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A MOST UNCERTAIN CRUSADE:
THE UNITED STATES, HUMAN RIGHTS
AND THE UNITED NATIONS, 1941-1954

DISSERTATION

Presented in Partial Fulfillment of the Requirements for
the Degree Doctor of Philosophy in the Graduate
School of the Ohio State University

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This dissertation analyzes American human rights policy during World War II and in United Nations debates over the drafting of an international bill of rights. By endorsing the Atlantic Charter and the Declaration by the United Nations, the Roosevelt administration proclaimed that the world-wide protection of political and economic rights was a central war aim. Only if nations followed a humane code of conduct toward their citizens, Roosevelt believed, could peace and stability return to a war-torn world. British and Soviet objections and Roosevelt's own changing postwar vision, though, caused the State Department to drop plans to grant human rights responsibilities to an international peacekeeping body. Only pressure by American non-governmental organizations and Latin American states forced Roosevelt to retreat. The United Nations Charter called upon member nations to "promote universal respect for, and observance of human rights" and to create a Human Rights Commission (UNCHR) that would draft the world's first bill of rights.

The Truman administration supported a conservative human rights agenda at the United Nations. By December 1948, the UN
had completed a non-binding human rights declaration and a cautiously-worded Genocide Convention. The UNCHR, under Eleanor Roosevelt’s leadership, began to draft a binding covenant of civil and political rights. In all three endeavors, the State Department sought to incorporate American legal norms and weak enforcement mechanisms to protect domestic laws that enforced racial segregation, disenfranchisement, and legal inequality.

By 1950, this narrowly-conceived policy had generated an international and domestic backlash. A growing bloc of underdeveloped nations, over U.S. objections, attached economic guarantees and the right of self-determination to the covenant. Domestically, isolationist-oriented senators, led by John Bricker (R-OH) and joined by the American Bar Association, charged that the Genocide Convention and the covenant would overturn parts of the U.S. Constitution and spread socialism. They proposed a constitutional amendment to limit the legal impact of human rights treaties. Though the amendment failed to pass, Bricker’s supporters forced President Dwight Eisenhower to stop work on the covenant. Eisenhower subsequently began a short-lived propaganda campaign to highlight Soviet human rights abuses. U.S. human rights policy now returned to its WWII focus on vague, politicized rhetoric that girded the nation for war.
Dedicated to Elizabeth
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CHAPTER 1

INTRODUCTION: THE ORIGINS OF A CRUSADE

The brilliant human rights scholar Louis Henkin subtitled the twentieth century, "The Age of Rights." The growing number of newspaper stories, television programs, and internet sites that report on human rights violations and attempts to punish their perpetrators attest to the validity of Henkin's claim. From the revolutionary use of international courts to try those accused of genocide in the former Yugoslavia and Rwanda, to the debate over General Augusto Pinochet's extradition to Spain to face charges of crimes against humanity, to the Chinese government's suppression of political dissent, human rights-related stories dominate today's headlines. The proliferation of non-governmental organizations (NGOs), including the grassroots-based Amnesty International, the research-oriented Human Rights Watch, and hundreds of regional and local bodies promise that reports of torture, executions, and disappearances receive a wider audience than previously possible. These developments could not have occurred until and unless international law and public opinion recognized "human
"rights," or "those benefits deemed essential for individual well-being, dignity, and fulfillment, and that reflect a common sense of justice, fairness, and decency."¹

This dissertation examines the American catalytic role in defining and implementing a post-WWII global order premised upon the international protection of specific human rights. President Franklin D. Roosevelt, believing that peace could occur only if governments granted political, economic, and social rights to their citizens, made the promotion of human rights a major Allied war aim. The Atlantic Charter and the Declaration by the United Nations, whose contents Roosevelt did much to shape, proclaimed that the Allies were fighting to guarantee religious liberty, freedom of speech, self-government, and economic security to peoples world-wide. Lacking precedents to guide the translation of these goals into postwar policy, State Department planners sought assistance from NGOs, including the Commission to Study the Organization of Peace, the Federal Council of Churches, and the American Law Institute.

Roosevelt, though, soon turned down State Department and NGO plans to have a postwar international peacekeeping body enforce human rights standards. This was due to objections from British Prime Minister Winston Churchill and Soviet Premier Joseph Stalin, who refused to consider human rights issues as proper matters for international concern. Also, by
1943, Roosevelt desired to create a postwar organization that relied on the Big Three to keep peace through primarily military cooperation. His plan to create a successor to the League of Nations, which he submitted to the Allies at the 1944 Dumbarton Oaks Conference, omitted any responsibility by the body itself or member nations to protect human rights. Only strong objections from domestic organizations and Latin American nations forced Roosevelt and the State Department to propose amendments. At the San Francisco Conference, Roosevelt persuaded Stalin and Churchill to allow the United Nations to promote human rights through a human rights commission. To prevent a recurrence of the Holocaust and other wartime atrocities, U.N. members assigned the commission to draft the world's first bill of rights.

President Harry S. Truman, Chair of the U.N. Commission on Human Rights (UNCHR) Eleanor Roosevelt, and State Department lawyers, seeking to forestall U.N. investigation of domestic racial discrimination, followed a very conservative human rights policy at the United Nations. This strategy required the careful pursuit of two contradictory goals: helping U.N. members formulate binding treaties that contained weak enforcement provisions while gaining U.N. approval of texts that rigidly incorporated American jurisprudence. Both positions, Truman and State Department lawyers knew, would prevent human rights agreements from invalidating Jim Crow
laws and would enhance the chances of Senate ratification. The resulting non-binding Universal Declaration of Human Rights, the conservatively-worded Genocide Convention, and early versions of a covenant limited to political and civil rights demonstrated the success American diplomats had in achieving those goals.

By the early 1950s, though, foreign and domestic forces began to challenge the narrow assumptions that guided American human rights policy. A growing bloc of non-aligned, underdeveloped nations called for the inclusion in the covenant of economic guarantees and the right of all peoples to self-determination. Concurrently, isolationist-oriented anti-communists, led by Senator John Bricker (R-OH) and the American Bar Association (ABA), claimed that U.N. human rights treaties would repeal parts of the U.S. Constitution and would promote communism domestically and around the world. Their strident, though legally questionable, claims persuaded the Senate to postpone ratification of the Genocide Convention and to propose a constitutional amendment to limit the president's foreign affairs powers. After the coalition of underdeveloped nations overrode U.S. objections and added their amendments to the covenant, Bricker and the ABA renewed their criticisms of the U.N.'s human rights program. Their growing support from Republican voters caused incoming President Dwight Eisenhower to withdraw support from the U.N. treaty-writing process. By
undertaking a subsequent psychological warfare campaign against the Communist bloc, Eisenhower returned American human rights policy to its World War II roots. Like Franklin Roosevelt, Eisenhower used vague, politicized human rights rhetoric, unsupported by specific proposals for its realization, to unify the nation in the face of an external threat.

The Historiography

The emerging historiography of American human rights policy comprises three categories: brief historical sketches and case studies by political scientists and historians, histories of the drafting of treaties by specialists in international law, and autobiographical and biographical accounts of American policymakers. In all three groupings, the lack of archival research, the scant attention paid to the intersection of domestic and foreign policy, and the presentist bias of many authors testify to the youthfulness of the field. What remains are narrow, linear narratives that connect, with little explanation or systemic criticism, Franklin Roosevelt’s Atlantic Charter to Eleanor Roosevelt’s Universal Declaration. Only recently, with the publication of works by Carol Anderson, Mary Dudziak, and Paul Gordon Lauren, is the field combining insights from international and
constitutional law, diplomatic history, and scholarship on domestic topics from the Civil Rights Movement to the Roosevelt and Truman administrations.

The first body of literature encompasses works by political scientists and historians who briefly sketch U.S. human rights diplomacy in the 1940s and 1950s in order to explain its re-emergence in the 1970s. Presentism makes these authors uninterested in archival research. Seeking to uncover the roots of President Jimmy Carter's human rights-focused foreign policy, Robert Biggs, A. Glenn Mower, Robert Brown, and Douglas MacLean outline briefly a straight path from the Atlantic Charter to the Universal Declaration (and then they fast forward to the 1970s) to demonstrate a constant, American-led drive to protect human rights under the United Nations umbrella. Other historians, such as Stephen Wrage, Howard Tolley, and Sandy Vogelgesang, probe U.S. history more deeply to argue that a human rights ideology was imbedded throughout three hundred years of American political culture. None venture beyond this narrow thesis, though, to examine the internal complexities, contradictions, and fluctuations in State Department wartime and postwar policymaking. They also ignore U.S. diplomacy at the United Nations during discussions of South Africa and Eastern Europe. Mower and Tolley come closest to examining these subjects, but the former writes a comparative study of Eleanor Roosevelt and Jimmy Carter, while
Tolley concentrates on the work of the U.N.'s Commission on Human Rights after 1955.¹

A subset of the secondary historical literature identifies U.S. human rights diplomacy as a form of Cold War-era ideological or cultural imperialism. Encompassing Melvyn Leffler's concept of "core values," Akira Iriye's "cultural internationalism," and Michael Hunt's definition of ideology, this perspective argues that American leaders used human rights language to fight the Cold War, to expand, defend, undergird, and justify economic and military hegemony, and to spread Western values world-wide. Like the first group, these authors express an indirect but critical interest in human rights policy. They accept the language of policymakers in order to analyze American military, diplomatic, and economic strategy, but they disagree on whether these means fit the nobler ends. For John Lewis Gaddis, Arthur Schlesinger, Jr., and Leffler, the Cold War was a valiant, successful struggle by the U.S. and its allies to protect political and economic freedom. Some "revisionist" historians, including William Appleman Williams, Thomas McCormick, and Bruce Cummings, identify as "tragic" the hijacking by of human rights rhetoric by American leaders to mask support for brutal dictators, colonialism, and international economic inequality. Even Iriye, whose recent work examines how transnational private organizations transmit cultural, economic, and political
values, omits any discussion of how NGOs exported Western conceptions of human rights during the early Cold War.

