
THE INTERNATIONAL
COVENANT ON ECONOMIC,
SOCIAL AND CULTURAL RIGHTS

Travaux Préparatoires 1948-1966

VOLUME I

EDITED BY
BEN SAUL



OXFORD

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The International Covenant on Economic, Social and Cultural Rights

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Abbreviations

ALI	American Law Institute
CESCR	Committee on Economic, Social and Cultural Rights
ECOSOC	Economic and Social Council
ECHR	European Convention on Human Rights
ESCRs	Economic, Social and Cultural Rights
FAO	Food and Agriculture Organization
IBRD	International Bank for Reconstruction and Development
ICAO	International Civil Aviation Organization
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ILC	International Law Commission
ILO	International Labour Organization
IMF	International Monetary Fund
IRO	International Refugee Organization
OHCHR	UN Office of the High Commissioner for Human Rights
UDHR	Universal Declaration of Human Rights
UK	United Kingdom of Great Britain and Northern Ireland
UN	United Nations
UNDP	UN Development Programme
UNESCO	UN Educational, Scientific and Cultural Organization
UNGA	UN General Assembly
UNHCR	UN High Commissioner for Refugees
UNICEF	UN Children's Fund
UNTS	United Nations Treaty Series
USA	United States of America
USSR	Union of Soviet Socialist Republics
VCLT	Vienna Convention on the Law of Treaties
WHO	World Health Organization

Introduction: The Drafting of the International Covenant on Economic, Social and Cultural Rights, 1948–1966

The increasing attention to economic, social, and cultural rights in legal practice and scholarship renders their origins of renewed interest and importance in international law. The drafting of the first binding instrument in the field, the International Covenant on Economic, Social and Cultural Rights (ICESCR), sprawled over 18 years between 1948 and 1966. While a number of scholarly works have analysed the drafting,¹ the *travaux préparatoires* have never been comprehensively collated, indexed, and republished until now—50 years after the ICESCR was adopted, and 68 years since drafting commenced. The *travaux* are only partly available online in the United Nations (UN) document system and are not consolidated there in one place. Hardcopy records are scattered throughout libraries and archives in different countries, and are often incomplete. The *travaux* of most (though not all) other human rights treaties have already been published.² The present collection remedies a major gap and makes the ICESCR *travaux* more accessible.

The relative inaccessibility of the *travaux* is partly a result of the drafting being protracted and convoluted. The drafting sprouted during, and was initially mixed up with, the drafting of the Universal Declaration of Human Rights (UDHR) in 1947–48,³ which itself became part of an effort to draft an International Bill of Rights comprising a declaration and one or more covenants. The ICESCR discussions were spread

¹ Matthew Craven, *The International Covenant on Economic, Social and Cultural Rights: A Perspective on its Development* (Clarendon Press, 1995); Ben Saul, David Kinley, and Jacqueline Mowbray, *The International Covenant on Economic, Social and Cultural Rights: Commentary, Cases and Materials* (Oxford University Press, 2014). A short procedural history has also been published: UN Audio Visual Library of International Law, 'International Covenant on Economic, Social and Cultural Rights and International Covenant on Civil and Political Rights: Procedural History', Historic Archives, United Nations Audiovisual Library of International Law, New York, 2008; <http://legal.un.org/avl/ha/icescr/icescr.html>.

² Jean Allain, *The Slavery Conventions: The Travaux Préparatoires of the 1926 League of Nations Convention and the 1956 United Nations Convention* (Martinus Nijhoff, 2008); William Schabas (ed), *The Universal Declaration of Human Rights: The Travaux Préparatoires* (three volumes, Cambridge University Press, 2013); Paul Weis, *The Refugee Convention, 1951: The Travaux Préparatoires Analysed, with a Commentary by the Late Dr Paul Weis* (Cambridge University Press, Cambridge International Documents Series Volume 7, 1995); Hiram Abtahi and Philippa Webb, *The Genocide Convention: The Travaux Préparatoires* (two volumes, Martinus Nijhoff, 2008); Marc Bossuyt, *Guide to the 'Travaux Préparatoires' of the International Covenant on Civil and Political Rights* (Martinus Nijhoff, 1987); Lars Adam Rehov, *Guide to the Travaux Préparatoires of the United Nations Convention on the Elimination of All Forms of Discrimination against Women* (FB Rothman, 1993); Sharon Detrick, *The United Nations Convention on the Rights of the Child: A Guide to the 'Travaux Préparatoires'* (Martinus Nijhoff, 1992). *Travaux* of the conventions on racial discrimination and torture are yet to be published, although there is an extensive analytical commentary on the latter: Manfred Nowak and Elizabeth MacArthur, *The United Nations Convention Against Torture: A Commentary* (Oxford University Press, 2008). There are also published *travaux* of key regional human rights instruments (eg, Council of Europe, *Collected Edition of the 'Travaux Préparatoires' of the European Convention on Human Rights* (eight volumes, Martinus Nijhoff, 1975–85)) and major treaties in international humanitarian law and international criminal law.

