

THE LONG ROAD TO THE INTERNATIONAL RECOGNITION OF ECONOMIC AND SOCIAL RIGHTS: THE RIGHT TO AN ADEQUATE STANDARD OF LIVING¹

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Abstract: A long road was necessary for economic and social rights to be internationally recognized. In fact, it was only after the Second World War that the protection of human rights, including economic and social rights, became one of the aims of the United Nations. Despite that, this legal protection was by no means made without controversies, especially when it comes to economic and social rights. The fact that most of the articles of the Universal Declaration of Human Rights refer to civil and political rights corroborates these difficulties. Only articles 22 through 27 protected economic and social rights. The objective of this article is to shed some light into this process, as the Universal Declaration has been the foundation of the codification of the whole human rights system. Particular attention will be given to the discussions around the inclusion of article 25 that refers to the right to an adequate standard of living. It is interesting to analyze how this right was adopted during the process of elaboration of the Declaration, as it was then incorporated by so many texts and influenced the recognition of other rights. In fact, if today we are able to have autonomous rights to water, to health, to food, to housing and to education, it is thanks to the proclamation of the right to an adequate standard of living in the first place.

Keywords: recognition; economic and social rights; right to an adequate standard of living.

Summary: I. INTRODUCTION; II. THE UNITED NATIONS CHARTER: ANY ROOM FOR HUMAN RIGHTS?; III. THE UNITED NATIONS CHARTER: THE ORIGINS OF THE UNIVERSAL DECLARATION OF HUMAN RIGHTS; IV. THE FIRST DRAFT AND THE RIGHT TO AN ADEQUATE STANDARD OF LIVING; V. THE REFORMULATION OF THE FIRST DRAFT AND THE RIGHT TO AN ADEQUATE STANDARD OF LIVING; VI. FINAL CONSIDERATIONS; VII. REFERENCES.

I. INTRODUCTION

A wide range of international law texts nowadays protects economic and social rights. However, a long time was necessary for the recognition of these rights to be a reality. In fact, it is only after the events in Europe in the 30s and the Second World War that the international community realized that an international text protecting human rights was crucial³. The atrocities committed during these events could no longer be

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³ SSenyonjo, Manisuli (2011): *Economic, Social and Cultural Rights*, Surrey, Ashgate Publishing Company, xi.

accepted. Despite that, the proclamation of the Universal Declaration by the United Nations was by no means made without debates, especially when it came to social and economic rights. The fact that most of the articles of the Universal Declaration of Human Rights refer to civil and political rights confirms the resistance of the international community to recognize economic and social rights. Only articles 22 through 27 of this text protected economic and social rights.

The right to an adequate standard of living is one of them. It consists of guaranteeing that everyone will be able to enjoy the minimum that is necessary for his subsistence in terms of food, housing, clothing, medical care and education. As Añón explains it⁴, the right to an adequate standard of living summarizes the main concern of all economic, social and cultural rights, corroborating the interdependence and interrelation of those rights. In fact, article 25 of the Universal Declaration of Human Rights establishes that “Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control. Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.”

The importance of this right is also confirmed by the fact that it is contained not only in the Universal Declaration but also in other treaties of the United Nations system. In fact, article 11.1 of the International Covenant on Economic, Social and Cultural Rights also guarantees it. By the same token, article 27 of the Convention on the Rights of the Child and article 28 of the Convention on the Rights of Persons with disabilities also establish the right to an adequate standard of living.

All these texts were somehow based on the Universal Declaration of Human Rights. Actually, the Universal Declaration has been the foundation of the codification of the whole human rights system⁵. In this sense, it served as a model to not only international but to national provisions. In 1993, in the World Conference on Human Rights⁶, the States highlighted that the Universal Declaration was the source of inspiration and had been the basis for the United Nations in making advances in standard settings as contained in the existing international human rights instruments.

Consequently, it is interesting to analyze the process that led to the adoption of the Universal Declaration of Human Rights and how the right to an adequate standard of living was adopted, as it was then incorporated by so many texts and influenced the

⁴ Añón, María José (2003): “El derecho a no padecer hambre y el derecho a la alimentación adecuada, dos caras de una misma moneda”, in Abramovich, Victor, M. J. Añón and Christian Courtis (eds.): *Derechos Sociales Instrucciones de uso*, Mexico DF: Doctrina Jurídica Contemporánea, p. 103.

⁵ Hannum, Hurst (1995): “The Status of the Universal Declaration of Human Rights in National and International Law”, 25 *Georgia Journal of International and Comparative Law*, p. 289.

⁶ United Nations (1993): *World Conference on Human Rights*, doc. A/RES/48/121.

recognition of other rights⁷. In fact, this would help to understand the context in which it was adopted. Undoubtedly, to proclaim the right to an adequate standard of living as a universal right was a big step⁸. If today we are able to have autonomous rights to water, to health, to food, to housing and to education, it is thanks to the proclamation of the right to an adequate standard of living in the first place.

