for Incorporation in the Draft Convention or Conventions. It regarded its task therefore as consisting in the formulation of general principles concerning the problem entrusted to it. In its view it would rest with the Drafting Committee at its next session to put these principles into the proper form.²⁷

The report of the Working Group on Implementation was included as ‘Annex C’ of the Commission’s report to the Economic and Social Council. The position expressed in the Commission’s report reflected that of the Working Group on Implementation and did not address the question of how ‘provisions for implementation’ were to be taken forward: ‘The Commission decided to take no decision on any specific principle or solution stated in the Report, but to transmit the Report to the Governments of the various States and to the Economic and Social Council for their consideration and comment.’²⁸

6. Draft Articles on Implementation of the Bill on Human Rights

The response of the Economic and Social Council to this aspect of the Commission’s work is contained in a resolution titled ‘Draft Articles on Implementation of the Bill on Human Rights’. In the resolution, the Economic and Social Council directed:

[T]he Commission on Human Rights, through its Drafting Committee and at its next session, to give particular attention to the implementation aspect of the Bill of Human Rights, in order

²³ E/CN.4/21, p. 6.

²⁴ E/CN.4/44, 3 December 1947.

²⁵ E/600, 17 December 1947, p. 5. The representative of Uruguay did not participate in any meeting of the Working Group on Implementation. He was ‘unavoidable delayed’ and did not reach Geneva until 10 December 1947. E/600, pp. 41 and 68. The representative the Ukrainian Soviet Socialist Republic left the Working Group after sending a letter to the Chairman of the Commission on 6 December 1947, maintaining that the question of implementation should be discussed at a later stage of the Commission’s work. E/600, pp. 42-43. These absences reduced membership of the Working Group on Implementation to four.

²⁶ E/CN.4.53, 10 December 1947, p. 2.

²⁷ E/600, 17 December 1947, p. 41.

²⁸ E/600, 17 December 1947, p. 7.

to ensure that draft articles on implementation may be submitted to Member Governments at the earliest possible date.²⁹

However, the priority accorded to the implementation of human rights by the Economic and Social Council did not manifest in the work of the Commission on Human Rights or its Drafting Committee. The Drafting Committee met twenty-five times from 3 May until 21 May 1948. Focusing first on the Draft International Covenant on Human Rights and then on the Draft International Declaration on Human Rights, the Drafting Committee states in its final report that ‘it did not have the time to discuss the question of implementation’,³⁰ and it ‘did not have the time to consider the instructions of the Economic and Social Council regarding implementation (Resolution 116 (VI) F).’³¹ The Commission on Human Rights also did not have time when it met for its third session:

16. The Commission recognized that in approving the Draft International Declaration of Human Rights it had not completed its task of preparing an International Bill of Human Rights, which consists of a Declaration, a Covenant, and Measures of Implementation. It agreed that the Declaration would form only part of the International Bill of Human Rights, and that completion of a Covenant, containing measures of implementation, is essential.

17. The Commission decided that further work on the Question of Implementation was of the utmost importance and that therefore it should embark upon this work together with work on the Covenant, at its fourth session on the basis of the Report of the Working Group on Implementation which met during the second session of the Commission (Annex C of document E/600) taking into account the other documentation contained or listed in Annexes "B" and "C" of the present report. The Commission recommended to the Economic and Social Council that a meeting of the Commission be held early in 1949 for the completion of the Covenant and the measures of implementation.³²

The Economic and Social Council noted that the Commission ‘did not consider the question of implementation’,³³ and that it had ‘presented to the sixth session of the Council a draft Declaration and a draft Covenant prepared with unequal thoroughness, together with the report of its working group on Measures for Implementation’.³⁴ Although it recognised that ‘the Bill of Rights was incomplete without the draft Covenant and measures for implementation’,³⁵ the Council decided to ‘transmit to the General Assembly the draft International Declaration of Human Rights submitted to it by the Commission on Human Rights in the report of its third session, together with the remainder of the report of the Commission and the records of the proceedings of the Council on the subject.’³⁶

7. The UN General Assembly and ‘Measures of Implementation’

In the first paragraph of its report on the Draft International Declaration of Human Rights, the Third Committee of the General Assembly noted the main task of the Commission on Human Rights, established by the Economic and Social Council, was to ‘prepare a draft international declaration of fundamental human rights and freedoms and a draft international covenant for the application of such rights and freedoms, as well as to study measures of implementing both these documents’.³⁷ However, ‘[t]he Third Committee, at its 94th meeting, decided to consider

²⁹ E/RES/116(VI)F, p. 19.