³ Universal Declaration of Human Rights, UNGA resolution 217A (III), Part A (10 December 1948).

across many UN bodies, including the General Assembly and its Third Committee, the Economic and Social Council (ECOSOC), and the Commission on Human Rights (and its drafting committees), and involved the input of the UN Secretariat, numerous specialized agencies and non-governmental organizations (NGOs). The process was further intermingled, often confusingly, with the concurrent drafting of what became the International Covenant on Civil and Political Rights (ICCPR). It was also tied up in lengthy and politicized debates about the nature of economic, social, and cultural rights, their manner of implementation and enforcement, and the modes of international supervision.

In formal terms, the *travaux* of a treaty, and the circumstances of a treaty's conclusion, are a supplementary means of interpretation under article 32 of the Vienna Convention on the Law of Treaties (VCLT).⁴ As such, they may be used to confirm the meaning resulting from the application of the general rules of interpretation in article 31 of the VCLT, or to determine the meaning when the article 31 interpretation (a) leaves the meaning ambiguous or obscure, or (b) leads to a result which is manifestly absurd or unreasonable. They are not, however, to be used deterministically as evidence of a static original intent or to thwart dynamic, flexible, adaptive interpretations suited to evolving circumstances and legal developments. In relation to the ICESCR, the *travaux* may aid interpretation at time when domestic implementation (including litigation) of ICESCR obligations is growing; civil society activism is burgeoning; and international supervision is strengthening—including through individual, quasi-judicial communications under the Optional Protocol procedure in force since 2013.⁵

Of course, the formal legal status of the *travaux* of a treaty understates their broader significance, particularly given the flourishing scholarly interest in the history and historiography of international human rights.⁶ They are also a precious record of the historical development of one of the world's two foremost human rights treaties, drafted during three critical global historical periods: the post-war settlement and restructuring of international relations, order, and values in the late 1940s; the onset and solidification of Cold War ideology and competition in the 1950s and '60s; and decolonization and the emergence of newly independent, developing, and non-aligned states in the 1950s and '60s. The records reproduced in this book preserve the distinctive contributions and preoccupations of states, and the voices of the diplomats, NGOs, and international civil servants who represented diverse interests and often strove to bridge seemingly irreconcilable differences.

The extensive debates recorded in the *travaux* between 1948 and 1966 shed much light upon the concerns of the drafters; their points of convergence and divergence; their agreements to disagree, compromises, and constructive use of ambiguities; and their omissions and silences. As is a common frustration with all *travaux*, the thousands of pages of records sometimes still do not enable readers to divine a single, coherent drafting intention on a given issue, or to cure ambiguities in provisions. Nor do they capture the action behind the scenes, including the manoeuvring and horse-trading that took

⁴ Vienna Convention on the Law of Treaties (adopted 23 May 1969, 1155 UNTS 331, entered into force 27 January 1980).

⁵ Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (adopted 10 December 2008, entered into force 5 May 2013).

⁶ eg, Samuel Moyn, *The Last Utopia: Human Rights in History* (Harvard University Press, 2010).

place outside the meeting rooms. The drafting records do not speak at all to some of the unanticipated concerns of future generations, such as the rise of multinational corporations, changes in the global economy and labour relations, the decline of socialism, privatization, climate change, or modern medicine.

A. The Legal Origins of Economic, Social, and Cultural Rights

As adopted, the ICESCR contains ten articles of substantive economic, social, and cultural rights, as well as two general articles on non-discrimination and equality. The substantive provisions include rights concerning work (article 6), just and favourable conditions of work (article 7), trade unions (article 8), social security (article 9), families, mothers, and children (article 10), an adequate standard of living (article 11), health (article 12), education (articles 13–14), and cultural life (article 15). Some of the ten articles are loose aggregations of more specific rights; the right to an adequate standard of living in article 11, for instance, is comprised of distinct, explicit entitlements to food, housing, and clothing.

The *travaux* are, however, only a fairly late part in the story of the origins, emergence, and internationalization of economic, social, and cultural rights. Much of the conceptual work to identify and circumscribe such rights was accomplished earlier during the drafting of the UDHR. As will be seen, the UDHR itself drew heavily on earlier sources, and those sources in turn were influenced by prior developments.

