**Notes for a Talk to a Public Forum organised by the Refugee Action Collective to Celebrate Human Rights Day on 10 December 2011 at Toowong Senior Citizens Hall, 9 Maryvale Street, Toowong by Stephen Keim, President, Australian Lawyers for Human Rights**

**Introduction**

The decision to celebrate Human Rights Day on 10 December was made by the United Nations General Assembly in resolution 423(V) on 4 December 1950. The resolution invited all member states and interested organisations to celebrate the day in whatever way they saw fit. Today then is the sixty second day on which the international day has been celebrated. Celebrations have been many and various. The best celebration of which I am aware is that of former Chilean general, dictator and purveyor of crimes against humanity, Augusto Pinochet, who chose to leave this realm and his mortal coil on human rights day, 10 December 2006.

In many ways, General Pinochet is a symbol of the progress and failures of human rights ideas in our lifetimes. He committed his crimes. Through various stratagems, he avoided accountability for those crimes. However, he died a harried and discredited man. The failure of accountability in his case remains a warning and reminder to the most secure of today’s dictators and human rights criminals that life is long; that being able to do something is not the same thing as doing the moral thing; and that times can change and power can shift.

But I digress.

The date chosen by the General Assembly in 1950 was a no brainer. Only two years before, a long and tortuous process reached its climax with the passage, a few minutes before midnight, on 10 December 1948, at the Palais de Chaillot in Paris, across the Seine from the Tour Eiffel, when what had become known as the Universal Declaration of Human Rights was adopted by the General Assembly.

Although I have written, a number of times in recent years about the need for accountability for human rights crimes committed in Sri Lanka, today, I will be leaving that subject to Father Pan and Ian. Today, I want to talk about the Universal Declaration and the heritage it brings to us and those who come after us.

**The Modern Development of Human Rights Instruments**

During the Second World War, the actions carried out by fascist regimes in Europe created a desire among certain people to put in place an international system to prevent such atrocities from reoccurring. The debate in the United Kingdom was kicked along by [HG Wells](http://en.wikipedia.org/wiki/H._G._Wells#Writer)’ publication in 1939 of a draft [*Declaration of Rights*](http://www.newstatesman.com/200010090006). The draft, after contributions and comments by various colleagues of Wells including [AA Milne](http://en.wikipedia.org/wiki/A._A._Milne), [JB Priestley](http://en.wikipedia.org/wiki/J._B._Priestley) and [Kingsley Martin](http://en.wikipedia.org/wiki/Kingsley_Martin), was published by Penguin as [*The Rights of Man or What We Are Fighting For*](http://www.newstatesman.com/200010090006). The book became a best seller and was translated into 30 languages.

On 1 January 1942, the protection of human rights became part of the official war aims of the war powers. The influence of Wells’ Declaration had been earlier seen in President Roosevelt’s famous [Four Freedoms Speech](http://www.americanrhetoric.com/speeches/fdrthefourfreedoms.htm) delivered, a year earlier, on 6 January 1941. Roosevelt had 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 world-wide 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 neighbour -- anywhere in the world.”

These four freedoms provide leading examples of what became civil and political rights (freedom of speech and expression) on the one hand and economic, social and cultural rights (freedom from want), on the other.

The international framework began with the establishment of the United Nations by the signing of the Charter on 26 June 1945, while the war yet raged, at the San Francisco War Memorial and Performing Arts Center by 50 of the 51 foundation nations (Poland signed later).

**The United Nations Charter**

The protection of human rights was not the only purpose of forming the United Nations. The maintenance of international peace was, perhaps, a greater priority. Human rights, did, however, get a look in in the drafting of the foundation document, the [Charter of the United Nations](http://www.un.org/en/documents/charter/chapter9.shtml). The Charter was signed on 26 June 1945. It came into force on 24 November 1945. The Preamble to the document placed significant emphasis on the protection of human rights. The opening words of the Preamble read as follows:

## “PREAMBLE

### WE THE PEOPLES OF THE UNITED NATIONS DETERMINED

* to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and
* to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and
* to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and
* to promote social progress and better standards of life in larger freedom,

… “

Human rights also received express mention in article 2 and article 55.

**The Road to the Universal Declaration**

I have just finished reading a book written at the time of the fiftieth anniversary of the UDHR and published in 2001 by Mary Ann Glendon called *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights*.