II. THE UNITED NATIONS CHARTER: ANY ROOM FOR HUMAN RIGHTS?

The complex process that culminated in the proclamation of the Universal Declaration of Human Rights took some years⁹. It was impossible to accept that policies of racial discrimination and genocide prevailed over values that protected human dignity¹⁰. Even if the expression “human rights” had been used in the eighteenth century, it is the atrocities committed in the Second World War that will make it popular in the whole world. Indeed, the struggle of the Second World War made the American President Franklin D. Roosevelt give his famous speech “Four Freedoms”, in 1941, in which he committed himself to prepare a post-war world of freedom. This speech and other initiatives on human rights will influence the formulation of the United Nations Charter.

Roosevelt’s speech summarized the values that should be fought for in the Second World War. It said, “In the future days, which we seek to make secure, we look forward to a world founded upon four essential human freedoms. The first is freedom of speech and expression—everywhere in the world. The second is freedom of every person to worship God in his own way—everywhere in the world. The third is freedom from want—which, translated into world terms, means economic understandings, which will secure to every nation a healthy peacetime life for its inhabitants—everywhere in the world. The fourth is freedom from fear—which, translated into world terms, means a worldwide reduction of armaments to such a point and in such a thorough fashion that no nation will be in a position to commit an act of physical aggression against any neighbor—anywhere in the world. That is no vision of a distant millennium. It is a definite basis for a kind of world attainable in our own time and generation. That kind of world is the very antithesis of the so-called new order of tyranny which the dictators seek to create with the crash of a bomb.” This speech will serve as a reference for the Universal Declaration of 1948; it will be incorporated in its preamble and in the preambles of the International Covenant on Civil and Political Rights and of the International Covenant on Economic, Social and Cultural Rights adopted in 1966.

The need for a Charter on Human Rights is also strengthened by the fact that Prime Minister Churchill agreed with President Roosevelt a “Declaration by United

⁷ Sudre, Frédéric (2008): *Droit européen et international des droits de l’homme*, Paris, Presses Universitaires de France, p. 44.

⁸ Eide, Asbjørn (2010): *Freedom from Need*, Stockholm, Volume 55, *Scandinavian Studies in Law*, p. 177.

⁹ Schabas, William A. (2013): *The Universal Declaration of Human Rights – The travaux préparatoires*, Cambridge, Cambridge University Press, p. lxxi.

¹⁰ Sohn, Louis B. And Thomas Buergenthal (1973): *The United Nations as Protector of Human Rights*, New York, *Contemporary Legal Education Series*, p. 506.

Nations to preserve human rights”¹¹. In fact, later in 1941, Roosevelt and Churchill adopted the Atlantic Charter¹², which was not a declaration or a treaty but the affirmation “of certain common principles in the national policies of their respective countries on which they based their hopes for a better future for the world.” The sixth clause of this Charter determined that “they hope to see established a peace which will afford to all nations the means of dwelling in safety within their own boundaries, and which will afford assurance that all the men in all the lands may live out their lives in freedom from fear and want”.

In another address¹³, in 1944, Roosevelt reaffirmed the need to also codify and protect economic and social rights “This Republic had its beginning, and grew to its present strength, under the protection of certain inalienable political rights—among them the right of free speech, free press, free worship, trial by jury, freedom from unreasonable searches and seizures. They were our rights to life and liberty. As our nation has grown in size and stature, however—as our industrial economy expanded—these political rights proved inadequate to assure us equality in the pursuit of happiness. We have come to a clear realization of the fact that true individual freedom cannot exist without economic security and independence. ‘Necessitous men are not free men.’ People who are hungry and out of a job are the stuff of which dictatorships are made”. The freedom from want is mentioned another time in this affirmation, confirming its importance and the concern of Roosevelt to eliminate poverty. As far as the right to an adequate standard of living is concerned, this is the most important freedom, as it is where the foundation of this right lays in.

Other pioneer resource in the matter of human rights was the publication of Wells: “The Rights of Man or What are we fighting for?” as it is mentioned by Schabas¹⁴. Wells prepared in this book his own declaration, in which he gave particular importance to the right to subsistence and to work¹⁵. Previously to that, Wells had already put forward his campaign on human rights with a letter published in *The Times* on 23 October 1939, which contained a Declaration of Rights¹⁶.

Another initiative that influences the Universal Declaration and, therefore, the proclamation of the right to an adequate standard of living is the International Bill of Rights prepared by Hersch Lauterpacht¹⁷. This author affirms “the value of political

¹¹ O’Connell, Rory and Tom Obokata (2009): “The United Kingdom: Developing a Human Rights Culture”, *60 Years of the Universal Declaration of Human Rights in Europe*, Oxford, Intersentia, p. 27.

¹² United Nations (1941): The Atlantic Charter, available at: <http://www.un.org/en/sections/history-united-nations-charter/1941-atlantic-charter/>

¹³ Rosenman, Samuel (Ed.) (1950): *The Public Papers & Addresses of Franklin D. Roosevelt*, Vol XIII, New York, Harper, 40-42.

¹⁴ Schabas, William A. (2013): *The Universal Declaration of Human Rights – The travaux préparatoires*, Cambridge, Cambridge University Press, p. 1xxiv.

¹⁵ Wells, H. G. (1940): *The Rights of Man*, Harmondsworth, Penguin.

¹⁶ Hertig Randall, Maya (2013): “The history of international human rights law”, *Research Handbook on Human Rights and Humanitarian Law* (eds. Robert Kolb and Gloria Gaggioli), Northampton, Edward Elgar Publishing, p. 15.