Indeed, a fairly straight line can be drawn between the rights included in the ICESCR and the eight provisions on economic, social, and cultural rights in articles 22–27 of the UDHR. The UDHR contains rights to: social security (article 22), work, trade unions, and leisure (article 23–24), an adequate standard of living, health, social insurance, and maternal and child protection (article 25), education (article 26), and cultural life (article 27). Versions of these appeared in the ICESCR, with the exception of the right to property (in article 17 of the UDHR) which was discussed but rejected. In addition, article 22 of the UDHR⁷ was an early iteration of what became the principle of progressive realization in article 2(1) of the ICESCR.⁸ The next section traces how economic, social, and cultural rights found their way into the UDHR as a result of legal and political developments in the 1940s.

1. The United Nations Charter 1945

A few immediate cues can be taken from the UN Charter 1945. While the Charter contains a number of references to human rights and fundamental freedoms, it does not specifically refer to economic, social, and cultural rights. Instead, it variously frames the issues as matters of economic and social progress, development, and cooperation. Thus the preamble refers to the world's determination 'to promote social progress and better standards of life in larger freedom' and 'to employ international machinery for the promotion of the economic and social advancement of all peoples'.

⁷ UDHR, article 22: 'Everyone ... is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.'

⁸ The UDHR also stipulated a more general principle in article 28 that: 'Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.'

Next, in Chapter IX on international economic and social cooperation, article 55 of the Charter provides that:

With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote:

- a. higher standards of living, full employment, and conditions of economic and social progress and development;
- b. solutions of international economic, social, health, and related problems; and international cultural and educational cooperation; and
- c. universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

In terms of implementation, under article 56, states parties pledge to cooperate to achieve the purposes in article 55, while the role of specialized agencies in furthering these goals is addressed in articles 57–59 and coordinated by the ECOSOC and General Assembly under article 60. Over time, specialized agencies with mandates relevant to economic, social, and cultural rights would come to include, for example, the International Labour Organization (ILO), World Health Organization (WHO), UN Educational, Scientific and Cultural Organization (UNESCO), Food and Agriculture Organization (FAO), and UN Development Programme (UNDP), among others.

Various functions of ECOSOC with respect to ‘international economic, social, cultural, educational, health, and related matters’ (article 62) are then set out in Chapter X of the Charter. The ECOSOC was strengthened into a principal UN organ at the initiative of the smaller powers at San Francisco, largely to emphasize the importance of collectively addressing economic and social problems. An Australian proponent, Herbert Evatt, had warned of the links between economic insecurity and totalitarianism which led to the Second World War: ‘The great threat to human freedom which we have been combating for five years arose out of and was made possible by an environment dominated by unemployment and lacking freedom from want’.⁹

Those links had earlier been emphasized in US President Franklin D Roosevelt’s State of the Union Address of 9 January 1941, which envisioned principles for a post-war world. The third of the four freedoms was ‘freedom from want—which, translated into world terms, means economic understandings which will secure to every nation a health peacetime life for its inhabitants, everywhere in the world’.¹⁰

The goal of ‘freedom from want’ was reiterated in the Atlantic Charter of 14 August 1941, which set out principles for post-war international organization. While the Atlantic Charter was a statement by the UK and US governments, it was later endorsed by 26 allied countries in the Declaration of the United Nations of 1 January 1942.¹¹ At the suggestion of the UK, the Atlantic Charter further mentioned the ‘desire to bring about the fullest collaboration between all nations in the economic field, with the

⁹ Cited in Mary Ann Glendon, *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights* (Random House, 2001), 14. See similarly Herbert V Evatt, ‘Economic Rights in the United Nations Charter’ (1946) 243 *Annals of the American Academy of Political and Social Science* 4.

¹⁰ US President Franklin D Roosevelt, State of the Union Address, 9 January 1941.

¹¹ A W Brian Simpson, *Human Rights and the End of Empire: Britain and the Genesis of the European Convention* (Oxford University Press, 2004), 183.

object of securing, for all, improved labor standards, economic advancement, and social security'.¹²

A US State Department draft international bill of rights of December 1942 included economic and social rights among its 16 articles, including 'rights to minimum standards of economic, social and cultural welfare' (but excluded earlier references to education).¹³ The draft was itself influenced by US, French, and English domestic bills of rights, League of Nations minorities treaties, national constitutions, and the Institut de Droit International's Declaration of the International Rights of Man 1929 (discussed later).¹⁴

While the US draft bill went no further, President Roosevelt again emphasized economic and social rights in his 'second bill of rights' State of the Union Address of 11 January 1944.¹⁵ Roosevelt argued that 'true individual freedom cannot exist without economic security and independence' and invoked rights to work; a living wage sufficient to provide adequate food, clothing, and recreation; a decent home for the family; adequate medical care and good health; social protection; and a good education.¹⁶ The speech was inspired by his domestic New Deal agenda, as well as an abandoned US National Resources Planning Board proposal in January 1943 for a domestic bill of rights.¹⁷ The latter included rights to work; fair pay; adequate food, clothing, shelter, and medical care; social security; and freedom from forced labour.¹⁸

