

# ‘A Circus of Sound Shaped From Many Tongues’: Rethinking Human Rights as a Decolonisation Project

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## Abstract

*This essay will examine some of the ways in which the principles of universality and anti-colonialism informed the drafting of the UN Charter and the UDHR. My examples are mainly from India and Pakistan, but it is clear that women from many countries - some of whom had won battles against colonial powers in earlier decades, particularly women from Latin America who formed a strong contingent – were deeply invested in making women’s rights an explicit part of the human rights system. Many of the Asian women active in this early phase were also concerned with ending racism and colonial rule and creating enforceable norms that would assist this process. There was no contradiction for them between challenging their own patriarchs and the patriarchal forces of empire.*

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## Introduction

Universality is under threat on a scale that has not been seen since the United Nations (UN) was founded in the aftermath of World War II. While the UN system as a whole is under attack with the abrupt withdrawal of funding by the Trump administration, the paralysis of its Security Council in dealing with genocide in Palestine has caused disgust and despair in people who would support it. The attack on the UN comes from right wing movements and leaders who, more often than not, have won the consent of their electorates for dismantling the institutions that formed the post-world war consensus. But it also comes from academics and movements which think of themselves as ‘progressive’ or ‘leftwing.’ A whole range of post-structuralist and postcolonial theory, including decolonial theory, has declared that ‘grand narratives’ are dead, that interests are based on identities, that no common cause can be made

between groups where one is inherently privileged (as in white privilege) and the others are permanent victims.

One of the effects of the undermining of universalism in academic discourse has been the creation of alliances between the left and anti-war movements such as Stop the War coalition with Islamists during the campaigns against the War on Terror, while attacking often secular women's movements as inauthentic. At the same time, Britain and the US have strengthening links with Islamists to control terrorists - a policy that culminated with jihadist forces being the West's negotiating partner and guarantor of security in Afghanistan and Syria.

Airbrushed from the record of much 'progressive' writing as well as in neo-imperialist work is the complex history of not only the freedom movement led by Gandhi and Nehru in India but the histories of thousands of women who had fought the British Empire, gone on to establish major public institutions, and continued to fight for democratic rights in the postcolonial period. Several of those women played key roles at the UN, where they won crucial battles for rights which are usually thought to be 'western'. They also fought for decolonisation and rallied against cultural relativism. Fortunately, some of their stories are now being told. In this essay, I shall draw upon recent scholarship to argue that far from being a stitch-up by the victors of the Second World War, the influence of freedom movements and decolonised states was crucial to the language of the UN and to spreading the idea of universal human rights to millions across the world (see also Sahgal, 2014).

## **Origins of the UN and the Influence of Anti-Colonial Movements**

In 2018, the High Commissioner for Human Rights, Zeid Ra'ad Al Hussein, made an extraordinarily frank farewell address to the 38th Session of the Human Rights Council UN General Assembly in which he asked, "Why is the Universal Declaration, and the whole body of human rights law that followed it, the object of so much attack now?" Al Hussein identifies a whole range of sources from where the attack is emanating, "not only from the violent extremists, like the *Takfiris*, but also from authoritarian leaders, populists, demagogues, cultural relativists, some Western academics, and even some UN officials." He is worth quoting at some length:

*I heard recently a UN official telling others there is really no such thing as universal human rights, musing that they were picked from a Western imagination. I remember thinking to myself that the Universal Declaration of Human Rights – the most translated document in the world – was negotiated by the same political leaders who poured universal values into the Charter, creating the United Nations. Is the UN also then somehow not universal? Were its values sourced only from a Western tradition – unrepresentative of the rest of the world? (Al Hussein, 2018)*

For Al Hussein, “a clear rejection of this comes from a look at the negotiating record itself”, starting with the San Francisco Conference which established the UN, that he characterises vividly as “a circus of sound shaped from many tongues; its result was not a solo tune from a Western instrument” (Al Hussein, 2018).

