

CHAPTER 2

UNITED STATES AS A CHAMPION ON HUMAN RIGHTS?

In the aftermath of the Second World War, the U.S. victoriously structured a new world order that was based on a triad of enlightenment principles; democracy, the rule of law, and the respect for human rights. Since then, these three principles have been included in the global agenda with little debate. On the other hand, by tracing back to the origin of the human rights motivation of the U.S., we find it had been established before the First World War broke out. This was the United States' 200 years of interpretative jurisprudence.¹ Until today that jurisprudence had been having an influential role on many human rights laws and declarations. The most obvious declaration of the human rights is "The Universal Declaration of Human Rights" (1948), which is the most important customary human rights law in the global community. Nevertheless, before going through the content in full-detail, and how influential this declaration has been —first, let's take a look at the U.S. regional human rights system, how it supports the U.S.'s claim, and how it contributes to the establishment of Universal Declaration of Human Rights.

A. Inter-American Human Rights System

North America has a tradition of regional approaches to international human rights issues which grew out of solidarity developed during the movement of independence. The Pan-American Conference took action on several human rights matters well before the creation of the United Nations.² The modern form of inter-American human rights system began with the transformation of the Pan-American union into the Organization of American States (OAS). The OAS Charter proclaimed

¹ Hans J. Morgenthau, "The Mainsprings of American Foreign Policy," in *In Defense of the National Interest: A Critical Examination of American Foreign Policy* (New York: Alfred A. Knopf, 1952), 35.

² Thomas Buergenthal and Dinah Shelton, *Protecting Human Rights in the Americas* (Arlington, Va.: N.P. Engel, 1995), 37-44.

the fundamental rights of individuals as a founding principle.³ In 1959, the OAS created a seven-member Inter-American Commission on Human Rights, later extended to cover all thirty-five OAS member states, which has a mandate to further respect human rights. This Inter-American Commission also prepared country reports and conducted on-site visits to various countries to examine human rights situations in order to make recommendations to governments.

The OAS was initiated before the United Nations was officially established. Though the United States did not play the sole role, it was recognized by the international community as a major actor in initiating this human rights organization. This is not long before the United States took over the major role of promoting human rights norm within the region and expanded its effect around the world through the influence on the gist or content of The Universal Declaration of Human Rights (1948).

B. United States as an architect of Universal Declaration of Human Rights (1948)

The Universal Declaration of Human Rights has been acclaimed as the most important international document of twentieth and twenty-first century. It is commonly recognized as the birth certificate of the international human rights movement and authoritative catalog of human rights and it is the basis for the contemporary international law of human rights. However, the Universal Declaration was not the invention of human rights; rather the Declaration adopted the idea from the principles of “natural rights” and from the bill of rights composed in America and France in the eighteenth century. One notable source for the catalog of rights in this Declaration was from the “Constitution of the United States and its 200 years of interpretative jurisprudence”.⁴

³ Department of International Law, “Principle: Article 3,” chap. II, in *Charter of Organization of American States* (Washington D.C.: Organization of American States, n.d.).

⁴ Louis Henkin, “The Universal Declaration and the U.S. Constitution,” *Journal of the Political Science and Politics*, 31, no.3 (September, 1998), [http://www.jstor.org/sici?sici=1049-0965\(199809\)31%3A3%3C512%3A%3E2.0.CO%3B2-H](http://www.jstor.org/sici?sici=1049-0965(199809)31%3A3%3C512%3A%3E2.0.CO%3B2-H)

The influence of the United States Constitution and its jurisprudence on the Universal Declaration is substantial. It inspired the Declaration in *spirit*, in *principle*, and in *detail*. By the time that Declaration was drafted, the United States Constitution had been the heart of an established and acclaim constitutional polity and culture for more than 150 years. Moreover, considering the drafting team responsible for the content of human rights catalog in this Declaration was appointed by the former-President of the United States Harry Truman, we see the broader extent to U.S. influence on the Declaration.

In 1946, U.S. President Harry S. Truman appointed Eleanor Roosevelt⁵ as a delegate to the United Nations General Assembly; she played an important role together with John Peters Humphrey⁶ in drafting the UN Universal Declaration of Human Rights. Eleanor Roosevelt served as the first chairperson of the UN Human Rights Commission from 1945 to 1952. President Truman called her “the first lady of the world” in tribute to her human rights achievement. Many other Americans were also responsible in the formation of this Universal Declaration.

Theses two example explain why the U.S. claims to be the champion of human rights. Unfortunately, a declaration is not a treaty. It does not create international legal obligation; it does not even urge the states to assume international obligations. Rather, it calls on states to recognize the rights of their inhabitants under their national laws and take measures to realize human rights through national institutions within their own society. Rights stated in both the Universal Declaration and national institutions of the United States are never guaranteed to be respected, especially when it violates the rights of a group of people. In other words, the influence of the Declaration on the Constitution has not been as prominent as the Constitution has been on the Declaration. It’s hard to deny that creating an ideal

⁵ **Anna Eleanore Roosevelt** (October 11, 1884-November 7, 1962) was the first lady of the United States from 1933-1945. She supported the New Deal policies of her husband, President Franklin D. Roosevelt, and assumed a role as an advocate for American Civil Rights Movement (1896-1954). In 1940s, she was one of the co-founder of Freedom House. Roosevelt resigned from her UN post in 1953 when Dwight D. Eisenhower became president.

⁶ **John Peters Humphrey** was appointed as the first Director of Human Rights Division in the United Nations Secretariat. He remained with the UN for 20 years and worked in area including freedom of the press, status of women, and racial discrimination. In 1988, on the 40th anniversary of the Declaration, the UN Human Rights awarded United Nations Prize in the field of Human Rights was bestowed on Professor Humphrey.

human rights declaration is much easier than truly acting upon it. John J. Mearsheimer (2004) had called this kind of action as “*talk like idealists but act like realists*”.

C. “Ideal” human rights norm of the United States

The “rhetorical” commitment the United States has towards the protection of human rights seems to be the best in the world, regardless of their actual commitment. In fact, the U.S. Department of State has elevated the promotion of human rights as the central goal of its foreign policy. As stated, the promotion of human rights help secure the peace, deter aggression, promote rule of law, combat crime and corruption, strengthen democracies, and prevent humanitarian crises. These are what the U.S. claims to try to educate the world about.

According to the U.S. Department of State, because the promotion of human rights is an important national interest, the United States seeks: *First*, to hold governments accountable according to their obligation under the universal human rights norm and international human rights instrument; *Second*, to promote greater respect for human rights, including freedom from torture, freedom of expression, freedom of the press, women’s rights, children’s rights, and the protection of minorities; *Third*, to promote the rule of law and seek accountability; *Forth*, to assist efforts to reform and strengthen the institutional capacity of the Office of the UN High Commissioner for Human Rights and the UN Commission on Human Rights; *Finally*, to coordinate human rights activities with important allies, including the EU, and regional organizations.

These are the basic human rights commitments of the United States. The questions are, “*Does the United States really commit to those ideal human rights norms? Does it really respect the rights of its own people and people of other nations? Is it ready to strengthen Human Rights institutions as it claims?*” And the most important question is, “*Is its claim of being the champion of human rights valid enough to be accepted by the international community?*” All explanations of the following chapter will respond to those questions in order to prove the main argument of this research.