Ambitious proposals to include an international bill of rights in the UN Charter were, however, unsuccessful. After the great powers proposed Chapter IX at the Dumbarton Oaks Conference in 1944,¹⁹ Mexico—which had adopted a socialist constitution in 1917—and the Inter-American Juridical Committee both recommended that the Charter include an international bill of rights.²⁰ At the regional level, in March 1945 a resolution of the Inter-American Conference on War and Peace, involving 21 states, initiated the preparation of a Draft Declaration of the International Rights and Duties of Man.²¹ Uruguay, in particular, emphasized economic rights and social security, while Brazil urged the raising of living standards and economic and social conditions.²²

Interest in the Americas in strengthening human rights flowed into the drafting of the UN Charter at San Francisco in April 1945. Chile, Cuba, Panama, and Uruguay argued for the inclusion of a declaration or charter of rights,²³ supported by many of the 40 NGOs present. Panama, backed by Cuba, commended a draft bill prepared by a

¹² Ibid, 181. Similar principles were found in regional agreements. For example, in article 35 of the 'Anzac Pact' or 'Canberra Pact' of January 1944, Australia and New Zealand declared their support for a post-war settlement based on justice and human rights and fostering full employment and social security in the South Pacific: see Ben Saul, 'Throwing Stones at Streetlights or Cuckolding Dictators? Australian Foreign Policy and Human Rights in the Developing World' (2011) 100 *The Round Table: The Commonwealth Journal of International Affairs* 409, 424.

¹³ Simpson (note 11), 187.

¹⁴ Extracted in Louis Sohn, 'How American International Lawyers Prepared for the San Francisco Bill of Rights' (1995) 89 *American Journal of International Law* 540, 545–6.

¹⁵ Simpson (note 11), 187.

¹⁶ Ibid, 188. Roosevelt also called for fair prices for farmers and fair competition for businesses.

¹⁷ Ibid, 187.

¹⁸ Extracted in *ibid*, 187.

¹⁹ UK, US, Soviet Union, and China.

²⁰ Inter-American Juridical Committee, 'Draft Declaration of the International Rights and Duties of Man and Accompanying Report' (1946) 40 *American Journal of International Law Supplement: Official Documents* 93, 104.

²¹ Inter-American Conference on War and Peace, Resolution XL: International Protection of the Essential Rights of Man (7 March 1945).

²² Inter-American Juridical Committee (note 20), 104.

²³ Ibid, 105; Simpson (note 11), 261.

committee of the American Law Institute (ALI) in 1944, discussed later, which included economic and social rights.²⁴

The US opposed the initiative, in part because the ALI had not formally adopted its committee's draft due to controversy among American lawyers about the inclusion of economic and social rights.²⁵ At the insistence of the US, the issue was deferred for consideration by a future Commission on Human Rights, due to be established by the ECOSOC under article 68 of the UN Charter.²⁶ The formulation of an international bill of rights was duly included in a list of future work by the UN Preparatory Commission in November 1945.²⁷ Panama and Cuba pressed for a bill of rights before the General Assembly in January 1946,²⁸ but the Assembly affirmed its delegation to the Commission on Human Rights.

2. The Drafting of the UDHR²⁹

The ECOSOC was established in January 1946. It in turn established the Commission on Human Rights in February 1946 and immediately mandated it to prepare an international bill of rights.³⁰ A temporary 'Nuclear' Commission met in April–May 1946 and received proposals for bills from Panama (again submitting the ALI Statement) and Cuba. The Cuban Declaration on Human Rights included numerous economic and social rights, relating to: equal opportunity to raise individuals' standard of living (article 7); education (article 8); work, work conditions, and fair pay (article 9); maintenance/social insurance (article 10); adequate food (article 11); hygienic living conditions and suitable clothing (article 12); surroundings free from avoidable diseases (article 13); adequate medical assistance (article 14); and property (article 16).³¹ The Nuclear Commission recommended that the full Commission on Human Rights draft an international bill of rights as soon as possible, but the full Commission did not meet until the following year.³²

At the first session of the full Commission in January–February 1947,³³ a number of draft proposals included economic and social rights. Panama again put forward the ALI Statement of 1944 (which Iran also supported); Cuba resubmitted its proposal; and Chile presented the Inter-American Juridical Committee's Draft Declaration of

²⁴ Simpson (note 11), 261.

²⁵ See later in the chapter; also *ibid.*, 321.

²⁶ See also Inter-American Juridical Committee (note 20), 105.

²⁷ See Schabas (note 2), lxxvii–lxxviii (citing PC/EX/113/Rev.1).

²⁸ A/19 (29 January 1946) (Panama); E/HR/1 (12 February 1946). ECOSOC resolution 5(1) (16 February 1946).