Legal histories that seek to interpret the language of human rights treaties by examining their drafting histories comprise a second component of human rights literature. Some lawyers, such as Natalie Hevener Kaufman, William Schabas, Hurst Hannum, Dana Fischer, Lawrence LeBlanc, and Nehemiah Robinson, write to advocate the incorporation of international human rights norms into American law. Their accounts, to varying degrees, employ United Nations records to explicate the meanings of specific clauses and their possible domestic applications. These accounts are impersonal, detailed, and text-bound; the world outside of the committee room has no place. The authors take U.S. policy, when examined, as a given; the most important question for them is what happened, and not why. A second group of authors focuses even more tightly on the United States by comparing the human rights guaranteed by its Constitution with those safeguarded by U.N. treaties. Louis Henkin, Bert Lockwood, and Kenneth Randall incorporate American legal and political history into their narratives to examine either how lawyers have tried to use international law in domestic courts or theorize how such activity might be done. Both types of legal history are invaluable in understanding the history and terminology of international law.
Autobiographical and biographical narratives of key political figures are, surprisingly, the least useful in documenting American human rights policy. Most of the key policymakers were middle-level State Department lawyers who published no personal recollections. Two critical exceptions are works by State Department postwar planner Harley Notter and Roosevelt's U.N. advisor James Frederick Green. The memoirs of presidents and secretaries (and undersecretaries) of state, however, contain virtually no information on the making or implementation of human rights policy. Cordell Hull and Sumner Welles include only briefly mention the Atlantic Charter, and the reminiscences of Dean Acheson, Harry S. Truman, John Foster Dulles, and Dwight Eisenhower omit all references to human rights. Even Eleanor Roosevelt chose only to include scattered anecdotes on her leadership of the Human Rights Commission, and most date only to the passage of the Universal Declaration of Human Rights in 1948. Her biographers have devoted even less attention to her U.N. activities. Books by or about wartime human rights lobbyists, such as Clark Eichelberger, Dorothy Robins, and Robert Divine, help to fill in this historical gap.\(^6\)

New scholarship has tried to correct these shortcomings by using archival evidence, examining U.S. human rights policy on its own merits, and analyzing the importance of lobbying by non-state actors. Carol Anderson, Mary Dudziak, and Jo Renee
Formicola have recounted the surprisingly influential and often controversial activism by civil rights and religious organizations. David Hilderbrand, George Schild, Townsend Hoopes, and Douglas Brinkley have written accounts of wartime international conferences at which diplomats laid the political and legal foundations for postwar human rights activity. No review of the current literature could omit Paul Lauren's brilliant philosophical and political study of how human rights has emerged as an international concern. The entire field of human rights history, though, is still in its infancy, as seen by two recent works. Akira Iriye's study of cultural interchanges by NGOs has only one brief (and incorrect) reference to the postwar promotion of a Westernized human rights ideology. An analysis by Eric Foner of how Americans have defined "freedom" throughout their history omits entirely the efforts by presidents Woodrow Wilson and Franklin Roosevelt to evangelize the gospel of human rights abroad. 

My dissertation draws upon scholarship from the three historiographical categories as well as newer works to examine the intersections of law and diplomacy, domestic and foreign policy, and NGO and governmental activity. By starting in 1941, the study also outlines how amorphous and broad Wilsonian-influenced postwar planning became more narrow and conservative due to overriding national security and political
interests. It is often a story of how policymakers must make contradictory, even hypocritical, decisions in a complex world: to defend national sovereignty but agree to some measure of international oversight, to advance human rights yet protect segregation and other forms of racial discrimination, to advocate parochial, Anglo-Saxon legal terminology before a culturally diverse, international audience, and to judge human rights abuses committed by allied and enemy governments using different standards.

THE INTERNATIONALIZATION OF HUMAN RIGHTS

Prior to World War II, international law and diplomacy recognized, with only some exceptions, that governments had sovereign control over peoples under their rule; heads of state could treat their citizens as they saw fit. The United States, by 1941, was in a unique position to lead a revolt against this tradition. A nation born of rebellion against tyranny, its Constitution included a revolutionary list of political and social limitations on governmental power that theoretically safeguarded individual freedom and personal liberty. American presidents throughout the nineteenth century declared a right and duty to spread those treasured values across the continent (the philosophy of "Manifest Destiny") and overseas (the ideology of "imperialism"). Although this
rhetoric of "human rights" even today sounds very progressive and even modern, policymakers employed it to justify white supremacy, jingoism, and the oppression of domestic minorities. President Woodrow Wilson, determined to prevent a resurrection of the European killing fields after World War I, expanded upon this evangelical tradition. In his work at the Versailles Peace Conference, he tried to institutionalize a respect for human rights for European minorities within the League of Nations. His efforts failed, though, as fascist and communist dictators soon launched wars of conquest, the Senate refused to join the League, and successive presidents withdrew into isolationism.

Gradual but profound changes in international law inspired American, European, and non-Western non-governmental organizations to lobby for the transnational protection of human rights. Governmental immunity from human rights responsibilities began to fall in the mid-nineteenth century. Due to pressure from religious and secular human rights activists, European, Middle Eastern, American, and African nations signed multilateral treaties to ban the slave trade, care for the wounded in battle, and permit humanitarian intervention on behalf of persecuted ethnic minorities. Treaties such as the 1864 Geneva Convention on the rights of war casualties and the 1890 General Act for the Repression of the African Slave Trade created new statutory and customary
international law. European nations, believing that massive human rights violations destabilized world order and caused wars, intervened diplomatically and militarily in the nineteenth century to protect Christians in the Ottoman Empire. Few governments assumed these responsibilities willingly; these early efforts were very modest, sporadic, ad hoc, and undertaken to protect small, specific groups or categories of people. In each case, moreover, pressure from NGOs such as the British and Foreign Anti-Slavery Society (today's oldest human rights NGO), the International Red Cross, and the American Anti-Imperialist League was a decisive factor in bringing human rights concerns to the attention of governments.⁹

Concurrently, economic upheaval generated by the Industrial Revolution spawned a transnational movement to protect workers from economic exploitation. The writings of Karl Marx and Friedrich Engels exposed the poor and dangerous working conditions, low wages, long hours, and abuse of women and children in American and European factories. NGOs such as the Salvation Army, the Young Men's (and Women's) Christian Association, and the International Workers of the World pressed for transnational action on behalf of and by exploited workers. NGOs also lobbied in the international arena for women's suffrage, the fair treatment of indigenous peoples, and assistance for newly-freed slaves.¹⁰
New transportation and communication technology, early twentieth-century revolutions, and the enormous battlefield suffering of World War I created a renewed push for the internationalization of human rights. The telegraph, radio, railroads, and airplanes shortened the travel time and psychological distance between human rights violations and informed citizens living continents away. Building on their earlier struggle to prevent the exploitation of women, NGOs led by Susan B. Anthony and Carrie Chapman Catt successfully lobbied for two conventions that banned the international trade in women and girls. Upheaval caused by economic inequality in Mexico, China, and Russia captured the attention of Western leaders such as Wilson and British Prime Minister David Lloyd George. Fearful that people around a war-torn world would heed Vladimir Lenin's call for a communist revolution, they signed conventions to protect workers from the worst excesses of capitalism. Trade unions led the way in arguing that worker exploitation demanded international answers. The formation of the International Labor Organization in the wake of WWI, which soon drafted dozens of treaties on work hours, worker's compensation, and trade union rights, foreshadowed a post-WWII movement to guarantee economic and social rights.
The causes and bloody consequences of World War I persuaded the Allied Powers to undertake unprecedented efforts to internationalize human rights enforcement. At the Paris Peace Conference, the Allies re-drew the map of Europe by carving culturally heterogeneous states out of the Ottoman and Austro-Hungarian empires. Cognizant that the persecution of ethnic minorities had led to war and appalled by the genocide of Armenians by the Ottoman Turks, the victors penned a series of Minorities Treaties with the vanquished Central Powers, the Baltic states, and nations in central and southern Europe. Each required signatories to protect the cultural and economic rights of racial, ethnic, and religious minorities and guaranteed everyone equality before the law. They empowered the League of Nations to discuss and act upon petitions from victims of alleged treaty violations.¹²