¹⁷ Lauterpacht, Hersch (1945): *An International Bill of the Rights of Man*, New York, Columbia University Press.

freedom is impaired by the absence of substantive economic freedom, by economic insecurity, by undeserved want, and by absence of educational opportunity¹⁸.” That is to say, there is no political freedom if you cannot afford your own subsistence.

All these initiatives were part of a movement that wanted the human rights to be protected to guarantee a world without war. In fact, numerous organizations and individuals produced their own draft of an international bill¹⁹, putting pressure on the international community to include human rights in the United Nations Charter that was to be adopted.

In fact, as it was previously mentioned, after the Second World War, the States felt they could no longer fear aggression, and for that, they realized that it was necessary to create alliances and to make collective efforts to guarantee peace. In that sense, in 1944, the Allies decided, “it was imperative for them to meet and draft a charter for a new international organization that would become known as the United Nations²⁰”. In reality, they realized that their borders and resources were not enough to protect them from aggression and from war. Consequently, in August, September and October 1944, China, the United States, the United Kingdom and the Soviet Union met in the Dumbarton Oaks Conference²¹, to create an organization to replace the League of Nations.

In spite of all pressure to include human rights in the United Nations Charter, the United Kingdom, the United States and the Soviet Union agreed not to make any reference to these rights in the text. The proposal of the Foreign Affairs Minister of Panama, Ricardo J. Alfaro, to include a “Statement of Essential Human Rights” in the Charter, was not retained²². China was the only country that was willing to compromise to guarantee racial equality and human rights in the text. As a consequence, many States showed their dissatisfaction with not only the absence of human rights in the Charter, but also for not participating in the debates.

III. THE UNITED NATIONS CHARTER: THE ORIGINS OF THE UNIVERSAL DECLARATION OF HUMAN RIGHTS

The absence of some countries in the process of formulation of the United Nations Charter as well as the absence of human rights in this instrument led to much discontent. In fact, in the Inter-American Conference on war and Peace, held in 1945, twenty one American countries highlighted that they had not taken part in the Dumbarton Oaks Conference and affirmed they desire to see a bill of rights included in the United Nations

¹⁸ Lauterpacht, Hersch (1945): *An International Bill of the Rights of Man*, New York, Columbia University Press, p. 156.

¹⁹ Morsink, Johannes (1999): *The Universal Declaration of Human Rights - Origins, Drafting, and Intent*, Philadelphia, University of Pennsylvania Press, p. 17.

²⁰ Lauren, Paul Gordon (2011): *The Evolution of International Human Rights*, Philadelphia, University of Pennsylvania Press, p. 160.

²¹ United Nations (1946-947): *The Yearbook of the United Nations*, New York, United Nations Publications, p. 4.

²² De Schutter, Olivier (2014): *International Human Rights Law*, Cambridge, Cambridge University Press, p. 16.

Charter²³. The Inter-American Juridical Committee will later prepare a Declaration of the International Rights and Duties of Man.

Other advocates for human rights also reacted with concern when they saw that the proposals of the Great Nations did not consider any human rights, but only matters of sovereignty. As it is explained by Lauren²⁴, the actions of the Powers in the Conference showed that they had “everything to do with geopolitics and almost nothing to do with normative values about peacemaking and human rights”.

The criticism that followed those actions confirmed the commitment of the activists, NGOs, and many other authors with human rights. Vociferous debates and protests were organized. The ambassador of New Zealand in the United States affirmed “No adequate machinery for securing peaceful change and economic justice —only words (...). It aims too low.”²⁵ All this pressure led to the approval by the Secretary Stettinius that the idea of human rights should be incorporated in the United Nations Charter, if not in a separate bill of rights, in explicit references in its text to recognition and protection of human rights²⁶.

The United Nations Charter was adopted in June and entered into force in October 1945. Due to the criticism, references to human rights were made in six articles of the Charter²⁷. However, Article 68 is the most important as it calls for the establishment of a Commission on Human rights: “The Economic and Social Council shall set up commissions in economic and social fields and for the promotion of human rights, and such other commissions as may be required for the performance of its functions”. In February 1946, the Commission on Human Rights was established through the Resolution of the Economic and Social Council E/20²⁸.

It is affirmed in the section A, paragraph 2 of the Resolution that the work of the Commission “shall be directed towards proposals, recommendations and reports to the Council, regarding: a) an international bill of rights”. The initial members of the Commission were: M. Paal Berg (Canada), Professor René Cassin (France), M. Fernand Dehousse (Belgium), Mr. Victor Raúl Maya de la Torre (Peru), Mr. K. C. Neogi (India), Mrs. Roosevelt (United States) and Dr. John C. H. Wu (China). This nuclear commission was a temporary body, charged with making propositions on the definitive composition of the Commission²⁹.

²³ Morsink, Johannes (1999): *The Universal Declaration of Human Rights - Origins, Drafting, and Intent*, Philadelphia, University of Pennsylvania Press, p. 17.

²⁴ Lauren, Paul Gordon (2011): *The Evolution of International Human Rights*, Philadelphia, University of Pennsylvania Press, p. 180.

²⁵ Cited in Lauren, Paul Gordon (2011): *The Evolution of International Human Rights*, Philadelphia, University of Pennsylvania Press, p. 182.