The UN Charter and the Universal Declaration on Human Rights (UDHR) were debated at a time of devastation and insecurity with millions of refugees across Europe in the aftermath of war, the Indian subcontinent’s Partition, and the devastation of the genocidal war visited on China and huge swathes of Asia by the Japanese empire. The Holocaust was not mentioned explicitly in either the Charter or the Declaration but was in the minds of the delegates and frequently alluded to in their debates. So too would have been the movements that fought for independence from colonial rule and their need for a comprehensive and enforceable legal framework to dismantle colonialism. They were acutely aware of the results of dispossession and famine under colonial rule as well as a lack of ‘classical’ rights such as freedom of speech and freedom of association. But they also had a fierce determination to build a new world based on the many struggles that they had fought - for equality and against bigotry within their own societies, as well as ending foreign rule and imperial domination.

Below I examine some of the ways in which the principles of universality and anti-colonialism informed the drafting of the UN Charter and the UDHR. My examples are mainly from India and Pakistan, but it is clear that women from many countries - some of whom had won battles against colonial powers in earlier decades, particularly women from Latin America who formed a strong contingent – were deeply invested in making women’s rights an explicit part of the human rights system. Many of the Asian women active in this early phase were also, perhaps even

more concerned, with ending racism and colonial rule and creating enforceable norms that would assist this process. There was no contradiction for them between challenging their own patriarchs and the patriarchal forces of empire. Whatever claims imperial powers made for their civilising mission, including ending atrocities against women committed within their own societies, they were extremely reluctant to grant women explicit access to the same rights as men, nor were they willing to ensure that issues that affected women more than men - such as marriage - were included in human rights documents. Gayatri Spivak's analysis of reformist colonial policy as being about 'white men saving brown women from brown men' did not really hold water for the colonial period when male social reformers in the 19th century such as Ram Mohan Roy and Jyotiba Phule campaigned against sati and caste discrimination and for the education of girls. But it was even less relevant where women were supported by male comrades in freedom struggles to advance their cause. Conversely, women participants from the UK and US were reluctant to mention women's rights specifically and frequently obstructed attempts by Latin American and Asian women to put them on the agenda. The commentaries that do defend the principle of universality and the drafting of the UDHR point somewhat defensively to the diverse cultures and philosophical positions of the participants (Johnson and Simonides, 1998). But a critical human rights theory is developing using archives and the drafting history of the UN to create a counter-narrative (see Adami and Plesch, 2022).

In an overview of the drafting of International Bill of Rights (the Universal Declaration of Human Rights), and the two treaties that followed it on civil and political rights, the ICCPR and the economic and social rights, the IESCR, Susan Waltz points to the role of small states or countries from what are now called the 'Third World' or 'Global South'. She argues that human rights was a political project and while 'the great powers deployed human rights as a rhetorical weapon in the Cold War, many small states seized opportunity to use human rights projects to advance the cause of independence and self-determination' (Walz, 2004). In short, in fighting for universal human rights, they were doing the international work of decolonisation - creating legal norms by which people could imagine, argue, struggle and enforce their rights against colonial and imperial powers. But the idea of freedom which animated their struggles was not an atavistic attempt to restore the old order, nor simply a seat at the table as an independent power; it was nothing less

than the creation of a new world - One World - which was interdependent and waging peace rather than war (Bhagavan, 2012).

### **What is universality?**

*'The concept of universalism is filtered like light through a prism and breaks up in many hues' (Bennetta, 1998, p.328).*

The universality of human rights is the beautifully simple idea that people are endowed with rights simply by virtue of being human. Human beings everywhere, regardless of their status or any particular characteristics are endowed with rights. Universality is both an overarching concept of human rights and the skeleton which constitutes the framework of rights. It is the test against which respect for rights, the enjoyment of rights and the indivisibility of rights can be measured. From the beginnings of the debates to establish an international governing body such as the United Nations, freedom fighters who were also feminist advocates used the concept to advance human rights into new areas. Challenging an imperial and male-centric vision of human rights by arguing that rights applied to all, regardless of whether they were citizens of sovereign nations or subjects of an empire, they also fought for equality between races and between the sexes by explicitly naming women and people who were not citizens as rights bearers. They prohibited discrimination on the basis of sex, race, religion and other characteristics (Article 2 of the UDHR).