Wilson and other Allied leaders, though, refused to apply these human rights standards to non-Europeans. Ignoring the precedent-setting lobbying by representatives from Southeast Asia, India, Armenia, and the Middle East, they declined to grant independence to non-white peoples. In fact, the peace conference further entrenched the colonial system by giving the colonies of the defeated nations to the Allies as mandates. The Allies even opposed recognizing the principle of racial equality in the Treaty of Versailles. Japan, the only non-white power invited to the peace conference, advocated
tirelessly for its inclusion. Wilson, a white supremacist who knew such an addition would cause turmoil in the racially segregated United States, suddenly and unilaterally cut off all debate on the topic. The refusal by Wilson and other Allied leaders to recognize racial equality would poison human rights discussions at the U.N. after WWII. As the American scholar and political activist W.E.B. DuBois stated so poignantly in 1900, "The problem of the twentieth century is the problem of the color-line,—the relation of the darker to the lighter races of men in Asia and Africa, in America and the islands of the sea."[1]

The advent of the League of Nations and the International Labor Organization inspired an interwar generation of NGOs to advocate the global enforcement of political, economic, and social guarantees. As the Women's International League for Peace and Freedom fought for suffrage and reproductive rights, DuBois' Pan-African Association struggled for self-determination, and the Comintern advocated global socialism. Rene Cassin, Alejandro Alvarez, and Wellington Koo, who later became the architects of human rights activism by the United Nations, worked with the Institut de Droit International, the Académie Diplomatique Internationale, and the Ligue pour la Defense des Droits de l'Homme to publish drafts of an international bill of rights. The publicity generated by these efforts induced individuals and NGOs to file hundreds of
petitions before the League of Nations. The league forced member governments to provide redress in many cases. Working in cooperation with NGOs, the league's Mandates Commission, Advisory Committee on the Suppression of Traffic in Women and Children, and Minorities Committees oversaw and even regulated to an unprecedented degree the relationship between national governments and peoples under their control.14

THE CONCEPTUAL FRAMEWORK

Although World War II derailed the further development of international human rights law, it also reaffirmed the conviction that peace could not exist if governments could hide behind the walls of national sovereignty and domestic jurisdiction to practice the worst forms of torture, murder, and oppression. But once again, the leaders of NGOs had to convince skeptical Allied leaders, including Roosevelt, that support for human rights must be more than rhetorical. Their renewed advocacy of a binding bill of rights, enforced by an international organization, is one part of this dissertation. The reluctance of Roosevelt, Truman, and Eisenhower to agree, a consequence of intersecting domestic and international pressures, forms a second theme. Disagreements between NGOs, Western nations, the Communist Bloc, and the emerging underdeveloped world on whether to include economic and social
guarantees and the right of self-determination in binding
human rights treaties comprise a third theme in the
dissertation's latter chapters.

This work is organized both chronologically and
thematically. Chapters two and three examine the wartime human
rights trialogue undertaken by the Roosevelt administration,
American allies, and domestic non-governmental organizations
that culminated in the drafting of the United Nations Charter.
Early U.N. efforts to create a human rights commission, to
craft its agenda, and to pass a non-binding human rights
declaration are the focus of the fourth chapter. The next two
chapters examine the American role in formulating the Genocide
Convention and early drafts of a covenant on human rights. The
rejection of the convention by the Senate leads to one of the
major themes of chapter seven: the emergence of domestic and
foreign opposition to U.S. human rights policy at the United
Nations. The conclusion analyzes the long-term impact that
these events and themes have exerted on American foreign
policymakers up to the present.


On 6 January 1941, President Franklin D. Roosevelt delivered a somber State of the Union address to a Congress that had witnessed Nazi Germany's conquest of most of Western Europe and Japan's occupation of Indochina and parts of China. "At no previous time," he warned, "has American security been as seriously threatened from without as it is today." Only by actively resisting aggression, Roosevelt declared, could the United States help to construct a postwar world based upon the "cooperation of free countries, working together in a friendly, civilized society." Peace and global collaboration would come as national governments rejected tyranny and granted their citizens what Roosevelt called "the Four Freedoms": freedom of speech and religion, and freedom from want and fear. "Freedom," he concluded, "means the supremacy of human rights everywhere."¹

In his 1941 State of the Union speech, Roosevelt defined one of the central war aims of the United States: the formulation and enforcement of basic human rights around the
world. He believed that democratic nations, which by definition protected the political and economic rights of their citizens, were less likely to wage aggressive war. In wartime speeches and proclamations such as the Atlantic Charter and the Declaration by the United Nations, he encouraged the other Allied countries and many Americans to accept his bold but imprecise vision. To flesh out the President's ideas, Secretary of State Cordell Hull charged several State Department committees with drafting an international bill of rights that would preclude mass human rights violations like those committed by the Axis powers. After several years of delay caused by a shortage of staff, a lack of resources, and a growing rivalry between Secretary of State Hull and Undersecretary of State Sumner Welles, the committees generated a list of political and civil rights that nations should grant to their citizens and two blueprints for an international organization that could enforce those guarantees.

Opposition from other Allied leaders, disagreements inside the State Department, and the emergence of more pressing postwar issues, however, led Hull and Roosevelt to set aside these human rights proposals. This decision provided the opportunity for religious, legal, and academic associations to draft their own plans for the protection of economic, political, and social rights by an international
body. They lobbied for their plans in Washington, only to be ignored by the administration for the same reasons that had prevented Hull and Roosevelt from adopting the State Department's own preliminary work. The result was a growing credibility gap between Roosevelt's words and official postwar planning, a gap that soon bred frustration and anger within non-governmental human rights organizations as Allied plans for the creation of a United Nations coalesced.

II

This pattern of human rights rhetoric unsupported by policy implementation began even before the United States formally entered World War II. On 27 December 1939, almost four months after Germany invaded Poland, Hull created the first postwar planning entity within the State Department. The task the Secretary of State gave to the Committee on Problems of Peace and Reconstruction was "to survey the basic principles which should underlie a desirable world order to be evolved after the termination of present hostilities." The group established three subcommittees, including one on political problems that quickly drafted a primitive plan for a European "political body" with jurisdiction over transnational "social issues," including human rights. The committee and the political subcommittee ceased to meet after
late June 1940, though, in part because they lacked the necessary technical staff and because, as the U.S. edged toward war, the State Department had to concentrate on more immediate diplomatic crises.²

Although State Department postwar planning had essentially ceased by mid-1940, Hull and Welles encouraged private internationalist organizations to fill the void. In early September 1939, Walter H. Mallory, the Executive Director of the Council on Foreign Relations, and Hamilton Fish Armstrong, editor of the council's journal, *Foreign Affairs*, offered to conduct postwar policy studies for use by the State Department. The council, formed in 1921, had been a leading voice for internationalism throughout the interwar years.³ Hull and Welles appointed several council members to serve on State Department planning committees, and during the war the council submitted almost seven hundred memoranda to the State Department. One of the first reports, released on 10 July 1941 and entitled "Basic American Interests," advocated "adherence to an international charter of human rights" that would include the principles of racial equality and freedoms of religion, association, and the press.⁴

A second band of interwar internationalists from the League of Nations Association also pushed for the centrality of human rights in American postwar planning. The Commission to Study the Organization of Peace, led by the League's past
president, James T. Shotwell, and its executive director, Clark Eichelberger, was formed in 1939 by fifty intellectuals to help the State Department plan for a new postwar world order. Members included John Foster Dulles, the future Secretary of State who would also become an important human rights lobbyist for the Federal Council of Churches, and Dean Virginia Gildersleeve from Barnard College, who would serve as an official delegate to the San Francisco Conference in 1945. The commission's first report of November 1940 explained that nations could only prevent world wars if they abdicated partial sovereignty to an international peacekeeping and if they granted unspecified human and cultural rights to their citizens. "The destruction of civil liberties anywhere," the report tartly asserted, "creates danger of war." five

Although these initial studies had a minimal influence on the Roosevelt Administration, where officials were more concerned with immediate events, the president's sometimes soaring rhetoric did inspire State Department postwar planners and internationalist activists who continued to press for the globalization of human rights issues. This was the case with the Atlantic Charter, a declaration of war and postwar aims hammered out by Roosevelt and British Prime Minister Winston Churchill at their famous meeting off the coast of Newfoundland in August 1941. An original draft of the charter, prepared by the British, would have prohibited both countries
from adding territory to their realms or accepting any postwar border alterations without the consent of those affected. It would also have committed both countries to defend the right of peoples to choose their own form of government, not to mention the rights of freedom of speech and thought, "without which such choosing must be illusory," and to a postwar international organization that would have guaranteed these rights. Subsequently, though, Undersecretary of State Welles deleted British references to defending the freedoms of speech and of thought and to creating an international organization because he thought such ideals might raise the ire of congressional isolationists. Roosevelt accepted Welles' revisions, even though the document was non-binding and the words were essentially taken from his own 1941 State of the Union address. He added, though, a vague expression of hope that a future peace would provide economic security and equal access to raw materials and markets for the world's peoples, thereby allowing them to live in freedom from want and fear. Churchill accepted most of the amendments. Despite Welles' strenuous objections, Roosevelt sided with Churchill and deleted a reference to global free trade.

The U.S. and British governments released the Atlantic Charter with much fanfare on 14 August. Both nations promised to encourage self-government for the world's peoples, to foster international economic cooperation by gradually
collapsing trade barriers, to establish a peace that would nourish economic development, and to construct a "wider and permanent system of general security" to prevent another world war. Although the document was not legally binding, both American and British statesmen saw it as something of a blueprint for a future peace. Churchill, in a 9 September speech before the House of Commons, promised that the charter would be a "milestone or monument which needs only the stroke of victory to become a permanent part of the history of human progress." Roosevelt was more guarded, given the fragile domestic political scene, blandly telling the press upon his return that the charter comprised "an interchange of views relating to the present and future." Hull, who was less restrained, publicly remarked that the charter's ideals were "universal in their practical application."