²⁶ Morsink, Johannes (1999): *The Universal Declaration of Human Rights - Origins, Drafting, and Intent*, Philadelphia, University of Pennsylvania Press, p. 17.

²⁷ Articles 1, 13, 55, 62, 68 and 76.

²⁸ United Nations (1945): Resolution E/20.

²⁹ Schabas, William A. (2013): *The Universal Declaration of Human Rights – The travaux préparatoires*, Cambridge, Cambridge University Press, p. 1xxix.

One of these propositions was that the Commission should be geographically equitable. As a consequence, the Economic and Social Council appointed the following nations to be part of the Commission that was in charge of the Declaration: Australia, Belgium, Byelorussian Soviet Socialist Republic (BSSR), Chile, China, Egypt, France, India, Iran, Lebanon, Panama, Philippine Republic, United Kingdom, United States of America, Union of Soviet Socialists Republic, the Ukraine, Uruguay and Yugoslavia. From January 1947 to December 1948, this Commission would work on the project to write an international bill of rights.

Morsink³⁰ points out the seven formative drafting stages of the Universal Declaration of Human Rights: “(1) the First Session of the Commission, (2) the First Session of the Drafting Committee that it created, (3) the Second Session of the Commission, (4) the Second Session of the Drafting Committee, (5) the Third Session of the Commission, (6) the Third Committee of the General Assembly, and (7) the Plenary Session of the same 1948 Assembly”.

In this context, as a result of the First Session of the Commission, a drafting committee was established. This Committee was composed by the Chairman, the Vice-Chairman and the Rapporteur: Roosevelt, Chang and Malik, respectively. The director of the United Nations Human Rights division John Humphrey was invited for a meeting with this Committee. At the end of this meeting, Humphrey was invited to elaborate a preliminary draft.

IV. THE FIRST DRAFT OF THE UNIVERSAL DECLARATION AND THE RIGHT TO AN ADEQUATE STANDARD OF LIVING

It is possible to say that the first and basic draft outline of the Declaration was produced by Humphrey, in June 1947³¹. Eleanor Roosevelt affirmed referring to this draft that it “was not a proposed Bill of Human Rights, but simply a working document on the basis of which the Drafting Committee hoped to prepare a preliminary draft bill for the consideration of the Commission on Human Rights³²”. In spite of that, this first draft outline was of crucial importance as it was used as a basis for the debate to start.

The participation of different actors in the elaboration of the Declaration makes it difficult to say who was its main architect. Indeed, some emphasize the role of Eleanor Roosevelt in the process of the text’s elaboration. Others point out the authority of Charles Malik of Lebanon and Chang Wu of China. On the other hand, some call René Cassin the father of the Declaration³³. John Humphrey is also claimed to be its first author. It is very hard to reach a conclusion, as the Declaration was a result of many different drafts and

³⁰ Morsink, Johannes (1999): *The Universal Declaration of Human Rights - Origins, Drafting, and Intent*, Philadelphia, University of Pennsylvania Press, p. 19.

³¹ United Nations, Economic and Social Council (1947): *Commission on Human Rights, Drafting Committee, Draft Outline of International Bill of Rights*, doc. E/CN.4/AC.1/3

³² United Nations, Economic and Social Council (1947): *Commission on Human Rights, Drafting Committee, First Session, Summary record of the first meeting*, doc. E/CN.4/AC.1/SR.1, p. 5.

³³ Winter, Jay and Antoine Prost (2013): *René Cassin and Human Rights: From the Great War to the Universal Declaration*, Cambridge, Cambridge University Press, p. 237.

work of various governments and people. In fact, it was difficult to reach a consensus on the text, lots of synthesis and compromise were required³⁴. The right to an adequate standard of living is also part of this process.

In this sense, it is necessary to point out that the first draft outline was a result from other drafts that John Humphrey had collected, the most important ones being the one sent by the American Law Institute, elaborated from 1942 to 1944 and introduced by Panama³⁵; and the draft submitted by the Inter-American Juridical Committee, elaborated in 1945 and submitted by the delegation of Chile³⁶. The draft submitted by the delegation of Cuba³⁷ and the one submitted by the American Federation of Labor³⁸ were also considered. In fact, Humphrey had asked his staff to collect all documents referring to human rights that had been proposed to the United Nations. As he affirms “I was no Thomas Jefferson and, although a lawyer, I had had practically no experience drafting documents. But since the Secretariat had collected a score of drafts, I had some models on which to work³⁹”.

In this sense, Humphrey mixed and molded his first draft according to the ones he had collected. His document consisted in a preamble and forty eight articles. René Cassin will prepare another draft on the basis of the material assembled by Humphrey⁴⁰. In the preamble of his draft, Humphrey made allusion to the four freedoms affirmed by Roosevelt. The forty eight articles, that outlined individual rights, were divided in three sections: liberties, social rights and equality.

Most of the articles related to civil and political rights, as they were the least controversial. As far as social and economic rights are concerned, and more particularly the right to an adequate standard of living, its first version was given by Humphrey as it follows: he decided to divide the rights to health, food and housing in two articles. Article 35 of his draft disposed “everyone has the right to medical care. The State shall promote public health and safety.” On the other hand, article 42 of Humphrey`s draft determines that “everyone has the right to good food and housing and to live in surroundings that are pleasant and healthy”.