Most observers would endorse the strong association between the person and the document. Mrs Roosevelt always regarded her association with the negotiation and adoption of the UDHR as her greatest public achievement. Many people have expressed the view that, without her involvement, the turbulent winds of a developing Cold War would have overcome the goodwill of the post war period making the achievement of the Declaration impossible at least for several decades.

In any event, Ms. Glendon’s charting of the history is fascinating and I will provide you with the merest of glimpses of that history. I wanted to do this for two reasons. One is to show what a tortuous process the preparation of the Declaration was. Second, I want to provide a few insights concerning the people who played key roles in guiding the Declaration to its form as we know it, today, and its adoption in that form.

Long and Winding Road

A key early step on the road occurred before the San Francisco meeting of the uniting nations. A group of American human rights NGOs, including the National Association for the Advancement of Coloured People, met with the US secretary of state, Edward Stettinius, in May 1945. Apparently as a result of the urgings of that group, the secretary of state announced that the US would reverse its opposition to the establishment of a permanent commission on Human Rights as part of the yet to be formed United Nations.

Mrs Roosevelt had planned to go to the San Francisco meeting with her husband, the President. By the time of the meeting, Franklin was dead and Harry Truman was the new president. Over the advice of foreign policy professionals, President Truman resolved to appoint Mrs Roosevelt as part of the UN delegation to the first meeting of the body in London in commencing on 10 January 1946. She had made sufficient impression on the Atlantic voyage that Senator Vandenberg, the leader of the delegation, asked her to be the US representative on the (les important) third committee on social, humanitarian and cultural affairs.

Mrs Roosevelt impressed both her masters and her colleagues from other countries. Shortly after the London meeting, she was asked to be part of a nuclear committee to derive priorities for the yet to be formed Human Rights Commission. She was elected Chair of that committee which recommended developing a Bill of Human Rights as the major priority for the new Commission. In June 1946, Mrs Roosevelt was appointed Chair of the Human rights Commission of the United Nations.

The Human Rights Commission of the United Nations met at the UN’s temporary home in an old gyroscope factory at Lake Success at the northern end of Long Island, New York on 27 January 1947. In the twenty months that followed, the nationalist Chinese were being thrust from power in China; the Berlin blockade and airlift was taking place; the partition of Palestine had occurred with resultant war and creation of refugees; and the scheduled free elections on the Korean peninsula were not taking place, setting the scene for the subsequent war. This was an extraordinarily difficult period during which to negotiate a foundation document on human rights. It could only be achieved because of the presence of a person with the patience, respect and leadership qualities of Roosevelt. It is to our benefit that she was there.

As a result of the January, 1947 meeting, the director of the secretariat to the Commission, Canadian academic lawyer, John Peters Humphrey was asked to prepare a draft Bill. The 48 article document, prepared with the help of the secretariat and presented in early June 1947,was described by Humphrey as containing “every conceivable right” which the Commission might want to discuss. Deservedly, he is acknowledged as the author of the first draft of the UDHR.

After briefly discussing the Humphrey draft, the Commission’s drafting committee referred the draft to one of their number, Rene Cassin. Cassin was a proud French, Jewish, internationalist, also with a legal academic background, who had served during the war as De Gaulle’s principal constitutional lawyer. His instructions included a direction to give philosophical direction to Humphrey’s collection of rights. Cassin succeeded admirably, breaking the articles into themed chapters with headings and adding a preamble which provided a justification for having an international Bill of Rights. Cassin is recognised with Humphrey as one of the two principal authors of the UDHR.

The draft went through weeks of discussions at a time either before a committee of the Human Rights Commission or a drafting committee thereof in June 1947; November 1947; May 1948; and May/June 1948 when the much discussed and somewhat changed document was forwarded to the Economic and Social Committee of the United Nations.

A salutary contribution was made by [Hansa Mehta](http://www.indianetzone.com/3/hansa_mehta.htm), a female delegate from India and a long term fighter for Indian independence and fighter for women’s rights. Mrs Mehta had served as one of two advisers on the drafting of the rights provisions in the Indian Constitution. At home, she was battling against many traditional practices that restricted the rights of women including purdah; child marriage; polygamy and restrictions on marriage between different castes. It was Mrs Mehta that, among other important contributions, insisted on and succeeded in changing the references to “all men” in the first article to its more inclusive reference to “all human beings” and giving the same inclusive feel to “everyone” and “no one” where they appeared in future articles. This made the UDHR well ahead of its time and gives it its inclusive feel from the very first line.