Despite these initial statements, Great Britain, the United States, and even the Soviet Union quickly denied that its ideals were the literal clay from which a postwar world would be molded. In the same 9 September speech, Churchill pointedly reassured the House of Commons that the document did not apply to the internal economic or political dynamics of the British Empire. After signing the charter in London on 24 September, Soviet Ambassador Ivan Maisky expressed even more cynicism than Churchill, contending that the "practical application of these principles will necessarily adapt itself
to the circumstances, needs, and historic peculiarities of particular countries." Roosevelt's half-hearted endorsement reinforced the reserved, routine, and sometimes even hostile coverage given the document by the American and British media and public. A January 1942 Gallup poll revealed that only seven percent of respondents could cite one of the declaration's eight points. Nevertheless, the Atlantic Charter was a significant achievement in the history of U.S. human rights policy, for it marked Roosevelt's first attempt to obtain international recognition of his Four Freedoms. It remained for the State Department and private lobbying organizations to graft those principles onto their developing postwar plans.

The Atlantic Charter, Roosevelt's comments notwithstanding, was both a touchstone and a catalyst for postwar planning inside and outside the State Department. The department's Division of Special Research, established by Hull in February 1941 to conduct special analyses of foreign policy issues, finished a commentary on the charter on 11 September. Written by Harley Notter, the report articulated a paradox unresolved by the declaration. It made clear that the postwar power and security of the United States depended on its success in using the charter's ideals to nurture stability in the postwar world. But the charter provided a fuzzy and incomplete roadmap to that new world order and left many
issues unresolved, such as to whom its reference to self-government would apply. Notter could hardly have been more specific, though, at a time when the global military situation was constantly in flux, the U.S. had not even entered the war, and the department's postwar planning was still in its infancy.

Criticism of the declaration came from some private organizations that lamented the exclusion of the freedoms of religion and speech. John Foster Dulles, Chairman of the Commission to Study the Bases of a Just and Durable Peace, a postwar study group set up by the Federal Council of Churches, regretted the emphasis on economic rights as opposed to the equally important "intellectual and spiritual freedoms." To blunt this criticism, Roosevelt told Congress upon his return from the conference that he interpreted the charter to "include of necessity the world need for freedom of religion and freedom of information." He also made sure that the next international statement of war aims, the Declaration by United Nations, included both. Despite these omissions, the Atlantic Charter was the first American multilateral commitment during World War II to secure some political rights for at least some of the world's struggling peoples.

The release of the charter sparked additional interest in postwar planning within the State Department. In August and September, Notter dashed off two memos to his superior, Leo
Pasvolks, decrying the need to expand the number of personnel within the Division of Special Research and to make its existence permanent. The department was needed, he wrote, to analyze "the far-reaching international adjustments" that the charter envisioned and that were "basic to stable, peaceful, and democratic relations in the post-war world." Notter also proposed to create an informal group of foreign policy experts directly under Hull and Welles who would translate the research findings generated by the division into coherent postwar plans. Pasvolsky initialled both proposals and sent Hull a plan for an Advisory Committee on Post-War Foreign Policy to study the economic, military, political and territorial issues raised by the charter. The Japanese attack on Pearl Harbor accelerated consideration of the proposal. On 22 December, Hull wrote the president that the proposed body would "translate into a program of specific policies and measures the broad principles enunciated in the Atlantic Declaration." "I heartily approve," Roosevelt quickly replied. Although the committee itself would not exist for long, its subcommittees generated the most numerous and detailed postwar plans of any entity in the U.S. government, including the first international bill of rights written by the State Department.\(^{11}\)

Once the United States entered World War II, the State Department redoubled its commitment to identify the central
ideals around which it wanted to organize the postwar world. One week after Pearl Harbor, Secretary of State Hull and several subordinates drafted a new statement of war and peace aims modelled along the Atlantic Charter. Hull wanted to obtain a public Allied agreement on postwar aims well before a peace conference convened, thereby avoiding President Woodrow Wilson's bitter clashes with the other victorious powers after World War I. The preamble of the draft accord obligated the Allies to adhere to the Atlantic Charter and stated that an Allied victory was "essential to defend and preserve life, liberty, and independence, and to preserve human freedom and justice not only in their lands but everywhere." The three substantive clauses committed signatories to use all of their resources to defeat the Axis, to cooperate with one another in this effort, and to make no separate peace. On 19 December, Hull sent the draft to Roosevelt, who, after making several minor changes, shared it with a visiting Churchill. Subsequently, Hopkins suggested that "religious freedom" be included in the preamble's list of essentials, and Roosevelt convinced skeptical Soviet Ambassador Maxim Litvinov to accept this addition.¹²

After Litvinov and British Ambassador Lord Halifax made minor alterations, the United States, Great Britain, China, and the Soviet Union (the Big Four) initialled the Declaration by the United Nations on 1 January 1942. The next day, twenty-
six other countries did the same. The term "United Nations" was Roosevelt's, who suggested it to Churchill on 31 December. Although the document was not a binding treaty, and although the peace aims were relegated to a preamble, Hull declared on 2 January that the declaration was "living proof that law-abiding and peace-loving nations can unite... to preserve liberty and justice and the fundamental values of mankind." Roosevelt, however, referred to the declaration only once in his 1942 State of the Union address, preferring to concentrate his remarks on the more immediate task of mobilizing for war. With the Atlantic Charter and the declaration behind him, the president now preferred to leave the more detailed questions of defining and executing his rhetorical human rights commitments to State Department committees.13

The department, though, was ill-prepared and slow to launch a major research project on how to implement the human rights promises of the Atlantic Charter and the Declaration by the United Nations. Current crises, such as Japanese expansion in Asia and Germany's offensive against the Soviet Union, still took precedence over long-range planning in the allocation of staff and resources. On 7 February 1942, Pasvolsky wrote an urgent six-page memo to Welles and Assistant Secretary of State Gardiner Shaw asking for an enlargement of the Division of Special Research. The body was not prepared, Pasvolsky claimed, to undertake the additional
responsibility of providing research studies and specialized expertise for the newly-formed Advisory Committee on Post-War Foreign Policy. The Advisory Committee itself did not convene until 12 February, when Welles, chair of the committee in Hull's absence, told those gathered that they comprised the State Department's major postwar planning body whose recommendations would go directly to Roosevelt through Hull. Given its broad mandate, the committee broke into two economic and three political subcommittees that met immediately to draft agendas. On 14 March, the Subcommittee on Political Problems, led by Welles, first raised the possibility of formulating a bill of rights for the postwar period. The committee, though, voted to postpone further discussion.

Once again, private groups took the initiative in conceptualizing human rights policy during the early months of 1942. The Council on Foreign Relations, which participated in meetings of the Advisory Committee, was the first to propose a plan that vested responsibility for a bill of rights in a future international organization. In a March 1942 report, "Problems of Postwar International Organization: A Tentative Outline," the council identified several categories of political rights to be protected: freedom from arbitrary arrest and freedoms of speech, religion, press, association, "creative art," and "scientific inquiry." James T. Shotwell and Clark Eichelberger urged the Commission to Study the
Organization of Peace to research long-range postwar issues. On 15 February, the group's studies committee approved a memorandum by Eichelberger that outlined a future course of inquiry. Their next project would be a "blueprint of the future on the basis of the Atlantic Charter and United Nations." One of the report's three detailed sections identified the international protection of human rights as a top priority for a postwar era. On 5 March, the National Study Conference of the Commission to Study the Bases of a Just and Durable Peace approved thirteen "Guiding Principles" for the future. One proclaimed that the freedoms of religion, speech, assembly, press, and scientific inquiry were "fundamental to human development and in keeping with the moral order."

As the Axis armies conquered new territory in the Soviet Union, Asia, and Africa during the first half of 1942, several members of the Roosevelt administration exhorted the nation to mobilize for war in order to fulfill the human rights ideals of the Atlantic Charter and U.N. Declaration. Vice President Henry Wallace gave an apocalyptic appeal to the "Common Man" before the Free World Association in New York City on 8 May. Wallace summed up the war as a fight between "a slave world and a free world," between tyranny and freedom. He saw the war as the latest manifestation of a centuries-old "people's revolution" fought by those who sought to gain or defend economic and political freedom. The ultimate victory of the
"millennial and revolutionary march toward manifesting here on earth the dignity that is in every human soul" was, Wallace thundered, as inevitable as the defeat of the Axis. In only a slightly more restrained Memorial Day address at Arlington National Cemetery, Welles called for an end to imperialism, for global recognition of the Atlantic Charter, and, most controversially, for a world organization equipped with international police power. Even Roosevelt voiced his strongest statement yet in support of human rights in a Flag Day speech: "The four freedoms of common humanity are as much elements of man's needs as air and sunlight, bread and salt. Deprive him of all these freedoms and he dies; deprive him of a part of them and a part of him withers." He concluded with a prayer for a victory over tyrants that would "cleanse the world of oppression."