³⁴ Benoît-Rohmer, Florence (2009): “France: The origins, with the prospect of increasing effect”, *60 Years of the Universal Declaration of Human Rights in Europe*, Oxford, Intersentia, p. 19.

³⁵ United Nations, Economic and Social Council (1946): Statement of Essential Human Rights/Presented by the Delegation of Panama, Doc. E/HR/3

³⁶ E/CN.4/3. This is a preliminary draft of the American Declaration of the Rights and Duties of Man.

³⁷ United Nations, Economic and Social Council (1946): Draft Declaration on Human Rights and Letter of Transmittal/Cuban Legation, doc. E/HR/1

³⁸ United Nations, Economic and Social Council (1946): Proposal submitted by the American Federation of Labor to the Secretary General of the United Nations, doc. E/CT.2/2

³⁹ Humphrey, John (1984): *Human Rights and the United Nations: a great adventure*, New York, Transnational Publishers, p. 31.

⁴⁰ Hobbins, A. J. (1989): *René Cassin and the Daughter of Time: The First Draft of the Universal Declaration of Human Rights*, Fontanus II, p. 8.

Undoubtedly, article 35 was inspired from article 16 of the draft declaration sent by the delegation of Chile⁴¹ that said, “every person has the right to social security. The state has the duty to assist all persons to attain social security. To this end the state must promote measures of public health and safety and must establish systems of social insurance and agencies of social cooperation (...)”. Humphrey opted for changing the expression “must” for “shall”. As it is pointed out by Morsink⁴², in doing so, Humphrey highlighted the fact that the State shall promote health as a consequence of the first affirmation, that everyone has the right to medical care: “In this way the state policy of the second sentence is seen to flow from the right enunciated in the first sentence and not the reverse.”

Hence, it is possible to verify that the influence of Latin-American sources of rights in this draft is undeniable. As it is explained by Glendon⁴³, the drafts produced by Panama and Chile were very much appealing because their elements resonated with non-Western traditions. In fact, in the forties, Latin-American countries were gaining independence, which influenced a lot in their rights discourse. This discourse incorporated not only civil and political rights but also rights related to social justice, equality and fraternity. In fact this trend was seen in the Constitutions of some Latin-American countries.

When it comes to the right to food and housing, article 42 of the proposal made by Humphrey, it is possible to affirm that he got inspiration from the Panamanian proposal and from the one submitted by Cuba. Indeed, article 14 of the Statement of Essential Human Rights presented by the Delegation of Panama disposes that: “everyone has the right to adequate food and housing. The State has a duty to take such measures as may be necessary to insure that all its residents have an opportunity to obtain these essentials.”

On the other hand, the Draft Declaration on Human Rights of the Cuban Delegation⁴⁴ contained some social rights in its articles 10 to 14. In fact, it determined that every human being shall have the following rights: article 11, the right to adequate food; article 12, the right to hygienic living conditions and to clothing suitable for the climate in which he lives; article 13, the right to live in surroundings free from avoidable diseases; article 14, the right to adequate medical assistance.

Therefore, article 42 proposed by Humphrey “everyone has the right to good food and housing and to live in surroundings that are pleasant and healthy”, is a mix of both articles 14 of the Panamanian draft and article 13 of the Cuban draft. Furthermore,

⁴¹ United Nations, Economic and Social Council (1947): Draft Declaration of the International Rights and Duties of Man, formulated by the Inter-American Juridical Committee, submitted by the Delegation of Chile, doc. E/CN.4/2.

⁴² Morsink, Johannes (1999): *The Universal Declaration of Human Rights - Origins, Drafting, and Intent*, Philadelphia, University of Pennsylvania Press, p. 197.

⁴³ Glendon, Mary Ann (2003): “Forgotten Crucible: The Latin American Influence on the Universal Human Rights idea”, 16 *Harvard Human Rights Journal*, p. 32.

⁴⁴ Cited by Schabas, William A. (2013): *The Universal Declaration of Human Rights – The travaux préparatoires*, Cambridge, Cambridge University Press, p. 16.

although the right to housing had already been guaranteed in the Latin-American constitutions⁴⁵, such as article 10 of the Constitution of Chile and article 58 of the constitution of Costa Rica, the right to food was a novelty. In the comment to article 14 made by the Panamanian delegation, it is emphasized that food had not been dealt with in constitutional instruments, but its importance, pointed out by the United Nations Conference on Food and Agriculture⁴⁶, held in 1943, shows the necessity to protect and codify it as a right.

Humphrey's draft will be the basis for discussion until the last version of the Declaration could be adopted.

V. THE REFORMULATION OF THE FIRST DRAFT AND THE RIGHT TO AN ADEQUATE STANDARD OF LIVING

After two meetings of the Drafting Committee, the Working Group asked René Cassin to rearrange and redraft the material prepared by John Humphrey in the light of the discussions the Committee had had⁴⁷. Therefore, the right to an adequate standard of living is rewritten by Cassin. His draft consisted in a Preamble and fourty-four articles. According to Morsink⁴⁸, the article 35 and 42 proposed by Humphrey were replaced for one only article, that added "Everyone has a right to the best health conditions possible and to assistance to preserve them. The community shall promote public hygiene and the betterment of housing and food conditions". The right to medical care is replaced by the right to best health conditions, which is not as concrete. It is possible to verify that for Cassin social and economic rights were not as important as civil and political rights⁴⁹. The expressions "to promote" and "best health conditions" are not as stronger as the ones proposed by Humphrey.