International law had hitherto been the law governing relations between states. The Geneva Conventions or laws of war were about the conduct of war between states. In a situation of war, rules of conduct had been laid down under which civilians were to be protected from disproportionate and targeted attack. But where the Geneva Conventions did not apply there was no recourse for people who did not have citizenship, or whose citizenship was stripped from them, and who were being attacked by legal means by the governments under whose jurisdiction they lived. There was no higher law governing relations between individual human beings, states and empires. Starvation, for instance, was justified as political necessity by Churchill, worsening and prolonging the Bengal famine of 1943. The Holocaust, with its precursor of legal restrictions on Jews and the targeting of Jews, Roma and the disabled, produced mass murder, and other groups who had experienced slavery and forced labour had no legal remedy or even an agreed ethical

response from the world powers. Segregation and land dispossession were commonplace in settler societies such as the United States and Australia, and throughout the colonised world. In defending South Africa's laws, General Smuts, who had inserted mention of human rights in the UN Charter, also claimed that South Africa had broken no law as there was no enumeration of human rights by which any violations could be measured (Dubow, 2008). As history would show, some of the world's most eminent legal minds and philosophers agreed with him. There was, further, no recourse to tackle injustice other than by rebellion. And even rebellions need guiding principles to overthrow unjust rule. What world do they want to bring into being?

For women who were both freedom fighters and peace activists the question of a document enshrining universal human rights was not simply a philosophical discussion but a practical necessity which could be widely understood and even enforced. Long after the names and contributions of the women who influenced the UN Charter and the UDHR had been largely forgotten, the solid foundations that they had laid were used to construct the edifice of human rights. This was achieved by networks of feminists who worked to advance the idea of universality as a way of challenging atrocities and injustices in the 'private' sphere of the family, and the collective area of 'community.' They applied human rights to violence against women from the state and also community and family. They insisted that domestic violence was a human rights issue for which states were responsible. The issue of reproductive rights was snatched away from a coercive discourse of population control to give women the right to make decisions by which they could limit their families and control their own reproduction. Feminist economists worked with activists to challenge dominant paradigms of development and argue for alternatives (DAWN network; Jain, 1985). For them, human rights were not simply civil and political in nature but were also social and economic.

It is not surprising that the hard work of creating substantial bodies of knowledge derived from a view of human rights as indivisible and came largely from global South networks. Even if the memory of origins of the UDHR had faded, the urgency of seeing human rights universally applied continued to resonate. No freedom movement, no anti-colonial struggle believed that social and economic rights were unimportant. They needed to find ways to tackle poverty, challenge unfair trade rules, and question the debt inflicted by western powers during and after decolonisation. And in order to assist the decolonisation process, they also proposed

language on national self-determination. These principles, even if not always articulated as such, were foundational to feminist thinking which was secular and plural.

Feminists did this work in parallel with, and often at odds with, human rights organisations in the West. Amnesty International and Human Rights Watch ignored social and economic rights for decades and were latecomers to defending reproductive rights and indeed any form of women's rights. Even where the state was committing violations such as systematic rape, international human rights organisations failed to investigate and report or develop a theory of systematic violence which was aimed at subjugating and humiliating communities as well as attacking individual women's bodies. For instance, as late as the 1990s Amnesty International failed to report on the mass rape of women in former Yugoslavia and in Rwanda; indeed, they did not recognise genocide had taken place. Often treated as guardians of the human rights framework, they in fact helped to narrow definitions of human rights and acted as watchdogs not only against oppressive states but also against vast social movements whose work they alternately ignored and attacked.