²⁹ See Glendon (note 8); Johannes Morsink, *The Universal Declaration of Human Rights: Origins, Drafting and Intent* (University of Pennsylvania Press, 1999); Schabas (note 2); Jan Herman Burgers, 'The Road to San Francisco: The Revival of the Human Rights Idea in the Twentieth Century' (1992) 14 *Human Rights Quarterly* 447; John Humphrey, *Human Rights and The United Nations: A Great Adventure* (Transnational Publishers, 1984); René Cassin, 'La déclaration universelle et la mise en oeuvre des droits de l'homme' (1951) 79 *Recueil de Cours de l'Académie de Droit International* 241.

³⁰ ECOSOC resolution 1/5 (16 February 1946), E/27 (22 February 1946); Simpson (note 11), 324.

³¹ E/HR/1 (12 February 1946).

³² Draft bills proposed by Panama (the ALI Statement (see note 59 below)) (E/HR/3 (1946)) and Cuba (E/HR/1 (12 February 1946)) were also discussed in April–May 1946: E/HR/5 (26 April 1946); Schabas (note 2), lxxix. ECOSOC affirmed the transmission of the Panamanian and other drafts to the Commission in resolution 43(1) (11 December 1946).

³³ ECOSOC (Commission on Human Rights), Report of the Drafting Committee on an International Bill of Human Rights, First Session, E/CN.4/21 (1 July 1947). See also the UN Secretariat's study (E/CN.4/W.4) and other proposals (E/CN.4/W.16).

the International Rights and Duties of Man of 1945.³⁴ A draft resolution submitted by India proposed that '[e]very human being has the right of security', including the rights to work, education, health, and property.³⁵ The US suggested a rough list of potential categories of rights, including 'social rights such as the right to employment and social security and the right to enjoy minimum standards of economic, social and cultural well-being',³⁶ and later US proposals in February and March also included these.³⁷ As Eleanor Roosevelt said at the first session, 'no personal liberty could exist without economic security and independence. Men in need were not free men'.³⁸ The American Federation of Labor also made proposals.

Much of the immediate discussion focused on the form of an instrument (whether a declaration or convention), implementation and enforcement, and the drafting procedure. A three-person drafting committee was established, consisting of Eleanor Roosevelt, Peng Chun Chang (Kuomintang China), and Charles Malik (Lebanon), but this was soon reconstituted in late March 1947 into a larger drafting committee.³⁹ In the meantime, the ECOSOC requested the UN Secretariat to take the lead in producing a 'documented outline' of a draft declaration,⁴⁰ to be used by the committee at its first meeting in June 1947.

By this time, disagreement had already emerged over economic and social rights. In addition to the Latin American states already mentioned, the US argued for the declaration to be 'as bold and broad as possible and, in addition to the traditional categories of rights, it should embrace social rights such as those of employment, social security and equal opportunity as well as minimum standards of economic, cultural and social well-being'.⁴¹ The US did not, however, present its own draft bill.⁴²

In contrast, the UK was cool on economic and social rights. Earlier discussions within the UK government in March 1946 supported economic and social rights to work, education, housing, health and social security.⁴³ However, in preparing for the Commission in early 1947, the UK resolved to oppose their inclusion as being inappropriate in a binding instrument, too demanding of positive state action, and more properly the responsibility of the specialized UN agencies.⁴⁴ An early UK list of proposed rights in March 1947 contained no economic and social rights, apart from freedom from compulsory labour,⁴⁵ and even this was omitted from a later UK draft of April 1947. The final UK proposal of June 1947 contained no such rights and was based on existing, accepted British common law rights.⁴⁶

(a) UN Secretariat's First Draft of the UDHR, June 1947

The UN Secretariat's rough documented outline comprising 48 articles was circulated to the drafting committee on 4 June 1947⁴⁷ and became the earliest draft of the UDHR,

³⁴ E/CN.4/2 (8 January 1947). The draft was finally adopted as the American Declaration on the Rights and Duties of Man by the Ninth International Conference of American States at Bogotá, Colombia, in April 1948 (articles 7 and 11–16 relate to economic, social, or cultural rights).

³⁵ Draft resolution submitted by India, E/CN.4/11 (31 January 1947), article 1(c).

³⁶ E/CN.4/4 (28 January 1947).

³⁷ E/CN.4/17 (6 February 1947); see Simpson (note 11), 377–83;

³⁸ E/CN.4/SR.64 (8 June 1948). ³⁹ Simpson (note 11), 389.

⁴⁰ ECOSOC resolution A (28 March 1947), E/325 (22 April 1947).

⁴¹ ECOSOC, March–April 1947, E/SR.69, 5. ⁴² Simpson (note 11), 410.

⁴³ Ibid, 339–40 (UK's Advisory Committee on the UN). ⁴⁴ Ibid, 372–3.