In the fourteenth meeting of the Committee, after some suggestions of the United States, article 33 of Cassin was replaced by "Every one, without distinction of economic and social condition, has the right to the highest attainable standard of health. The responsibility of the State and community for the health and safety of its people can be fulfilled only by provision of adequate health and social measures⁵⁰". The rights to

⁴⁵ United Nations, Economic and Social Council (1947): Commission on Human Rights, Drafting Committee, International Bill of Rights Documented Outline. Part 1, doc. E/CN.4/AC.1/3/Add. 1.

⁴⁶ United Nations (1943): United Nations Conference on Food and Agriculture, Final Act and Section Reports, Washington, Department of State Publication.

⁴⁷ United Nations, Economic and Social Council (1947): Commission on Human Rights, Drafting Committee, First Session, Report of the Drafting Committee to the Commission on Human Rights, doc. E/CN.4/21, p. 3.

⁴⁸ Morsink, Johannes (1999): *The Universal Declaration of Human Rights - Origins, Drafting, and Intent*, Philadelphia, University of Pennsylvania Press, p. 294.

⁴⁹ In fact, some authors still consider civil and political rights as more relevant than economic and social rights. However, as it was declared in 1993 in Viena, these discussions have no longer place as all rights are interdependent and interrelated and without economic and social rights one cannot enjoy his civil and political rights.

⁵⁰ United Nations, Economic and Social Council (1947): Commission on Human Rights, Drafting Committee, International Bill of Rights, First Session, Summary record of fourteenth meeting, doc. E/CN.4/A.C.1/SR.14, p. 8.

adequate food and housing proposed by Humphrey completely disappeared. The right to medical care became the right to the highest attainable standard of health. Economic and social rights were seen as rights of second category; therefore, there was no reason to make them relevant.

This context will change in the second session of the Drafting Committee, which happened in New York, from 3rd of May to 21st of May 1948. In this session, the Committee considered comments from governments. When it comes to article 33, Mr. Bogomolov, representing the Union of Soviet Socialist Republic, proposed that “the right of the individual to a proper protection of his health should be expressly formulated” and that “it was the responsibility of the State to guarantee to the individual cheap and accessible medical assistance and to take general measures for the protection of his health”⁵¹. As a response to it, Cassin proposed the following: “everyone has the right to the protection of his health, by means of good housing, adequate food and medical care”⁵². It is evident that Cassin elaborated this article to improve the vagueness of article 33, by incorporating the rights to housing and food that had been proposed by Humphrey.

General Romulo of the Philippines proposed that article 33 were replaced by “everyone without distinction as to economic or social conditions has the right to preservation of his health by means of adequate food, clothing, housing and medical care.”⁵³ This was the text adopted by 4 votes to 0 with 2 abstentions. The mention to clothing had already been made in the text proposed by Cuba. In fact, in its article 12 it affirmed that everyone had “the right to hygienic living conditions and to clothing suitable for the climate in which he lives”. For Morsink⁵⁴ “this text did represent a return to the basic right talk Humphrey had used”.

The text of article 33 will change again in the Fortieth Meeting of the Commission on Human Rights. Indeed, the Chairmen Eleanor Roosevelt had received an amendment submitted by the United Kingdom, suggesting that the word “by means of adequate food, clothing, housing and medical care” should be replaced by “through the highest standard of food, clothing, housing and medical care which the resources of the State or community can provide”⁵⁵. In fact, for the representant of the United Kingdom it was a mistake to guarantee this right without making reference to the duties of the beneficiaires⁵⁶. This recommendation was put to vote, and was accepted by 8 votes to 2 with 5 abstentions.

⁵¹ United Nations, Economic and Social Council (1947): Commission on Human Rights, Drafting Committee, First Session, Summary record of eighth meeting, doc. E/CN.4/A.C.2/SR.8.

⁵² United Nations, Economic and Social Council (1947): Commission on Human Rights, Drafting Committee, First Session, Summary record of eighth meeting, doc. E/CN.4/A.C.2/SR.8.

⁵³ United Nations, Economic and Social Council (1947): Commission on Human Rights, Drafting Committee, First Session, Summary record of eighth meeting, doc. E/CN.4/A.C.2/SR.8.

⁵⁴ Morsink, Johannes (1999): *The Universal Declaration of Human Rights - Origins, Drafting, and Intent*, Philadelphia, University of Pennsylvania Press, p. 195.

⁵⁵ United Nations, Economic and Social Council (1947): Commission on Human Rights, Second Session, Summary Record of Fourtieth Meeting, doc. E/CN.4/A.C.2/SR.40.

⁵⁶ United Nations, Economic and Social Council (1947): Commission on Human Rights, Second Session, Summary Record of Fourtieth Meeting, doc. E/CN.4/A.C.2/SR.40.

The new article 33 became “Everyone without distinction as to economic and social conditions, has the right to the preservation of his health through the highest standard of food, clothing, housing and medical care which the resources of the State or community can provide. The responsibility of the State and community for the health and safety of its people can only be fulfilled by provision of adequate health and social services.”