Even conservative Secretary of State Hull joined the early chorus of human rights rhetoric on 23 July 1942 in his first foreign policy speech since Pearl Harbor. Angry at Welles for not clearing his speech beforehand and unimpressed with Wallace's bold vision, Hull wanted to outline his own tableau of the postwar world. The final product, entitled "The War and Human Freedom," took the secretary five weeks to write. Like Wallace, Hull used stark dichotomies to paint the war as a struggle between principles as much as between nations. The Axis plan for world order, founded upon the
physical and spiritual enslavement of subject peoples, was being implemented by mass murder, rape, starvation, and torture, "the most thorough-going bondage the world has ever seen." As defenders of liberty, justice, and economic opportunity, the Allies, and Americans in particular, were now part of a long and glorious struggle. Once they won the war, the central task would be to re-build the political and spiritual foundations necessary for the blossoming of liberty and human rights under law. Hull was vague on how to do this, though he implied that some combination of national reconstruction and international collaboration would be required. Although the speech was filled with cliches and simplistic images, it did show that even the secretary thought that the struggle to achieve global human rights would be a necessary component of the postwar era. The address also highlighted the philosophical differences between Hull and Welles, who was also closer to Roosevelt but whose independent streak would soon cost him his job.  

In response to the renewed emphasis on human rights by Wallace, Welles, and Hull, the State Department's postwar planning apparatus began to formulate a preliminary bill of rights. The Advisory Committee on Post-War Foreign Policy's Subcommittee on Political Problems appointed a drafting committee consisting of State Department Legal Advisor Green Hackworth, Assistant Secretary of State Adolf Berle, Jr.,
Benjamin Cohen from the White House staff, and Foreign Affairs editor Hamilton Fish Armstrong. All four had extensive experience in either corporate or international law, and all except Armstrong would be heavily involved in U.N. human rights issues for the next decade. Three basic tenets dominated their work. First, doubting the efficacy of having only national governments enforce human rights standards, they favored some form of loose international oversight. Second, their skepticism toward defining and enforcing economic and cultural rights, which American law did not recognize, made them predisposed to limit their study to political and civil rights. Finally, as lawyers, they supported the codification of human rights norms in binding multilateral treaties. The drafting committee did not exist for long, though, for it was soon absorbed into a new legal subcommittee that completed the only departmental wartime bill of rights.19

After the Subcommittee on Political Problems had identified human rights as a topic for discussion, Durward Sandifer of the Division of Special Research sketched a preliminary bill of rights. Sandifer, a soft-spoken, dry-humored specialist in international law who became one of Eleanor Roosevelt's most trusted advisors during her tenure with the United Nation's Commission on Human Rights, finished a twenty-one article draft on 31 July 1942. Lacking guidance as to the scope, content, and implementation of a list of
rights, Sandifer made several very conservative suppositions. He proposed that a future bill of rights would be attached to the constitutions of postwar European states. To identify what rights would be included, he merely distilled provisions from current European and American constitutions as well as other famous human rights texts, such as the 1689 British Bill of Rights. Finally, his plan relied upon internal, as opposed to international, enforcement by national courts that would apply municipal law. If these courts failed, though, Sandifer cautiously recognized that some sort of broader regional or global authority must assume investigative and/or judicial power.¹⁹

The draft covered only civil and political rights, most of which would have been familiar to Americans. Sandifer included the freedoms of religion, speech, assembly, and movement. All persons had the right to due process of law, to a speedy and fair trial, to habeas corpus, and to own property regardless of "origin, nationality, sex, language, race, religion, political convictions or religious beliefs." The draft allowed for appellate review by a nation's highest court for official state actions that contravened the specified rights. Either party might then apply for a writ of certiorari from an international court. In a more detailed second draft, Sandifer outlined four remedies the courts could grant:
monetary compensation, property restoration, freedom for those in jail, and a permanent injunction against future enforcement of the contested law. But even Sandifer grasped the deficiencies and idealistic assumptions embedded in his enforcement scheme, for he concluded that it should "merely...serve as a basis for examination of the problem."^20

Sandifer's draft generated some enthusiasm within the Subcommittee on Political Problems, although its members quickly rejected any means of international enforcement as an unacceptable infringement on national sovereignty. On 8 August, after receiving Sandifer's draft, the body appointed a Subcommittee on Legal Problems. Most of its members, including Chairman Hackworth, Armstrong, Berle, and Cohen, came from the inactive drafting committee. James Shotwell and Foreign Affairs Council director Brooks Emeny also participated, and former Elmira College history professor Alice McDiarmid advised the committee on human rights law. The subcommittee's charge was broad: to examine and revise Sandifer's draft and apply it to provisional European governments and/or an international organization, to produce a framework for trying those accused of war crimes, and to develop a statute for a new international court of justice. At its first meeting on 21 August, a year after the issuance of the Atlantic Charter, the group began to study how Allied occupation forces and postwar governments might apply
Sandifer's bill. The subject occupied the subcommittee's attention for the next four months, and its work marked a watershed in State Department wartime human rights planning.  

The deliberations of the Legal Subcommittee were marked by consensus among the participants on both the content of a bill of rights and its implementation. Most of the discussion focused on the problems of translating key Anglo-Saxon and American legal precepts into both the neophyte field of international human rights law and the discordant internal legal codes of nations around the world. To solve this dilemma, the participants increasingly shared the conviction that an international bill of rights could largely draw from the first nine amendments to the U.S. Constitution, which they believed were elastic enough to command global acceptance. The lack of prior instruction from the State Department also led the committee to consider briefly how their work would be applied in a postwar world. After some disagreement, the body decided to shelve further discussion in order to finish reviewing Sandifer's draft.  

At its next two meetings, the Legal Subcommittee strove to balance brevity with substance and universal application with acceptable derogations. On 1 October 1942, the committee began the laborious process of reviewing the style and substance of each article, a process that expanded the number of articles but narrowed most in scope. The committee had few
internal disagreements except over how to translate words and phrases such as "rights" and "due process of law" into other languages and over whether states or some international entity would enforce their end product. Committee members constantly referred to American legal norms as interpreted by federal courts, and therefore adopted without debate provisions prohibiting ex post facto laws, cruel and unusual punishment, excessive bail, double jeopardy, and self-incrimination. Yet discussions were not always this tidy, for most articles had to include not only a basic right, but a summary of how American courts had reasonably restricted it in decades of application. The committee, for example, allowed governments to suppress speech in the interests of "public decency, good morals, and public security." This Ameri-centricity carried over to the committee's attempt to bring European judicial practices closer to American standards by prohibiting incommunicado detention and permitting freedom of movement within national boundaries.²²

The most contentious debates occurred over the wide range of possible enforcement mechanisms, from calling upon nations to enact their own legal provisions to creating international institutions with jurisdiction over human rights violations committed by governments. Sandifer's draft allowed for appeals from state courts to an international tribunal, which the latter could accept at its discretion with a grant of
certiorari. The tribunal's powers were almost unlimited: it could invalidate national laws, award monetary damages, and free the unjustly imprisoned. Emeny advocated the insertion of an extraterritoriality provision to prevent nations from abusing the rights of foreigners within their boundaries. Cohen rebuked Emeny, though, for supporting an idea that had historically generated hatred for the United States in China, among other countries. He advocated incorporating the bill of rights into national constitutions, with national and international courts granted the power to declare contravening laws invalid. This strategy would allow for the gradual development, through decisions by the international body, of a uniform code of rights binding on all states. Cohen was realistic about his scheme, though, for he doubted that the U.S. government would ever allow Americans to appeal to extranational courts. The committee approved Hackworth's suggestion to drop the controversial topic from the draft and to ask that the issue be put on the agenda of a future permanent international organization. 23

Ironically, members of the committee were more disappointed with their revised draft than with the original bill drafted by Sandifer. The document's twenty-six articles consumed nine pages, and Shotwell thought that its complexity and length might hinder universal acceptance. Then, too, many
articles included controversial provisions and exceptions that detracted from the overall goal of formulating a basic list of individual rights. In addition to detailed articles on police warrants and due process, the draft contained expansive economic and social guarantees that would be hard to define and enforce. The latter included the rights to obtain a public education, learn one's own language, engage in business, work in safe conditions, receive adequate health services, and own property. On 29 October, the committee instructed Sandifer and the Division of Special Research to prepare a shorter draft as well as a memorandum on enforcement options. In its next five meetings, the committee pared down the list of civil and political rights and omitted most of the specific economic and social guarantees.24

By attempting to condense and simplify a code of rights, committee members had to confront a paradox that would consume American policymakers for the next decade: Though the rights identified and the words used to express them had to command universal acceptance, both should mirror American constitutional principles and practices. When the two conflicted, the committee gave precedence to the latter. This process further Americanized the committee's work and led to the elimination of economic and social rights and guarantees that might upset the racial status quo within the United States. No member publicly commented on the irony of limiting
an international bill of rights to support domestic racial discrimination, but specific references to racial equality in employment and educational opportunities vanished. The deletion of rights that protected minority languages, safe working conditions, and access to health care quickly followed. This tacit conservatism also led to committee to strike a proviso that applied the rights to all regardless of sex. The revised draft, now only nine articles and three pages in length, consisted mainly of the rights granted by the Fourth, Fifth, Sixth, and Eighth Amendments to the U. S. Constitution.  