Finally, going full circle, women who had been subjected to violence by armed groups and religious fundamentalists and had begun to mobilise against them faced hostile human rights organisations who often saw their murderers as innocent victims subject to persecution and torture. In opening up a front about armed conflict and its impact on women and civilians generally, women entered another arena which their forebears in the movement would have recognised - violent political movements which used religion to control women's minds and bodies, murdering and maiming those who would not conform, or who were designated an enemy 'other'. These movements typically used rape and violence against women as instruments for subjugation and control, as well as the destruction of a population.

Human rights organisations were at best highly selective about which kinds of fundamentalists they were opposed to and reluctant to look at the ideological underpinnings of their violence, and it was left to feminist human rights advocates to carefully distinguish between universal principles and cultural rights. To mark the seventieth anniversary of the UDHR in 2018, the UN tasked the Special Rapporteur to examine issues of cultural rights in the context of the universality of human rights. The mandate was probably intended by some states to be a critique of universality; a hope that the experts would critique its 'western' bias. But



the first two experts of the mandate, Farida Shaheed and Karima Bennouna came from a tradition of global South, universalist feminist organising and they affirmed universality as a basis for their investigation and defence of cultural diversity. Bennouna produced reports on religious fundamentalism and threats and challenges to universality. Much of the material of this paper was researched in order to put on record the origins of the human rights framework. In her report to the UN, Bennouna argued 'We need a foundational renewal of universality, and one which looks back to key standards, histories and achievements, but also forward to sustaining and reinvigorating itself in the future with a broad youth constituency that can nourish the tradition of the UDHR for the next 70 years.'

### **Race, Empire and Universalism**

*So long as ... colonial vested interests remain, ... there can be no peace, there can be no security. So long as there is no security or peace, we shall go on destroying all that generations of and centuries of human effort have built up... We cannot rejoice over the end of fascism in Europe when imperialism, its twin brother, is permitted to function in the colonies.*

*Vijaya Lakshmi Pandit (quoted in Bhagavan, 2023, p.244)*

If the great powers were engaged in creating an international security body which maintained the colonial systems of government and the Mandate which divided large parts of the world into different categories of readiness for self-government, the peoples of the world were determined that they should be able to remake the world in entirely new ways, based on equality between nations and equality between human beings. Systems of domination had to be destroyed, or the promise of a just peace and security would remain unfulfilled.

The Pan-African Peoples' Congress which had met in 1927 in the US and in 1945 in Manchester in Britain was one of the forces tying the issue of racial discrimination and colonial oppression to human rights. African-American women were active in this movement as well as were many people who later led their countries to freedom. Many of the activists in the movement were Black ex-servicemen who had fought fascism while experiencing severe racial discrimination themselves. The Manchester Congress 'demanded an end to colonial rule and an end to racial



discrimination', while it carried forward the broad struggle against imperialism, for human rights and equality of economic opportunity. The Pan-African Congress manifesto positioned the political and economic demands of the Congress within a new world context of international co-operation, arising from 'the grim ordeal of the war of liberation against Fascism' (Katzenellenbogen, 1995).

The Indian freedom struggle was a profoundly broad movement of 'anticolonial internationalism' (Reeves, 2021) that was acutely aware of the suffering of China and much of East Asia under Japanese occupation, racism and antisemitism in western countries, colonial loot all over Africa. The Indian National Congress had raised the plight of the Jews and called for them to be given refuge after Kristallnacht, sent a medical mission to China and supported the Republicans in Spain. In turn, their struggle attracted international solidarity too. Manu Bhagavan (2023) describes how Vijaya Lakshmi Pandit's arrival in the US to advocate for Indian independence was seen as an opportunity for Indian exiles, representatives of African nationalism and the National Association of Colored People - the NAACP – to advance their common agenda at the UN's founding conference in San Francisco.