³⁰ E/CN.4/95, p. 3.

³¹ E/CN.4/95, p. 3.

³² E/800, p. 6.

³³ A/625, p. 35.

³⁴ A/625, p. 34.

³⁵ A/625, p. 34.

³⁶ A/625, p. 34.

³⁷ A/777, 7 December 1948, p. 1.

only the draft declaration, as the other two documents (the covenant and measures of implementation) were not yet in a state suitable for consideration.’³⁸ Accordingly, the consideration of measures of implementation was deferred again. Mindful of the incompleteness of the previously proposed plan of work, the UN General Assembly adopted the following resolution:

Considering that the plan of work of the Commission on Human Rights provides for an International Bill of Human Rights, to include a Declaration, a Covenant on Human Rights and measures of implementation,
Requests the Economic and Social Council to ask the Commission on Human Rights to continue to give priority in its work to the preparation of a draft Covenant on Human Rights and draft measures of implementation.

While some delegates emphasised the achievements of the Universal Declaration of Human Rights, others raised concerns about absence of measures ensuring observance of the rights and freedoms embodied in the instrument. Speaking on behalf of India, Mrs Lakshmi Menon emphasised the importance of following through on matter of implementation: ‘Adoption of the declaration should not ... lead to neglect of the most important document: the convention, the adoption of which the Indian Government was most anxious to see; it hoped that it would be accompanied by effective measures for implementation.’³⁹ Likewise, ‘The New Zealand delegation attached great importance to the declaration of human rights, but it wished to emphasize that the United Nations would not have fulfilled all its obligations in that field until the General Assembly had adopted a covenant and effective measures of implementation.’⁴⁰

For some, the absence of such measures in the Declaration itself was disappointing. Speaking on behalf of Poland, Dr Juliusz Katz-Suchy emphasised that it had ‘been clearly established that it was merely a declaration of principles, which no Government would be obliged to implement.’⁴¹ In explaining the position of Poland, Katz-Suchy stated:

The Polish delegation had welcomed the formation of the Commission on Human Rights. In the Economic and Social Council it had expressed its disappointment at the fact that the Council had only prepared the draft declaration and not the draft convention nor the measures of implementation which should have been elaborated simultaneously, especially in view of the fact that the declaration, as presented, was only an expression of principles with no legal force, with no provisions for implementation, and with only moral value.

The draft declaration presented to the General Assembly was as a whole not satisfactory. The discussions which had arisen while it was being drafted had shown, furthermore, that it had been calculated not to guarantee respect for human rights and fundamental freedoms. The draft, in fact, contained no details with regard to implementation and made no mention of the limitations to which the principles it proclaimed were subjected by the legislation of contemporary States.⁴²

Katz-Suchy went on to state that the future importance of the Universal Declaration of Human Rights ‘would depend on the extent of its implementation, and particularly on its application to all countries, whatever their legal status. He pointed out that the most ardent defenders of

³⁸ A/777, 7 December 1948, p. 1.

³⁹ A/PV.182, p. 895.

⁴⁰ A/PV.182, p. 889.

⁴¹ A/PV.182, p. 909.

⁴² A/PV.182, p. 904.

human rights forgot those rights when dealing with the colonial question.⁴³ The concerns raised by delegates concerning the failure to provide measures for the implementation of human rights were not without validity. Shortly after the adoption of the Universal Declaration of Human Rights, Hersh Lauterpacht commented:

[I]t is not yet clear whether the Declaration will become a steppingstone to a true Bill of Rights - that is what is meant by a Covenant and provisions for implementation - or whether it will become a factor in causing the postponement or abandonment of the main instrument for which it was intended to pave the way.⁴⁴

The absence of effective measures of implementation was recognised as an issue that would impact globally on the adherence of states to the human rights and fundamental freedoms contained in the Declaration. The outcome that had been achieved was not that which had been expected when the process began in 1946. The section that follows reflects on the lessons derived from this for implementation and enforcement of human rights.