As Morsink⁵⁷ points out the Third Session of the Commission wanted to keep things short so it decided to amalgamate the article on health care rights (Second Session's article 33) with the rights to social security and the protection of motherhood and children (article 34), this later became article 25 of the draft. This fusion was suggested by India and the United Kingdom, that proposed that the articles became one article that disposed “everyone has the right to a standard of living adequate for health and well-being, including security in the event of unemployment, disability, old-age or other lack of livelihood in circumstances beyond his control⁵⁸”.

The proposal made by India and the United Kingdom was analyzed in the sixty-sixth meeting of the Commission on Human Rights, held in 9 June 1948. On the occasion, Mrs. Roosevelt emphasized her preference to the new article, affirming that it was briefer and in better form. She also suggested that the words “necessary social services and” should be included before the word “security⁵⁹”. On the other hand, Mr. Pavlov, representing the Union of Soviet Socialist Republics said that this new version disregarded the right to a dignified standard of living and the rights to medical care and housing. He highlighted that these rights had to be stressed and asked that his suggestions were taken into consideration by the Drafting Sub-Committee⁶⁰.

The new draft for articles 25 and 26 prepared by the Drafting Sub-Committee⁶¹ was considered in the seventieth meeting. It read “1. Everyone has the right to social security. This includes the right to a standard of living and social services adequate for the health and wellbeing of himself and his family and to security in the event of (against the consequences of) unemployment, sickness, disability, old age or other lack of livelihood in circumstances beyond his control. 2. Mother and child have the right to special care and assistance.” As a response to this new formulation, Mr. Pavlov affirmed that it was nowhere an improvement, as it made no reference to housing and medical assistance. To that Mrs. Roosevelt replied saying the expression “social security” already

⁵⁷ Morsink, Johannes (1999): *The Universal Declaration of Human Rights - Origins, Drafting, and Intent*, Philadelphia, University of Pennsylvania Press, p. 196.

⁵⁸ United Nations, Economic and Social Council (1948): *Commission on Human Rights, Third Session, India and the United Kingdom: Proposed amendments to the draft Declaration on Human Rights*, doc. E/CN.4/99.

⁵⁹ United Nations, Economic and Social Council (1948): *Commission on Human Rights, Third Session, Summary Record of the Sixty-Sixth Meeting*, doc. E/CN.4/A.C.2/SR.66.

⁶⁰ United Nations, Economic and Social Council (1948): *Commission on Human Rights, Third Session, Summary Record of the Sixty-Sixth Meeting*, doc. E/CN.4/A.C.2/SR.66.

⁶¹ United Nations, Economic and Social Council (1948): *Commission on Human Rights, Third Session, Report of the Sub-Committee consisting of the representatives of France, India and the United Kingdom, on articles 25-26 of the draft Declaration on Human Rights*, doc. E/CN.4/127.

incorporated those rights, so it was not necessary to mention each of them. Mr. Metall, representing the International Labour Organization proposed a new version of the article, that read: “Everyone has the right to a standard of living, and to social services adequate for the health and wellbeing of himself and family, and to social security including protection in the event of unemployment, sickness, invalidity, old age and the loss of livelihood in circumstances beyond his control⁶²”. These proposals will be later analyzed in the seventy first meeting of the Commission on Human Rights.

In fact, in the seventy first Meeting, held in the 14th of June 1948, Mrs. Roosevelt read the proposal made by the International Labour Organization. Mr. Pavlov, representing the USSR, reacted to this formulation asking that it made reference to “social insurance, housing and medical care”. The rights to food and clothing were not considered by the URSS: In fact, the URSS proposal read: “1) Everyone has the right to social security and to a standard of living sufficient for the maintenance of his own welfare and health as well as those of his family, and in particular the right to material security in case of unemployment, sickness, disability, old age or the loss of means of subsistence for reasons beyond his control, and in case of employment, the right to social insurance at the expense of the State or of employers, in accordance with the legislation of each country. 2) Everyone has the right to medical care and physician’s help in case of sickness. 3) Everyone has the right to housing worthy of the dignity of the human being. The State and community should take all necessary measures, including legislative ones, to insure for every person real possibilities of enjoying all these rights”. As a consequence of the absence of the rights to food and clothing, the Chinese delegation proposed that not only the right to housing and medical care were included, but the four of them.

Cassin reacted to both proposals affirming that the ILO proposal was satisfactory, but he had no objection to the word “housing and medical care” being included⁶³. Mrs. Roosevelt and Mr. Wilson, representing the United States and the United Kingdom also considered that the ILO proposal was complete and satisfactory. For them, there was no need to make specific reference to the rights to housing, medical care, food and clothing as they had been incorporated in general terms in the ILO text. Mrs. Roosevelt compromised though, affirming that “for the sake of unanimity she was prepared to accept the addition of the words “housing and medical care⁶⁴”.

As a response, Mr. Pavlov of the USSR highlighted that it was not possible to say that the right to medical care was inferred in the ILO draft. He emphasised that “It was true that the text spoke of standards of living and of social services adequate for health, but there was no provision for cases where health was lost or threatened⁶⁵”. Indeed, Mr.