⁴⁵ Quoted in *ibid*, 390. ⁴⁶ E/CN.4/AC.1/4 (5 June 1947); see *ibid*, 392–400.

⁴⁷ Draft Outline of an International Bill of Human Rights, E/CN.4/AC.1/3 (4 June 1947).

just edging out the British proposal.⁴⁸ The latter also fell by the wayside after the drafting committee decided to draft both a wider, general declaration and a more specific, binding covenant.⁴⁹ The committee chose to focus first on the declaration and defer the covenant, whereas the British proposal had been drafted as a covenant not a declaration.⁵⁰

The UN Secretariat draft outline was prepared by John Humphrey, Director of the UN Division of Human Rights and a former Canadian legal academic, assisted by Emile Giraud, a French lawyer also at the UN Secretariat. Humphrey acknowledged that he 'borrowed freely' from the 'best' of a number of draft texts produced earlier by others,⁵¹ and claimed that his draft 'was not based on any particular philosophy' but 'attempted to combine humanitarian liberalism with social democracy'.⁵² He acknowledged his selectivity and preparedness to amend or add to the proposals before him.⁵³

The proposed preamble of the UN Secretariat's draft referenced President Roosevelt's 'four freedoms'; freedom from want was later mentioned in the preamble of the ICESCR in 1966. The Secretariat's draft contained a section on what were later categorized as 'social rights'. The 11 articles included rights to: medical care and public health and safety (article 35); education (article 36); performance of socially useful work (article 37); good working conditions (article 38); such equitable share of the national income as the need for an individual's work and the increment it makes to the common welfare may justify (article 39); public help as necessary to support the family (article 40); social security (article 41); good food and housing and pleasant and healthy surroundings (article 42); rest and leisure (article 43); and the ability to participate in cultural life of the community, enjoy the arts, and benefit from science (article 44). It also included a right to property (article 22), but excluded a number of other rights that were ultimately included in the UDHR, including the right to strike, and protection of childhood and maternity.⁵⁴

While others later argued that it was 'uncontroversial' to include economic, social, and cultural rights from the outset of the UDHR drafting,⁵⁵ this was not Humphrey's recollection. Humphrey wrote in 1984 that it was 'by no means certain that economic and social rights would have been included in the final text if I had not included them in mine. There was considerable opposition in the drafting committee to their inclusion', and the near-contemporaneous European Convention on Human Rights 1950 (ECHR) did not include them.⁵⁶ Humphrey recalled, however, that the UK representative indicated that 'once the Secretariat had included something in its draft, it was very difficult for governments to object to its being there'.⁵⁷

⁴⁸ E/CN.4/AC.1/4 (5 June 1947); see also Simpson (note 11), 411.

⁴⁹ E/CN.4/AC.1/SR.11 (19 June 1947). ⁵⁰ Simpson (note 11), 414–18.

⁵¹ Including drafts prepared by Gustavo Gutierrez, Cuba, Irving Isaacs, Wilfred Parsons, Rollin McNitt, a committee chaired by Viscount Sankey, the American Law Institute, the American Bar Association, the American Jewish Congress, the World Government Association, the Institut de Droit International, and the editors of *Free World*: *ibid.*, 32–3. See also Simpson (note 11), 411–12 (Indian and US proposals).

⁵² Humphrey (note 29), 32.

⁵³ Humphrey (note 29), 39–40 ('I had myself decided what to put in and what to leave out, and I had made changes and additions').

⁵⁴ *Ibid.*, 413.

⁵⁵ Ashlid Samnøy, 'The Origins of the Universal Declaration of Human Rights', in Gudmundur Alfredsson and Asbjørn Eide (eds), *The Universal Declaration of Human Rights: A Common Standard of Achievement* (Martinus Nijhoff, 1999), 3, 11.

⁵⁶ Humphrey (note 29), 32.

⁵⁷ *Ibid.*

The initially strong British resistance dissipated particularly as the focus shifted to drafting a non-binding declaration rather than a convention, and it after later became clear that any future convention on economic, social, and cultural rights would be implemented differently. The controversy in the ensuing debates was thus not over whether to include such rights at all, but rather about their definition and specificity, implementation, enforcement, supervision and justiciability in a binding convention.⁵⁸

(i) *American Law Institute's Statement of Essential Human Rights 1944*

One particular influence on the UN Secretariat draft was a 'Statement of Essential Human Rights', drafted between 1942 and 1944 by an expert committee of the American Law Institute ('ALI Statement').⁵⁹ The ALI committee was comprised of 24 experts said to 'represent' the world's nations and cultures, on the assumption that it was possible to scientifically identify and codify universal rights.⁶⁰ Ten members were Americans and 14 were foreigners; 18 were westerners and six were non-western (including Arab, Chinese, Indian, and Latin American); and 17 of the 24 were lawyers.