## **Rebels Against Empire**

By the time Vijaya Lakshmi Pandit arrived in the US, she had already had a lifetime of experience in anti-colonial politics. Asked to describe herself at a women's lunch in California, she said simply, 'a rebel against the British Empire'. She had served three prison sentences and lost her husband, also a freedom fighter, whose health had collapsed after repeated imprisonments. Unlike the founder of Hindutva, known as 'Veer' (Brave) Savarkar, he had not asked for mercy or pledged to stop anti-Empire activities to gain his personal freedom. During her mourning period as a widow, when she was systematically stripped of her husband's wealth by her in-laws, she mobilised Congress women volunteers in a relief effort during the Bengal famine, establishing the first Indian chapter of Save the Children. She had also served as the first woman cabinet minister during the colonial period, after she was elected to the United Provinces Legislature during a period when the Congress fought elections.

British historians such as the Namierites (named after the 19th century historian Louis Namier) held that the Indian national struggle was not a heroic struggle in opposition to Empire but a grubby business where

nationalists often worked with the British jockeying for local and regional power. The national struggle, contended the Cambridge School of revisionist historians, provided no heroic narrative, hence their focus on petty local politics and self-advancement of nationalist leaders. But the achievements of women like Vijaya Lakshmi Pandit, Hansa Mehta, Kamaladevi Chattopadhyaya and others shows very clearly that periods in office gave them valuable administrative and negotiating experience which they used skilfully when they deliberately gave up power in order to continue to challenge empire through non-violent mass movements and boycott campaigns. Most of them had also been rebellious women in their personal lives.

Vijaya Lakshmi Pandit argued repeatedly that a just world could not be built as long as imperialism thrived, and that only sovereign nations could decide for themselves what kind of unity and interdependence they sought. Her biographer Manu Bhagavan says that while arguing for India's freedom, Pandit developed a distinct theory of anti-imperialism and the need for one world and expressed it as such: 'It is necessary to build up a new world with ties of cultural contact and commercial contact and contacts of every sort... Before we can talk about interdependence...we must realise that it is only through independence that we can achieve such interdependence' (Bhagavan, 2023).

### **Challenging imperialism - the Mandate system and the language of trusteeship**

Pandit had no official position at the United Nations Conference on International Organization that took place in 1945 in San Francisco as India was represented by men chosen by the British. But her allies included Indian exiles, Africans and African Americans, and they decided that the conference was the perfect opportunity to press the case for India's freedom and the freedom of all colonised peoples. Other anti-colonial nationalists such as Carlos Romulo also attended the conference (Reeves, 2021). The US was the only country to take up the offer to have non-government consultants and the National Association for the Advancement of Colored People as part of the discussions. They had helped Pandit organise meetings in hotels where British government representatives were staying. In fact, the NAACP was instrumental in getting Wendell Wilkie, a Republican, to promote Roosevelt's Four Freedoms across the Indian subcontinent. The NAACP also convened a conference in Baltimore with Indians, black Americans and other

colonised people in New York City and prepared a memorandum condemning colonialism and the system of trusteeship (Bhagavan, 2012, pp. 51-52), with Walter White and W E B DuBois, one of the founders of the Pan African Congress. Du Bois, conscious of the momentous nature of the occasion, said he was travelling to San Francisco 'to help save the world'. Paul Robeson of the Council on African Affairs was also consulted.

In San Francisco, Pandit succeeded in disrupting the British Indian delegation, one of whose members resigned. She fought a good fight to demand India's freedom from Churchill and to call out the double speak of the British government. The language of 'trusteeship', promoted by the British, was not true independence, she argued. She challenged the powers to go back to the language of the Atlantic Charter. She also referred to the language of an earlier conference at Dumbarton Oaks as a better precedent than the current colonial language, arguing that 'the British government was using an ancient weasel word...to offer the shadow but never the substance of independence to subject peoples'. In a memorandum released to all UN delegates she argued: 'The continuance of such a situation (as colonialism) affecting the honour, liberty, peace and progress of one-fifth of mankind is irreconcilable, alike with the concepts that have inspired the United Nations Conference and with the new world order which, it is hoped will be ushered in...'. She said that 'those who have usurped' the 'birth-right of freedom' of 600 million people 'may cynically claim to speak for them; but there will be no real peace on this earth so long as they are denied justice'.