8. Unfinished Business: The Implementation and Enforcement of International Human Rights Law⁴⁵

In the years following the adoption of the Universal Declaration of Human Rights, progress on the implementation and enforcement of human rights slowed. The Covenant that was to follow the Declaration was split into two instruments: The International Covenant on Civil and Political Rights (ICCPR);⁴⁶ and the International Covenant on Economic, Social and Cultural Rights (ICESCR).⁴⁷ Adopted by the UN General Assembly on 16 December 1966, eighteen years after the proclamation of the Universal Declaration of Human Rights, they would not enter into force until 1976.

To support the implementation of the rights codified in the ICCPR, Article 28 established the Human Rights Committee.⁴⁸ The equivalent institution for the ICESCR – the Committee on Economic, Social and Cultural Rights – was established by a resolution adopted by the Economic and Social Council.⁴⁹ Similar treaty monitoring bodies exist for each of the other core treaties of international human rights law. However, as noted by Volker Türk, the High Commissioner for Human Rights, ‘the system overall faces a significant lack of cooperation from its States parties’.⁵⁰ Addressing the 53rd session of the UN Human Rights Council on 19 June 2023, Türk highlighted the neglect of reporting obligations: ‘A total of 601 reports by States are overdue. Reports by 78 States have been overdue for more than ten years.’ The High

⁴³ A/PV.182, p. 908.

⁴⁴ Hersh Lauterpacht, “The Universal Declaration of Human Rights,” (1948) 25 *British Year Book of International Law* 25 (1948): 354-381, at 376.

⁴⁵ In the preface to his edited collection *The Universal Declaration of Human Rights: The Travaux Préparatoires*, William Schabas uses the term ‘unfinished business’ in relation to the issue of implementation:

Initially, work was undertaken on the “bill of rights” but by June 1947 the Drafting Committee of the Commission on Human Rights had separated the project into three components, a draft manifesto (ancestor of the Declaration), a draft convention (ancestor of the two International Covenants, finally adopted in 1966) and the issue of implementation, a complex subject that to some extent remains unfinished business.

Schabas, *The Universal Declaration of Human Rights*, xli.

⁴⁶ International Covenant on Civil and Political Rights, (1976) 999 UNTS 171.

⁴⁷ International Covenant on Economic, Social and Cultural Rights, (1976) 993 UNTS 3.

⁴⁸ International Covenant on Civil and Political Rights, (1976) 999 UNTS 171, Article 28

⁴⁹ ECOSOC Resolution 1985/17 of 28 May 1985.

⁵⁰ “Urging greater cooperation, High Commissioner Türk opens Human Rights Council session,” 19 June 2023. Available at: <https://www.ohchr.org/en/statements/2023/06/urging-greater-cooperation-high-commissioner-turk-opens-human-rights-council>

Commissioner also pointed to the inadequate resourcing of treaty monitoring bodies, and the lack of support from member states:

Backlogs of both State party reviews and individual communications are alarmingly high. As of 30 April, there were 385 State Party reports awaiting consideration. It would take the Committees just over three years to clear the backlog, at current resources – not taking into account the new reports that would come in during that time. The situation for individual complaints is also dire, with over 1,800 complainants currently waiting for a decision about their cases. Clearly, our resources are not commensurate to these important tasks, and we ask for greater support from Member States.⁵¹

The lack of support from states for the implementation of international human rights law has been a source of concern since the adoption of the Universal Declaration of Human Rights. As noted by Türk, the human rights treaty monitoring bodies ‘set the foundation for the work of all other human rights bodies’,⁵² including the bodies established under the UN Charter such as the Office of the High Commissioner for Human Rights and the Human Rights Council.