As the subcommittee edited the bill of rights during the fall of 1942, its members turned to private international law specialists for advice. In early November, Sandifer attended a Conference of Advisors of the American Law Institute in Philadelphia that discussed, as part of the group's infant International Bill of Rights Project, the possible content of such a document. Although Sandifer was present in an unofficial capacity, he shared the Legal Subcommittee's work at the meeting. Most of the eighteen law professors and former diplomats in attendance wanted to fashion a list of basic civil and political rights already recognized in many national constitutions. A minority wanted to add economic and social guarantees, a desire the first group rejected as controversial and unenforceable. The gathering referred the debate to
several subcommittees of the institute with the suggestion that two separate bills of rights might be necessary. The institute decided to draft a bill of basic political rights within six months and, at Sandifer's urging, to present updates on its work to the State Department. Sandifer left the meeting encouraged by the quality of debate, but he presciently worried that the division over content would polarize future international debate.\(^{26}\)

The Legal Subcommittee spent its last three meetings incorporating some stylistic changes and references to economic and social rights as recommended by the American Law Institute. The final document, approved by the subcommittee on 10 December 1942, contained sixteen articles that tried to balance individual rights with acceptable governmental derogations in the interests of national security, public morals, and levels of economic development. The document contained the familiar guarantees of freedoms of speech, assembly, and religion, equality before the law, due process of law, fair and speedy trials, and humane punishments. Governments also had the vague responsibility of providing the maximum possible economic, social, educational, and cultural opportunities to all citizens. The final article declared that the enumerated rights would be enforced by national courts and legislatures, "any [national] law or constitutional provision to the contrary notwithstanding." Committee members could not
decide if enforcement mechanisms would be exclusively national or also international, and so they left the issue open to future debate. Chairman Hackworth forwarded the bill of rights to the Subcommittee on Political Problems. The final document, ironically, differed little from Sandifer's draft of four months earlier. Guided by conservative assumptions in an American-centered framework, the outcome of four months of deliberations could hardly be otherwise.27

The only substantial human rights discussion by the Subcommittee on Political Problems reflected a similar narrow and cautious conception of human rights. At its last meeting on 19 June 1943, the body had a theoretical discussion of what and how human rights might be safeguarded. Representative Charles Eaton (R-NJ) suggested that the United States simply ask other nations to adopt its Bill of Rights, a motion seconded by Welles, who added that such passage might become a prerequisite for joining an international peacekeeping organization. Senator Walter George (D-GA) objected to Welles' proposal, and he stated that the U.S. should not allow a foreign institution to exercise sovereignty over what he defined as internal matters. Senator Elbert Thomas (D-UT) likewise cautioned the subcommittee. They would repeat these warnings ten years later during congressional debates over whether to ratify United Nations human rights treaties.28
By late 1942, State Department postwar planning bodies began to connect human rights issues to the creation of an international peacekeeping organization. With momentum after the battle of Midway and the invasion of North Africa favoring the Allies, and with the convocation of several summits between the Allied leaders on the horizon, State Department postwar planners focused on creating an improved successor to the League of Nations. The Subcommittee on Political Problems rejected further discussion of a bill of rights as premature and narrow and turned its attention to creating an international organization that, among other duties, would have the responsibility to protect human rights. The subcommittee had established in mid-1942 the Special Subcommittee on International Organization to formulate and revise possible blueprints. The subcommittee, headed by Welles, included Legal Subcommittee members Hackworth, Cohen, Notter, Pasvolsky, and Shotwell, plus Armstrong and geographer Isaiah Bowman. Clark Eichelberger also attended most of the meetings. After studying the charters of the League and the International Labor Organization, the body prepared to draft a constitution for a new international organization that would establish and maintain world peace following the conclusion of the present war.29

The Subcommittee on International Organization began its deliberations by reviewing a "provisional outline" prepared by
Shotwell. The chair of the Commission to Study the Organization of Peace, who was concurrently editing Sandifer's bill in the Legal Subcommittee, included the protection of human rights as a responsibility of the international body. His short preamble asserted that the United Nations, "having subscribed to a common program of human rights, [must] undertake to establish the instrumentalities by which peace and human rights may be secured." The subcommittee had discussed and approved the preamble with minor alterations by early November. In early 1943, the group wrote the remainder of a "Draft Constitution of International Organization," which it then forwarded to the Subcommittee on Political Problems. The plan called for an executive council of eleven nations, including the Big Four, that would have the supreme authority to make all policy decisions. The other seven members would be drawn from five regional bodies that would make local and regional decisions subject to review by the council. Secretary of State Hull, though, refused to forward the plan to Roosevelt due to his growing personal and professional dislike of Welles, who then bypassed Hull and gave the plan to the president anyway. Hull also opposed the plan's emphasis on regional blocs. Although President Roosevelt favored Welles' quasi-regional approach and grant of special status to the Big Four, he took no official action on this plan for a postwar international organization. Despite Hull's obstructionism, the
document's preamble demonstrated growing intra-State Department and private support for making the protection of human rights an international responsibility.\textsuperscript{30}

The push by State Department postwar planning agencies to graft human rights concerns onto a blueprint for an international organization bore fruit again in the summer of 1943. Roosevelt's inaction on the draft constitution, dissent within the department about its feasibility, and the need for a simpler outline to present at the upcoming inter-Allied Quadrant Conference in Quebec collectively required a second sketch. The "Staff Charter of the United Nations" emerged from an informal, ten-member drafting group within the Department's research arm, including Sandifer, Notter, and Fosdick. With Hull's initial blessing, the group quickly generated a twelve-page outline in early August 1943. Not surprisingly, given the overlap of authors, the plan differed little in substance from its predecessor. The Big Four would exercise predominant power on the Executive Council, where they retained a veto on everything except enforcement and arms control issues. All states could become members of the General Conference, the main policy-making organ. Technical economic, scientific, labor, health, and education agencies were linked directly to the conference instead of remaining autonomous under the draft constitution. At Hull's insistence, the plan omitted any official connection between regional bodies and the council.\textsuperscript{31}
During ten days of deliberation, the authors of the Staff Charter discussed at length how to incorporate the protection of human rights. Internal debate centered on where to include the issue and what enforcement mechanisms to authorize. The group decided to draft a clause (Article Nine) under which member nations "promised to give legislative effect, without discrimination as to nationality, language, race, political opinion, or religious belief," to a Declaration of Human Rights. Lacking time and expertise to define the latter, the committee simply annexed the entire Legal Subcommittee's draft bill to the charter. The group decided to have individual nations determine how to enforce the specified human rights because alternatives, such as requiring states to amend their constitutions or allowing individuals to sue their nations before international courts, were deemed politically unacceptable or too invasive. One possible controversy a bill of rights could unleash hit close to home. In its commentary on Article Nine, the group ironically concluded, without explanation, that the promise to apply human rights in a non-discriminatory manner "will not interfere with the laws of some of our states for the segregation of races."  

Despite the timely completion of the staff charter, Roosevelt did not formally discuss it with Churchill at the Quadrant Conference that convened on 17 August 1943. Most of their conversations instead revolved around immediate war
plans, from the impending invasions of Italy and France to the formation of a Southeast Asia Command. Roosevelt knew that serious differences existed between himself and Churchill on the structure of a postwar organization: Churchill favored decision-making confined exclusively to the Big Three (though he now reluctantly added China), and he saw little need for any formal body beyond separate regional councils. Given this chasm, the inability of Soviet leader Joseph Stalin to attend the meeting, and the fear of a backlash from congressional isolationists, Roosevelt was reluctant to discuss the issue further. He and Churchill approved a cautious statement, accepted by China and the Soviet Union later in the year, that promised the creation "at the earliest practical date [of] a general international organization."\(^{13}\)

Despite their decision to pigeon-hole two proposals that included human rights as a fundamental aim of a future international organization, Roosevelt and his top advisors continued to place the topic rhetorically at the center of a postwar world. Under Secretary of State Welles, in a speech in New York City on 17 November 1942, proclaimed that the Four Freedoms must be applied to the world's peoples as interdependent and inalienable rights if the triumph of the Free World was to be complete. He concluded that there must be "no swerving from the great human rights and liberties established by the Atlantic Charter itself." Roosevelt marked
the first anniversary of the United Nations Declaration by outlining three goals that lay ahead: achieving a decisive military victory over the Axis, using diplomacy to prevent future wars, and obtaining international cooperation in the pursuit of freedom and justice. Following the Quadrant Conference, Hull delivered a foreign policy address over the nation's airwaves. As a typical Hull speech, marked by uninspiring catch phrases, moderation in tone, and unsurprising content, it was not an impressive effort. After reviewing the improving Allied military situation, he affirmed American support for self-determination for "qualified" peoples, the sovereign equality of nations, the peaceful settlement of international disputes, free trade, and transnational cooperation based upon a common regard for "liberty, equality, justice, morality, and the law."31

Once again, State Department planning committees and private lobbying groups stepped into the human rights policy vacuum created by Roosevelt's inaction on the draft constitution and staff charter. In early January 1943, Hull abolished the Division of Special Research, with its activities divided between the newly created Division of Political Studies and Division of Economic Studies. Hull perceived that the distinction between planning and implementation was becoming blurry as an Allied victory approached. Both departments, therefore, continued the
research of their predecessor, but their members now cooperated with other governmental agencies to formulate policy execution plans. Notter led the Division of Political Studies with assistance from Sandifer and two professors of international relations, Philip Mosely and Samuel Jones. The topics analyzed by the Division of Political Studies included plans for international trusteeships, an international organization, and a global bill of rights. During the summer and early fall of 1943, the body began to sketch policy summaries that outlined basic issues, proposed multiple solutions, recounted previous departmental discussions, and concluded with a bibliography of relevant State Department documents.\textsuperscript{35}