Although the British government was quite rattled by Pandit's speeches, Churchill refused to come up with an offer of independence and persuaded the US to maintain the language of self-government although both China and the Soviet Union lobbied for India's 'independence'. Pandit had asked: 'Should the aim of trusteeship be defined as "independence" or "self-government" for the peoples of these areas? If independence, what about areas too small ever to stand on their own legs for defence?' It was finally recommended that the promotion of the progressive development of the peoples of trust territories should be directed toward "independence or self-government." But the language of the UN Charter maintained the colonial language of trusteeship and 'self-government' alongside 'independence' demanded by freedom fighters. Some human rights guarantees were also inserted into the Charter, but the change in wording may have had something to do with the intense campaign waged by Vijaya Lakshmi Pandit, in the teeth of Churchill's disdain and spitting opposition.

## **South Africa: from racial discrimination to apartheid**

The battle against racial discrimination continued when Gandhi and Nehru decided to challenge South Africa's racial policies towards Indians. India was still not independent, but Congress was in office in provincial legislatures and this time, with the concurrence of the Viceroy Lord Wavell, it was decided that Pandit should go to the General Assembly to test the principles of the newly founded UN in 1946. From a country which was not yet fully independent this was a remarkable legal as well as political and ethical challenge at the UN. It involved using the principles of human rights to test the limits of Article 2 (7) which prohibited interference in the internal affairs of member states (Bhagavan, 2012, pp.72-74), and that was being debated during the drafting of the UDHR as well. India had a particularly expansive interpretation of this clause.

South Africa and the struggle against racial discrimination became an extensive area of UN work, with UNESCO convening scientific conferences to combat race theory. Racial discrimination acquired the status of a 'jus cogens' norm, which sex discrimination had not. Pandit's task was to present complex legal arguments in compelling terms before the General Assembly. But first, India had to overcome the manoeuvres of General Smuts with his British and other allies who were trying to avoid the case coming to the General Assembly. Through a combination of legal principles and appeals to support in the wider world, the case was finally brought to the Assembly and Pandit won a resolution for India on behalf of South African Asians. The resolution did not stop racial discrimination becoming more entrenched in South Africa, but it was an important legal victory as well as an ethical challenge to stay true to the principles of the Charter. Eviscerating her South African opponents on the issue of 'the Christianising mission of the white man', Pandit pointed out that 'according to the Immigration Act of 1913, Jesus Christ himself, if he were in our midst today, would be a prohibited immigrant' (Bhagavan, 2012, p.79). South Africa, she argued, stood in violation of the Charter and was of concern to all the world's people. Bhagavan writes, 'Brilliantly, she wove together a narrative of tragedy that was sure to strike a chord with peoples from all communities: those embittered by racism, those subject to imperialism, and those devastated by Nazism and fascism'. On this view, 'the assault on the dignity of one group was an assault on all groups' (2012, p.74).

Some years later, Pandit spoke before the Security Council to argue for a boycott of South Africa, supporting a resolution from Norway. In her speech on the issue of boycott to the Security Council, she argued that the struggle for racial equality in South Africa was associated with the name of Mahatma Gandhi and reiterated the presence of 'a moral law which must be recognised and obeyed if mankind is to continue its onward march towards a brave new world'. Reiterating independent India's belief in "the promise of justice and equality enshrined in all democratic constitutions" and 'into the life of every citizen', Pandit underscored the tireless striving for 'the elimination of discrimination and the breaking down of all artificial barriers which separate men from each other'. She eloquently argued that apartheid was bad not only for its victims 'but also for those who preach and practice it for 'no group of human beings can, for any length of time, act unjustly and inhumanly towards their fellows without disastrous consequences for themselves...'. The idea was to expose the "double standard" in order to ensure that 'freedom and justice must have the same meaning for all men and women'. Ultimately, she warned, 'civilisation itself stands in jeopardy' for 'what use is it for us to talk of one world, to speak about freedom from want and from fear if, side by side, we contribute, actively or by our silent acquiescence to the building up of a situation which must erupt, and, erupting, lead to horrible consequences'. Here there was also a practical dimension to her arguments as she pointed out that 'nothing can take the place of the feeling of equality between man and man which must exist if the world is to survive in peace... While the smallest shadow or discrimination remains between people on grounds of race and colour, other benefits will be meaningless for all else stems from this feeling of oneness, the knowledge that we are equal and are equally entitled to all the rights and privileges which man has made possible for man'.