The Office of the High Commissioner of Human Rights was established in 1993 and the Human Rights Council in 2006. The Council replaced the Commission on Human Rights (1946-2006), and the Special Procedures that existed under the Commission (a system of independent human rights experts with mandates to report and advise on human rights),⁵³ were continued under the Human Rights Council. As part of the Council’s ‘institution-building’,⁵⁴ the Universal Periodic Review Mechanism was created, enabling a system of peer-review for States, with the international community assisting in the implementation of recommendations and conclusions in the field of human rights.⁵⁵ The mechanism’s scope of enquiry represented a significant advance in terms of geography and the range of rights protected. As noted by William Schabas:

[T]he Universal Periodic Review is broader than the reporting scheme for the treaties precisely because of its universality. China, which has not ratified the International Covenant on Civil and Political Rights, must report to the Human Rights Council on its compliance with civil and political rights, including issues relating to capital punishment. The United States, which has not ratified the International Covenant on Economic, Social and Cultural Rights, accounts for its conduct in areas of health care, housing and education to the Human Rights Council. The legal foundation, in both cases, is the Universal Declaration of Human Rights.⁵⁶

As with the human rights treaty bodies, the efficacy of the Universal Periodic Review Mechanism depends on the cooperation of states. This is perhaps the greatest weakness of the institutions established to support the implementation and enforcement of international human rights law. Despite the fact that human rights have been incorporated into the domestic law of states, National Human Rights Commissions have been established, and education in the field of human rights has gained traction, no trigger exists at an international level for effective enforcement of human rights where there is none at the national level. While state sovereignty is not as impermeable as it is once was, violations often fail to attract international attention until the threshold of an international crime has been reached.

⁵¹ Ibid.

⁵² Ibid.

⁵³ On 19 June 2023, Volker Türk stated: “I am deeply concerned that several mandate-holders have been subjected to personal abuse and threats. These attacks undermine the Council itself.” Ibid.

⁵⁴ UN Human Rights Council Resolution 5/1, Institution-building of the United Nations Human Rights Council, 18 June 2007.

⁵⁵ Ibid, para. 36.

⁵⁶ Schabas, *The Universal Declaration of Human Rights*, cxvii.

One of the lessons to be drawn from the drafting history of the Universal Declaration of Human Rights, then, is the importance of giving effect to practical arrangements for the implementation and enforcement of human rights, irrespective of how those rights are characterised. As noted by Andrew Clapham, ‘contemporary discourse risks diluting our attention to human rights in general terms as well as distracting attention from the structural changes that need to be made to avoid all types of human rights violation.’⁵⁷ Many of the structural changes needed to avoid all types of human rights violations are reflected in the Memorandum on Implementation prepared by the Human Rights Division of the UN Secretariat in 1947.⁵⁸ To realise a world with less conflict, poverty, ill-health, and inequality, the measures needed for the implementation of human rights today remain strikingly similar to those proposed in the years following the second world war. In commemorating the proclamation of Universal Declaration of the Human Rights, it is instructive to recall its origins with a focus on future ‘ways and means for the effective implementation of human rights and fundamental freedoms’.⁵⁹

7. Conclusion

The ‘provisions for implementation’ originally envisaged by the United Nation's Economic and Social Council in 1946 did not materialise as intended during the drafting of the Universal Declaration of Human Rights. Moreover, the priority accorded to the effective implementation of human rights by the Drafting Committee did not reflect that of the Council. While this outcome was disappointing, there is much to be learned by revisiting the drafting history of the Universal Declaration. In general terms, the conditions determining the effective implementation of human rights today are not dissimilar to those which prevailed at the time the Universal Declaration was drafted. Accordingly, it is instructive to consider how matters such as the primacy of human rights law, reporting on human rights violations, and institutional arrangements for implementation were considered by those tasked with preparing an International Bill of Rights. It is only by prioritising the issue of implementation that the original vision may be realised.

⁵⁷ Andrew Clapham, ‘Human Rights and International Criminal Law’ in *Cambridge Companion to International Criminal Law*, ed. William Schabas (Cambridge: Cambridge University Press, 2016), 18.

⁵⁸ E/CN.4/AC.1/12, 19 June 1947

⁵⁹ E/56/Rev.2, p 3.

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