The Division of Political Studies brought together previous State Department discussions of human rights issues into six policy documents. Turning first to a bill of rights, the group outlined options ranging from national and international lists of guarantees to an "international bill of international rights," which included only the transnational rights of expatriation, repatriation, aliens, and persons with multiple nationalities. A second summary discussed whether the Allies should enforce a bill of rights before or after a peace settlement and if they could apply it to all sovereign states and dependent areas, only sovereign states, or only ex-Axis and any newly independent nations. The third and ultimately
most significant of the half-dozen documents outlined how human rights might be protected by an international organization, if at all. None of the three abstracts contained new policy initiatives, but their compilation demonstrated that State Department planning was heading into a new decision-making phase.36

The division prepared a second batch of "H-documents" in late fall, including a massive 80-page summary of human rights activities in the interwar period by the League of Nations and during WWII by the Allies. The latter consisted of quotations from prominent political and religious leaders from around the world and brief summaries of American planning efforts. The effect, if not the purpose of the outline, was to demonstrate an emerging consensus to internationalize the protection of human rights. In September, the division produced memorandums on the possible content and implementation mechanisms of a bill of rights. The former outlined the extent to which nations already recognized personal, procedural, property, social, and political guarantees and, therefore, the relative feasibility of including each category in an international bill of rights. The latter summarized debate in the Legal and Political Subcommittees over national versus international enforcement schemes, and possible means of enforcing the document through political, legal, or judicial components of an international organization. As these summaries showed, the
push from general policy planning to formulating specific and practical recommendations was growing, and the time was fast approaching when Roosevelt and Hull had to make critical decisions. With this in mind, the summaries were bound into handbooks and given to American delegates attending the first inter-Allied meeting dedicated to establishing a successor to the League of Nations: the 1944 Dumbarton Oaks Conference.37

By mid-1943, as the momentum on battlefields in the Soviet Union, and the Pacific continued to shift in favor of the Allies, the cries of internationalist-oriented groups for a postwar world based upon the protection of human rights increased. Much of the rhetoric assumed that such responsibility must lie with a new permanent international organization. The passage of non-binding resolutions sponsored by Senators Tom Connally (D-TX) and J. William Fulbright (D-AK), and the issuance by the Big Four on 1 November of the Moscow Declaration on General Security that authorized or committed the United States to planning for and participating in such a body, further inspired these internationalists. According to a September National Opinion Research Center poll, four of every five Americans thought the United States should join a "union of nations." Its organization, jurisdiction, and mode of operation were hotly debated domestically, though, among State Department officials such as

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Hull and Welles, newspaper columnists Walter Lippmann and Arthur Krock, and activists Clark Eichelberger and John Foster Dulles.38

Eichelberger and the Commission to Study the Organization of Peace pleaded for a United Nations equipped to handle a growing list of economic and social ills that might plague the postwar world for the foreseeable future. During the summer of 1943, the National Broadcasting Company (NBC), in conjunction with the commission, sponsored thirteen radio programs on Allied war aims. Several expounded upon Roosevelt's Four Freedoms, including programs entitled "Food and Health in the Future" and "Justice and Human Rights," that reached at least four million Americans. That summer the Commission also wrote a study guide, Winning the War on the Spiritual Front. Distributed to rural parts of the country that could not receive the radio programs, the booklets were supposed to provide the foundation for study groups that would meet during the second week of August. The publication outlined the need for a postwar world based upon law and justice, interdependence, and economic cooperation, and it closed with a call to exert political pressure on Washington. The commission spelled out some specifics in its November 1943 report, entitled, "Fundamentals of the International Organization." To contain future aggression, the study recommended the establishment of multinational tribunals to
interpret international law, an advisory Permanent United Nations Commission on Human Rights, collaborative bodies of experts for technical economic and social issues, and, as a last resort, small international police and air forces. The report concluded with eleven "fundamentals," including the need for an international organization to "provide means through international law for safeguarding essential human rights." The specific rights were to be defined and continually revised by jurists and other legal experts.39

Echoing the commission, John Foster Dulles and the Commission to Study the Bases of a Just and Durable Peace likewise endorsed the Moscow Declaration and its call for the creation of an international organization. In an attempt to add some flesh to the bare-bones declaration, the commission circulated a collection of essays by prominent religious leaders. Princeton Theological Seminary President John A. MacKay enunciated the theme of the volume. The churches, he said, "must proclaim the enduring moral principles by which human plans are constantly to be tested." The fixed moral compass pointed toward a peace in which nations solved conflicts by adjudication, satisfied human wants through transnational cooperation, and acted according to a code of Judeo-Christian ethics. Dulles envisioned a nation of Christians who lobbied their political leaders to ensure that the final peace contained a solid moral underpinning. His
organization had earlier released on 19 March 1943 a "Statement of Political Propositions" that it hoped American postwar planners would accept and communicate to foreign governments. The first five principles called for international cooperation to control the use of force, to protect dependent peoples, and to harmonize national economic and financial policies. The sixth tenet called for universal acceptance of "religious and intellectual liberty." To ensure President Roosevelt read the declaration, Dulles personally forwarded a copy on 30 March 1943.

Lawyers offered their technical knowledge by publishing scholarly articles and advising the State Department on human rights issues. State University of Iowa Law Professor Percy Bordwell was one of the first in his field to send President Roosevelt his suggestions. Bordwell outlined a "Constitution for the United Nations" that he hoped would gain global adherence after the war. The document itself was merely a revised list of amendments to the U.S. Constitution that omitted those that were inapplicable (such as Eighteenth and Twenty-first on Prohibition) and included only titular alterations (such as replacing "Congress" with "Assembly") to those included. He postulated that these provisions would furnish the world with a human rights framework for a global federal union, similar to Clarence Streit's proposal in his
famous work, Union Now. Roosevelt responded blandly in April 1943 that he took "much pleasure" in reading this "very interesting" article.

International Law Professor Quincy Wright made a more substantial contribution in an April 1943 article printed in International Conciliation, a publication of the Carnegie Endowment for International Peace. Wright's piece surveyed the human rights promises made by Roosevelt and the United Nations, the gradual evolution of international law, and the increasing economic, military, and political interdependence of nations in order to argue that the time for transnational protection of basic individual rights was now. Those rights could be deduced, he claimed, from studying the natural rights theory of Enlightenment philosophers like John Locke, national bills of rights, international law, and recent Allied declarations such as the Atlantic Charter. He distilled from these sources a list of primarily civil, political, and property rights that had found widespread acceptance in theory, if not in practice. To ensure that nations adhered to those principles in the postwar era, Wright proposed four enforcement schemes: diplomatic channels, national legislation, and international courts that would either adjudicate disputes between states or receive petitions from individuals. His article served as the basis for an important May 1944 report of the Commission to Study the Organization of
Peace, and Wright himself became a leading human rights advocate at the San Francisco Conference a year later.\textsuperscript{42} The American Law Institute added its collective voice to the growing domestic consensus for an international bill of rights. After advising the State Department's Legal Subcommittee in November 1942, the institute's Committee of Advisors divided into subcommittees to consider specific personal, property, procedural, social, and political rights. In the spring of 1943, the committee met again to review the subcommittees' work. By that time, the five subcommittees had prepared basic proposals along with extensive technical commentaries. Although those who attended the May meeting made few final decisions, they did broadly agree to include freedoms of religion and speech, though they disagreed on whether to extend the latter protection to hate speech. Many voiced skepticism about adding social guarantees, such as to employment, education, and social security, due to enforcement obstacles. Others questioned whether to mandate a democratic form of government for all peoples. At its May meeting, William Draper Lewis, the Director of the International Bill of Rights Project, stated that a final draft would be presented at the institute's annual meeting in mid-1944. Sandifer attended the May meeting and sent a summary to the Division of Political Studies.\textsuperscript{43}
As the summer of 1943 dawned, though, internal State Department chaos and dissention muted these pleas by scholars and activists to grant some measure of jurisdiction over human rights issues to an international organization. The necessity of integrating the planning and implementation capabilities of the State Department and other agencies as an Allied victory grew closer severely taxed the existing postwar planning apparatus. Upcoming conferences of Allied leaders, for which the department had to undertake detailed planning on a host of military, economic, political, and social matters, exacerbated the administrative confusion. Funding and staffing levels were also clearly inadequate given the broad range of problems and contingencies that demanded study. The departure of Sumner Welles, who resigned as undersecretary on 22 August due to mutual personal and professional animosity toward Hull, left the department without a skilled top-level administrator and Roosevelt without a close confidante at Foggy Bottom."