Pandit blasted South Africa's unyielding commitment to white domination, the 'brutal mandate which the South African racists have awarded themselves'. For her, 'the comparison with Nazi Germany is inescapable. To destroy the house that Hitler built, a terrible world war had to be fought. Must another war we fought before South Africa mends its ways?' Ultimately, what explained why 'the brave sons of South Africa like Nelson Mandela, Walter Sisulu and Ahmed Kathrada, to name only a few are condemned to long terms of imprisonment and solitary confinement' is 'for daring to ask that the ideals of the Charter of the United Nations be put into practice'. As the apartheid regime continued over the years, Pandit called for an economic boycott of South

Africa, particularly targeting trade that benefited the country's defence capabilities.

As Bhagavan notes, 'beneath the poetic imagery of these words lies the hard scientific truth, unless people live in amity and have a sense of higher purpose nothing of enduring values can be constructed'. Just a few days later, a resolution authored by Norway passed unanimously and the UN Security Council explicitly called on all states to cease forthwith the sale and shipment of arms and ammunition in South Africa (Bhagavan, 2012).

### **Challenging racism and discrimination in the US**

A year before the UDHR was adopted, W E DuBois authored the introduction to the NAACP document 'An Appeal to the World: A Statement of Denial of Rights to Minorities presented to the UN in October 1947'. The petition presented a carefully researched, path-breaking document on widespread and systemic human rights violations against people of black descent. Although the petition never reached the General Assembly, after extensive lobbying of member states, it was finally accepted in a private meeting with John Humphrey, the Director of the UN Division for Human Rights. At the meeting, Walter White of the NAACP described how 'injustice against black men in America' had repercussions for the 'brown men of India, yellow men of China, and black men of Africa'.

The 96-page petition was a well-researched account of the systemic effects of racism on the lives of blacks in America, including discrimination and segregation in housing, health care, and education. It also included a reflection on India's stand on South Africa. Importantly, it referred to the language of the UN Charter to make its legal case and could be read as a proto-human rights document, although it would take several decades for international human rights organisations to recognise social, economic and political rights as matters of human rights. It was a work of deep scholarship and could be read as the first organised challenge to racism in the United States via the principle of human rights.

### **UDHR - the triple challenge: Decolonisation, peace, and patriarchy**

Had the UDHR indeed been a document dreamed up by 'the west', it would have been a very different kind. It would very likely have been called an 'international' bill or declaration rather than a 'universal' one. It would not have had explicit language that guaranteed all peoples rights regardless of whether they were still colonial subjects or citizens of sovereign nations. It would not have had any specific reference to women's rights such as the clause on the right to choice in marriage. It would have been drafted by fewer people with no written commentaries, and it would have had no mechanism for individuals to approach the United Nations or for states to intervene to support human rights in other states.

Narrative accounts such as Rebecca Adami and Bhagavan go a long way to undermine the 'Western' narrative that so frustrated Al Hussain, the High Commissioner for Human Rights quoted in an earlier section. The drafting process was so public and the engagement of governments and peoples so intense that any one account is bound to be selective. Indeed, even as official UN documents begin to recognise the role of women who contributed to the UN Charter as well as to the UDHR, they tend to concentrate on what they said about women. For instance, Minerva Bernadino is recognised for her role in inserting women rights into the Charter. And Hansa Mehta is mentioned for her language 'all human beings' instead of 'all men'. In fact, Hansa Mehta's contribution is typically underplayed and dismissed in most accounts (Rathore, 2021). One account says that she had a soft voice. Another mentions her name to make an inter-cultural point but then concentrates on male philosophers and their arcane debates. But Mehta's success lay in making women visible as bearers of human rights and dignity, both as part of humanity but also as individuals challenging religion and patriarchy. Importantly, she also pushed for an anti-colonial model of accessible and enforceable human rights. Mehta, who wanted a document that would be understood by ordinary people, and for the rights to be enforceable, also raised the issue of South Africa in the Human Rights Commission. She noted:

*Where these rights are flagrantly violated it is the duty of the United Nations to step in for their protection. If a State accepts a policy of discrimination on the ground of race or colour that State must explain and justify its policy before the bar of the world. It cannot excuse itself by saying that it is a matter of domestic policy. . . . If human beings are to be shut out from the world and not even*



*allowed to complain against their State on the plea that such complaints are domestic concerns, then the United Nations will fail in their duty to protect and promote the human rights to which they are bound by the Charter.*

During the UDHR drafting, domestic jurisdiction was discussed too at some length. The difficulty of reconciling the apparent conflict between the Charter's mandate to promote human rights and its prohibition on interference in the internal affairs of member states occasioned a good deal of discussion. René Cassin pointed to the exception to the non-intervention rule which was explicitly written into the Charter, namely that threats to international peace and security under Chapter VII could not be shielded by claims of domestic jurisdiction. When 'repeated or systematic violation of human rights by a given State within its borders results in a threat to international peace (as was the case of the Third Reich after 1933)', he argued, 'the Security Council has a right to intervene and a duty to act'. Mehta, too, had argued that 'in accepting an international organization like the United Nations . . . the Member States agreed to surrender a part of their sovereignty'.

## **Genocide**

The Genocide Convention and the UDHR were adopted on successive days in 1948, and while some scholars see them as completely different models of international law, others see them as two sides of the same coin: each addressing the issues of peace and security in the UN Charter. Since genocide involves collective rights on the one hand and intent or 'mens rea' which is sometimes hard to prove, charges of genocide have seldom been laid by international human rights organisations. To do this they would have to look at the ideology behind the violations and the history of the violations. Nimer Sultany has argued that Palestine offers a 'litmus test' for international law and human rights (Sultany, 2022). He examines 'the limits of the search for root causes and the full context in which systematic human rights violations occur'. It distinguishes between approaches to root causes that 'centralise occupation, discrimination, or colonialism' and argues that although the apartheid reports provide better context than has hitherto been offered in mainstream human rights discourse, they do not go far enough. This is because they 'de-politicise and de-historicise the Question of Palestine when they omit colonialism as a relevant framework to understand Zionist practices, as evident in the exclusion of Palestinian self-determination from the crime

of apartheid's application'. He goes on to argue that 'equally consequential is the omission of imperialism as a root cause, in particular United States (US) support for Zionist colonialism'. Ultimately, 'foregrounding colonialism and imperialism as root causes uncovers law's complicity in the infliction of injustice on the Palestinians' (2-3). For Sultany, then, the main failings of human rights organisations are 'structural' because 'they reflect the limitations, assumptions and legitimating effects of the human rights discourse and the international legal tools they deploy.'

The reports of Special Rapporteur Francesca Albanese on the Palestine territories, connecting occupation and apartheid and applying the genocide convention to a policy of colonial erasure and the economy of genocide, are firmly in the tradition of the women freedom fighters who established the framework of human rights and supported the passing of the Genocide Act.<sup>1</sup> For them dismantling imperialism was a primary aim of human rights and using law to help end war and violence and build a new world was its ultimate object.

Embedding the UDHR into hundreds of treaties and constitutions has been the work of freedom fighters and human rights defenders the world over. Technically it is discussed as 'customary international law' but what this arcane legal discussion conceals is the extent to which this has happened because millions were willing to fight for those rights. And it should remain a beacon for us. What is urgently needed is to bring back the language of anti-colonial activism of the UDHR (Abeysekera, 2014: 121). For it is high time that the origins of human rights as a decolonising project are recognised.

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