The ALI attempted to distil a universal list of basic individual rights from similar 'liberal elements' found in different countries and traditions.⁶¹ In addition to classical civil and political rights, the ALI Statement contained a number of economic, social, and cultural rights, including to property (article 10), education (article 11), work (article 12), conditions of work (article 13), food and housing (article 14), and social security (article 15).⁶² Some of these were reflected to varying degrees in the UN Secretariat's draft, including the latter's articles on property (article 22), education (article 36), social security (article 41), and good food, housing, and surroundings (article 42).⁶³

The reporter for the Social Rights Subcommittee argued that rights to work, fair pay, and education had been implemented in national constitutions and legislation 'on an inter-continental scale'.⁶⁴ The Commentary to the ALI Statement observed that most of the rights were well-grounded in existing national constitutions or other weighty legal sources, including the right to property (50 constitutions), education (40 constitutions), work (nine constitutions), conditions of work (18 constitutions plus many international labour standards), housing (11 constitutions), food (no constitutions, but in the practice of 44 states evidenced by a UN Conference on Food and Nutrition), and social security (27 constitutions (mainly concerning social insurance) plus the 21-state Declaration of Santiago de Chile of 16 September 1942).⁶⁵

⁵⁸ Iona Cismas, 'The Intersection of Economic, Social and Cultural Rights and Civil and Political Rights', in Eibe Riedel, Gilles Giacca, and Christophe Golay (eds), *Economic, Social and Cultural Rights in International Law: Contemporary Issues and Challenges* (Oxford University Press, 2014), 448, 453.

⁵⁹ 'Statement of Essential Human Rights by a Committee Appointed by the American Law Institute' (1946) 243 *Annals of the American Academy of Political and Social Sciences* 18 ('ALI Statement'); text reproduced at Annex I of this introductory chapter. See also William Draper Lewis, 'Statement of Essential Human Rights by Representatives of the Major Cultures of the World' (1945) 89 *Proceedings of the American Philosophical Society* 489; Sarah Seo, 'A Shattered Dream: The American Law Institute and the Drafting of the International Bill of Rights' (2007) 30 *Thomas Jefferson Law Review* 179; Sohn (note 14), 546–50.

⁶⁰ Seo (note 59); Simpson (note 11), 197.

⁶¹ Sohn (note 14), 548.

⁶² ALI Statement (note 59).

⁶³ Morsink (note 29), 6. Simpson (note 11), 412, expresses more doubt than Humphrey about the influence of the ALI Statement.

⁶⁴ Sohn (note 14), 549.

⁶⁵ ALI Statement (note 59). The Declaration of Santiago de Chile stated that: 'To be able to enjoy the basic freedoms of thought, expression, and activity, every man and woman must be afforded physical and economic protection against social and economic risks through properly organized social action.'

Where constitutions did not mention social and economic rights, some committee members emphasized the prevalence of social rights legislation, as in the US in relation to social security, labour relations, the minimum wage, and a national housing scheme.⁶⁶ One committee member argued that there was evidence of 'world-wide insistence on social and economic rights', including in 40 constitutions, and that '[t]o leave social and economic rights out of a modern bill of rights would be to stage Hamlet without the Dane'.⁶⁷ Another committee member, Wilfred Jenks, also a legal adviser at the International Labour Office, noted that work rights were found in legislation and international labour standards.⁶⁸

Most committee members were keen to include social rights, in response to the changing social conditions accompanying industrialization, the effects of the Second World War, and the shift from the agrarian societies in which classical political rights had arisen.⁶⁹ The Europeans in particular saw them as a means of preventing totalitarianism,⁷⁰ while the Latin Americans were influenced by their national traditions of social democracy. Jenks argued, for example, that the 'general [international] acceptance' of the right to work was 'attributable to a world depression sandwiched between periods of full employment resulting from two world wars' and that the right 'now holds the central place among the social claims which the common man expects the economic system to satisfy'.⁷¹

Ironically, Humphrey's endorsement of the ALI Statement's social rights elevated them beyond what the ALI committee itself had thought possible. The ALI Statement was not officially adopted by the ALI because of disagreements in the committee on the justiciability of social rights. In particular, a senior American member of the ALI, Warren Seavey, strenuously objected that it was not appropriate to include social rights in a bill of rights, as opposed to in social programmes and legislation. Seavey saw them as less 'fundamental' than classic political rights, thought they would give the state too much power to interfere in individual freedom and self-reliance, and believed they would make people into 'slaves'.⁷²

As such, their inclusion would be seen as too political⁷³ by going beyond identifying existing law, and would thus exceed the ALI's codification mandate.⁷⁴ It was further objected that they were not enforceable in the usual manner of rights,⁷⁵ although the ALI project aimed to codify rights rather than address their enforcement.⁷⁶ These concerns did not, however, forestall Humphrey, nor prevent the US government supporting the inclusion of social rights (albeit without agreeing to their justiciability).