⁶² United Nations, Economic and Social Council (1948): Commission on Human Rights, Third Session, Report of the Sub-Committee consisting of the representatives of France, India and the United Kingdom, on articles 25-26 of the draft Declaration on Human Rights, doc. E/CN.4/127.

⁶³ United Nations, Economic and Social Council (1948): Commission on Human Rights, Third Session, Summary Record of the Seventy-First Meeting, doc. E/CN.4/SR.71.

⁶⁴ United Nations, Economic and Social Council (1948): Commission on Human Rights, Third Session, Summary Record of the Seventy-First Meeting, doc. E/CN.4/SR.71, p. 6.

⁶⁵ United Nations, Economic and Social Council (1948): Commission on Human Rights, Third Session, Summary Record of the Seventy-First Meeting, doc. E/CN.4/SR.71.

Pavlov wanted the right to medical care be admitted not as a principle but as a right guaranteed by legislative measures⁶⁶. Furthermore, it was not sufficient to talk about standards of living and wellbeing, this was not the same as determining a human right to housing.

Mr Roosevelt reacted by saying that the expression “worthy of the dignity of the human being” was not clear, as each country would interpret it in a different way. Mr. Pavlov responded to it by reminding a memorandum of the President of the United States to Congress, which dealt with the matter related to young people living in slums. Mr. Pavlov sustained that the expression was clear “human beings should not live like animals; they should not be forced to live in shacks, hovels or caves⁶⁷”.

The paragraphs of the USSR proposal were put to vote. Paragraph 2 “Everyone has the right to medical care and physician`s help in case of sickness” was rejected by 7 votes to 4, with 2 abstentions. Paragraph 3 “Everyone has the right to housing worthy of the dignity of the human being” and the first paragraph were also rejected. The only part that was approved was the last paragraph: “The State and community should take all necessary measures, including legislative ones, to insure for every person real possibilities of enjoying all these rights”. It was time for the ILO proposal to be considered, with the amendments made by the Chinese and the United Kingdom representatives.

Mr. Wilson from the United Kingdom proposed a separate vote for the rights to food and clothing. Mr. Chang from China responded to it by saying that he “did not see what possible objection there could be to that phrase when millions of people throughout the world were deprived of food and clothing.” Morsink⁶⁸ points out that if it were not for the interference of Mr. Chang, the rights to food and to clothing would have been completely forgotten and not included in the Declaration. In fact, the delegation of China defended the inclusion of these rights until the end, emphasising that the expression “standard of living” was not clear and it was necessary to make references to the factors that make this standard adequate, that is to say, the rights to food and clothing. Mr. Roosevelt then suggested that after “standard of living” were included “food and lodging, housing and medical care”. Mr. Chang approved that proposal.

Afterwards, there was a vote to decide whether the words “food and clothing” should be included. The results were in favour of the inclusion of these words by 11 votes to 3. The Chinese amendment was adopted by 12 votes to none, with 2 abstentions. The ILO proposal was adopted with its amendments by 8 votes to none, with 6 abstentions. The article now included “food, clothing, housing, medical care and social services”. Article 25 now read “Everyone has the right to a standard of living adequate for the health

⁶⁶ United Nations, Economic and Social Council (1948): Commission on Human Rights, Third Session, Summary Record of the Seventy-First Meeting, doc. E/CN.4/SR.71.

⁶⁷ United Nations, Economic and Social Council (1948): Commission on Human Rights, Third Session, Summary Record of the Seventy-First Meeting, doc. E/CN.4/SR.71.

⁶⁸ Morsink, Johannes (1999): *The Universal Declaration of Human Rights - Origins, Drafting, and Intent*, Philadelphia, University of Pennsylvania Press, p. 197.

and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control. Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.”

All these debates show that the recognition of economic and social rights in the Universal Declaration was by no means an easy task. Humphrey⁶⁹ affirms that, had it not been for his choice to include these rights in the very first draft, probably they would have been completely excluded. In fact, the debates around the right to an adequate standard of living show that the more abstract was the article the better. If it were not for the pressure made by some governments, such as China and the URSS, article 25 would not be the way it is now.

VI. FINAL CONSIDERATIONS

The atrocities committed in the Second World War made the international community realize the need for human rights standards to avoid suffering and injustice. This process was by no means without controversies. Since the formulation of the United Nations Charter, States hesitated in recognizing the importance of human rights, especially economic and social rights. The tendency was to deny these rights, as they were considered rights from second category.

The debates around the inclusion of the right to an adequate standard of living in the Universal Declaration in 1948 corroborate this tendency. Until the very end there was much resistance whether this right should be included or not. Furthermore, when discussing about transforming the Declaration into a binding document, the international community decided to elaborate two Covenants instead of one: the International Covenant on Civil and Political rights and the International Covenant on Economic, Social and Cultural Rights. This choice also reflects the mentality still defended by some governments, that these rights generate different obligations.

In a world where millions of individuals still lack access of basic services, such as water and sanitation, it is impossible to keep this mentality. It is high time this vision changed, as without economic and social rights one cannot survive, let alone decently live and enjoy his civil and political rights. Only with the effective realization of economic and social rights will people be able to develop its capabilities and lead a decent life.

⁶⁹ Humphrey, John (1984): *Human Rights and the United Nations: a great adventure*, New York, Transnational Publishers, p. 82.

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