Another philosopher and professor, but also playwright, [Peng Chun Chang](http://en.wikipedia.org/wiki/Peng_Chun_Chang), was part of the drafting process from the beginning. He saw his country betrayed by a corrupt government and wrested from him by a Communist revolution even as the debates were going on. Notwithstanding, he continued to contribute, explain and defend the Declaration through many exhausting and exhaustive debates. Early on in the process, he insisted that the document should have a preamble and that it should stress the dignity of human beings. He also contributed the traditional Chinese concept translated literally as “two-man mindedness” and indicating a consciousness of the feelings and interests of others. It is found inadequately translated as “conscience” in article 1 in the phrase “[human beings] are endowed with reason and conscience and should act towards one another in a spirit of brotherhood”. His influence, however, appears in every line of the Declaration.

A young Lebanese Christian law and philosophy professor, Charles Malik, was rapporteur of the Human rights Commission and was subsequently elected chair of Economic and Social Committee and the Third Committee, the two major committees through which the Declaration had to proceed to arrive at the General Assembly. His patient and then firm chairmanship ensured that the Declaration arrived on time and intact, despite every delegate from every interested company having had full and repeated opportunity to comment, change and contribute to the document. Among his many contributions, however, are his putting the preamble back into the document at the request of Mrs Roosevelt over a weekend in mid-June 1948.

At the time, as a Christian Arab from the then tiny and multi-cultural state of Lebanon, Malik was rushing from meeting to meeting on the Palestinian crisis and articulating both the Arab cause and the need for tolerance and decency. His singular contribution is the opening paragraph of the preamble which anchors the Declaration in a belief in the inherent dignity and equality of all human beings. With further changes from the exhaustive discussions that followed, the paragraph leads off, beautifully, and gives the document its characteristic basis: “Whereas recognition of the inherent dignity and the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world”.

The discussions in the Third Committee ran from 28 September to 7 December 1948. Article 1 was debated for almost a week. Every article was debated at length. But the structure and key aspects of the text survived at least unscathed and with some improvements.

Under the Chairmanship of Australia’s HV Evatt, the debate in the General Assembly was just a few days, commencing on the evening of 9 December and the votes were counted just before midnight on the following day. Thirty-four delegates had spoken. The vote was on a vote of 48 votes in favour, 8 abstentions (the Soviet bloc and South Africa and Saudi Arabia) and none against.

Dr. Evatt said: “It is particularly fitting that there should be present on this occasion the person who, with the assistance of many others, has played a leading role in the work, a person who has risen to greater heights than even so great a name- Mrs Roosevelt, the representative of the United States of America”. The General Assembly gave her a long standing ovation.

**The Heritage**

I have wandered into these little corners of history so that we can appreciate a little of the contributions that make today’s celebrations possible.

The influence of the Universal Declaration is such that we read the words of the document (and the Conventions it has spawned) and we think them a little trite and certainly obvious. It is easy to fail to understand the massive achievement it was to state, in a preamble and just thirty articles, a set of values on which so much of the world can agree even those who are smashing those values by their actions. When the Declaration was being negotiated, the very idea of values with sufficient universality to be adopted was hotly disputed. That the Declaration was adopted and that we now see its provisions as trite may be one of its greatest achievements. We suffer a great loss, however, if we do not appreciate the difficulty of that achievement at that time. We also suffer a loss if we fail to appreciate the beauty of the language managed by Humphrey, Cassin, Chang, Mehta, and the others who contributed.

I want to finish with the closing words of the preamble. They exhibit the beauty of which I speak. They also remind us of four things about the document which is our heritage. They read as follows:

**“Now, Therefore THE GENERAL ASSEMBLY proclaims THIS UNIVERSAL DECLARATION OF HUMAN RIGHTS** as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.”

The four reminders are these. First, the rights and obligations set out in the UDHR comprise “a common standard of achievement for all peoples and all nations”. They provide a standard against we may and must continually measure our performance in the field of human rights.

Second, they provide an exhortation not just to governments but to every individual and to every organ of society. They speak to each one of us here today.

Third, it is acknowledged that there are historical, social and economic barriers to meeting all of the standards. What is called for is “progressive measures”. We must indeed continue to move forward.

Last, there is no doubt about the object which is sought by the document and each one of us. The object is “universal and effective recognition and observance”.

**Stephen Keim**

**Chambers**

**9 December 2011**