The ALI Statement itself was inspired by President Roosevelt's four freedoms speech⁷⁷ as well as the mention of freedom from want in the Atlantic Charter. The Atlantic Charter was admittedly less a human rights instrument than an effort to establish a better economic system.⁷⁸ While Simpson argues that '[t]he Charter acquired its significance in the history of human rights retrospectively by the rewriting of history',⁷⁹ that overlooks how the Atlantic Charter was one of the influences which stimulated the ALI committee to draft its bill at the time (1942–44), which in turn influenced the Humphrey draft

⁶⁶ John Ellingston, 'The Right to Work' (1946) 243 *Annals of the American Academy of Political and Social Sciences* 27, 28.

⁶⁷ *Ibid.*

⁶⁸ See, eg, C Wilfred Jenks, 'The Five Economic and Social Rights' (1946) 243 *Annals of the American Academy of Political and Social Sciences* 40, 43.

⁶⁹ Seo (note 59), 191.

⁷⁰ *Ibid.*, 187, 189.

⁷¹ Jenks (note 68), 41.

⁷² Seo (note 59), 186, 190–2; Simpson (note 11), 198.

⁷³ Lewis (note 59), 491.

⁷⁴ Seo (note 59), 194.

⁷⁵ Lewis (note 59), 491.

⁷⁶ *Ibid.*, 492.

⁷⁷ Cismas (note 58), 452.

⁷⁸ Simpson (note 11), 182.

⁷⁹ *Ibid.*

and thereby the UDHR. The ALI Statement had also gained prominence after Panama submitted it to the San Francisco conference in 1945 during the drafting of the UN Charter, and to the UN General Assembly in January 1946.⁸⁰

(ii) *Inter-American Draft Declaration of the International Rights and Duties of Man 1945*

A second significant influence on the Secretariat's first draft of the UDHR was the Inter-American Juridical Committee's Draft Declaration of the International Rights and Duties of Man of 31 December 1945,⁸¹ a version of which was later adopted at the regional level as the American Declaration of the Rights and Duties of Man 1948. The Draft Declaration included the rights to own property (article 8), work (article 14), share in the benefits of science (article 15), social security (article 16), and education (article 17), all articulated in lengthy detail.⁸² The Draft Declaration specifically influenced Humphrey's inclusion of rights to medical care (article 35) and work (article 37).⁸³

In turn, the Draft Declaration was informed by a range of influences: the Institut de Droit International's Declaration of the International Rights of Man 1929 (discussed later); the Atlantic Charter 1941; the Declaration of the United Nations 1942; the ALI Statement 1944; the ILO's Philadelphia Charter 1944 (discussed later); work by the Commission to Study the Organization of Peace; dissatisfaction at the limited consideration of human rights in the Dumbarton Oaks proposals in 1944;⁸⁴ and the UN Charter 1945. The aforementioned Commission to Study the Organization of Peace, an initiative sponsored by the Carnegie Endowment, included a Committee on Human Rights which proposed a Draft International Bill of Rights in February 1947.⁸⁵ That Bill included rights to education, social security, and work (articles 16–18).

The Inter-American Juridical Committee noted that the above influences supported the inclusion of 'newer economic and social rights of a positive character which have come to be recognized within recent years as a necessary inference from the conception of the democratic state as a cooperative commonwealth seeking the general welfare of all its members'.⁸⁶ Further, the Committee observed that 'distributive justice' or 'social justice' was the broad principle or theory underlying these new rights, going beyond both earlier ideas of rights as protections against the state but not entitlements to 'active assistance' from the state, and earlier, more limited, conceptions of the community's duty to promote individual welfare.⁸⁷ The Committee noted that in 'more recent years it has come to be understood that the individual cannot always by his own efforts attain the standard of living adequate to the development of his human personality', including because of changes in the economy.⁸⁸ It further emphasized the relationship 'between spiritual development and standards of material welfare' and the growth of basic rights in line with the growth of civilization.⁸⁹ It also acknowledged that action by the state would depend on the extent of its material resources and practical capacity to organize its resources over time.⁹⁰

⁸⁰ A/101 (10 October 1946).

⁸¹ E/CN.4/2 (8 January 1947). Text reproduced at Annex II of this introductory chapter.

⁸² See Annex II of this chapter.

⁸³ Morsink (note 29), 6.

⁸⁴ Inter-American Juridical Committee (note 20), 101, 103, 105–7; Draper Lewis (note 59), 494.

⁸⁵ Simpson (note 11), 196.

⁸⁶ Inter-American Juridical Committee (note 20), 107.

⁸⁷ Ibid., 108.

⁸⁸ Ibid.

⁸⁹ Ibid.

⁹⁰ Ibid., 109–10.