To meet these new challenges, Hull thoroughly reorganized the State Department's entire postwar planning procedures. On 12 July 1943, he abolished the Advisory Committee on Post-War Foreign Policy and all of its subcommittees, including the Legal and Political subcommittees that had drafted and discussed a bill of rights. In their place, Hull unofficially organized a senior advisory body, the Informal Agenda Group. Its members, including Pasvolsky, Notter, Cohen, Hackworth,
and Bowman, met weekly to outline plans for an international organization after scanning the policy summaries (including the Staff Charter) that emanated from the Division of Political Studies. The Agenda Group soon formed the nucleus of the American delegation to the 1944 Dumbarton Oaks Conference. The consequence of this restructuring on wartime human rights planning was profound: the centralization of decision-making marginalized topics that were not of immediate military and political significance in creating an international organization. The Informal Agenda Group preferred to focus on planning a successor to the League of Nations that was simple, easily acceptable to the other Allies, and could enforce peace by military means in a postwar world. By accepting such a focus, Hull could push aside the controversial problems of defining, implementing, and enforcing a bill of rights. He also suspected that Britain and the Soviet Union would have little interest in these issues, a conclusion soon supported by London's and Moscow's positions at the Dumbarton Oaks Conference.45

III

By late 1943, two paradoxes marked human rights discussions within the Roosevelt administration. While Roosevelt and Hull issued the Four Freedoms, the Atlantic
Charter, and the Declaration by United Nations to mobilize public support for the war and expanded postwar commitments, they privately rejected proposals to allow an international organization to implement the human rights principles contained in those statements. This policy determination, moreover, occurred despite increased planning by State Department bureaucrats and private organizations that generated specific human rights proposals. Division within the State Department, British and Soviet skepticism, and Roosevelt's own predilection for an international organization that would keep the peace through political and military action by the Big Four all mitigated against the president's adoption of human rights proposals.

Roosevelt had succeeded, though, in lining up national and international support for creating a successor to the League of Nations. The Connally and Fulbright resolutions and the Moscow Declaration committed the United States to participate in the planning for an international peacekeeping organization. Despite increased planning and lobbying by human rights activists that these measures inspired, Hull's Informal Agenda Group, the British and Soviet governments, and President Roosevelt himself soon decided to postpone high-level human rights discussions until late 1944. But in rejecting the human rights initiatives of State Department postwar planning bodies and private organizations, Roosevelt
laid the foundation for a powerful domestic backlash that would ultimately help to reorient completely U.S. human rights policy a year later.
1. *New York Times*, 7 January 1941. In June 1940, Roosevelt announced cautiously that his administration was dedicated to the elimination of "four fears," which he changed to the "four freedoms" in a press conference one month later and repeated in his 1941 State of the Union address. See Jonathan Daniels, *Complete Press Conferences of Franklin D. Roosevelt*, vol. 15 (New York: Da Capo Press, 1972), 497-99; and ibid., vol. 16, 18-21.


Most historians agree that the charter was of British origin. Sumner Welles states in *The Time for Decision* that he authored a preliminary draft of a joint declaration and gave a copy to British Foreign Minister Sir Alexander Cadogan. No copy survives, however, and FRUS makes no mention of it. Welles also does not repeat the assertion in his longer account of the conference in *Where Are We Heading?*. See Welles, *The Time for Decision* (New York: Harper and Brothers, 1944), 175-76; and idem, *Where Are We Heading?*, 6-7.


For a particularly stark denial that the Charter should be applied literally see the minutes of the Subcommittee on Political Problems, 24 October 1942, Notter Papers, RG 59, box 55, NARA.

9. Notter, *Postwar Foreign Policy Preparation*, 41-42, 517-519; Division of Special Research, "Comment on the Atlantic Joint Declaration of President Roosevelt and Prime Minister Churchill," 11 September 1941, Notter Papers, RG 59, box 13, NARA; and Notter to Leo Pasvolsky, chief of the Division of Special Research, 20 August 1941, Notter Papers, RG 59, box 8, NARA.


12. "Draft Joint Declaration by the United States of America, China, Great Britain, the Union of Soviet Socialist Republics and Other Signatory Governments," 19 December 1941, and


For names and dates of signatories of the U.N. Declaration see U.S. Department of State Bulletin 6 (3 January 1942), 3-4.

14. Pasvolsky to Welles and Assistant Secretary of State Gardiner H. Shaw, 7 February 1942, Notter Papers, RG 59, box 8, NARA; Divine, Second Chance, 50; Notter, Postwar Foreign Policy Preparation, 78-84, 97, 101-2, 104-7; and Hull, Memoirs, 2:1634-37. For a summary of the responsibilities of the committee and its subcommittees see Notter, "Work of the Committees Dealing with Post-War Political Foreign Policy," 10 June 1943, Notter Papers, RG 59, box 8, NARA.


18. Notter, Postwar Foreign Policy Preparation, 98, 114.


21. Minutes of Division of Special Research Staff Meeting, 10 August 1942, Notter Papers, RG 59, box 11, NARA; "Tentative Views of the Subcommittee on Political Problems," 12 August 1942, Records of the Advisory Committee on Post-War Foreign Policy, Notter Papers, RG 59, box 54, NARA; Notter, Postwar Foreign Policy Preparation, 114-16; and minutes of the first meeting of the Subcommittee on Legal Problems, 21 August 1942, Records of the Advisory Commission on Post-War Foreign Policy, Notter Papers, RG 59, box 72, NARA.

22. Minutes of the Legal Subcommittee, 22 October 1942, Notter Papers, RG 59, box 72, NARA. See also Cantwell v. Connecticut 310 U.S. 296 (1940); Sandifer, "Bill of Rights- Revised Draft of Articles 1-12," Notter Papers, RG 59, box 72, NARA; and minutes of the second meeting of the Legal Subcommittee, 1 October 1942, Notter Papers, RG 59, box 72, NARA.
23. Minutes of the second meeting of the Legal Subcommittee, 1 October 1942; minutes of the third meeting of the Legal Subcommittee, 22 October 1942; Sandifer, "Bill of Rights-Second Revised Draft," and Sandifer, "Commentary on Revised Draft," 26 October 1942, Notter Papers, RG 59, box 72, NARA.

24. Minutes of the fourth meeting of the Legal Subcommittee, 29 October 1942, Notter Papers, RG 59, box 72, NARA.


28. Minutes of the sixtieth meeting of the Subcommittee on Political Problems, 19 June 1943, Notter Papers, RG 59, box 55, NARA.

29. Notter, Postwar Foreign Policy Preparation, 108-10; and Divine, Second Chance, 51-52.

30. Shotwell, "Provisional Outline of International Organization," 28 October 1942, Notter Papers, RG 59, box 87, NARA. See also minutes of the Special Subcommittee on International Organization, 30 October 1942, Notter Papers, RG 59, box 85, NARA; Notter, "A Note," 19 June 1943, Notter Papers, RG 59, box 8, NARA; idem, Postwar Foreign Policy Preparation, 110-14; Hoopes and Brinkley, F.D.R. and the Creation of the U.N., 68-69; Eichelberger, Organizing for


For text of the staff charter see Notter, *Postwar Foreign Policy Preparation*, 526-32.

32. Staff Charter group, "Draft Commentary-First Revision," 3 September 1943, Notter Papers, RG 59, box 171, NARA. See also draft of article nine, 13 August 1943, and Staff Charter group, "Commentary on the Tentative Draft Text of the Charter of the United Nations," September 1943, Notter Papers, RG 59, box 107, NARA.

The Subcommittee on Political Problems would come to the same conclusion on enforcing a bill of rights in a brief discussion on 15 May 1943. See minutes of subcommittee on Political Problems, 15 May 1943, Notter Papers, RG 59, box 55, NARA; and idem, "Views and Arguments Developed in the Political Subcommittee, 15 May 1943, Notter Papers, RG 59, box 54, NARA.


35. Hull, Departmental Order 1124, 14 January 1943, Notter Papers, RG 59, box 8, NARA; Notter, Postwar Foreign Policy Preparation, 157-59, 173-76; U.S. Department of State Bulletin, 8 (16 January 1943), 63-64; and Hull, Memoirs, 2:1638.

For members of each division see Notter, Postwar Foreign Policy Preparation, 522-26.


For the drafting history of the Moscow Declaration see Notter to Pasvolsky and Hull, 14 December 1943, Notter Records, RG 59, box 8, NARA.


40. Dulles to Roosevelt, 30 March 1943, Official File 213, box 1, FDRL. See also New York Times, 6 June 1943; and Commission to Study the Bases for a Just and Durable Peace, A Righteous Faith for a Just and Durable Peace (New York: Commission to Study the Bases for a Just and Durable Peace, 1942); Divine,
Second Chance, 161-3; and Frederick Roblee, Chairman of the Commission on Public Affairs of the Bay City Council of Churches to Roosevelt, 1 April 1943, Roosevelt Papers, Official File, box 4351, FDRL.

41. Roosevelt to State University of Iowa Law Professor Percy Bordwell, 9 March 1943, Official File 4351, box 2, FDRL. See also Clarence Streit, Union Now (New York: Harper & Brothers, 1939); and Bordwell to Roosevelt, 18 January 1943, Official File 4351, box 2, FDRL.


43. Sandifer, "Report of Session of Annual Meeting of the American Law Institute on its International Bill of Rights Project," 13 May 1943, Notter Papers, RG 59, box 72, NARA; and American Law Institute International Bill of Rights Project, "Reports (Preliminary) of Subcommittees of the Committee of Advisors, February 1943," 13 May 1943, Notter Papers, RG 59, box 72, NARA.

44. Notter, Postwar Foreign Policy Preparation, 160-64; Hoopes and Brinkley, F.D.R. and the Creation of the U.N., 78-82; Pasvolsky, "Survey of Organization of Preparations on Post-War Foreign Policy," 10 June 1943, Papers of Notter, RG 59, box 8, NARA; and Notter to Pasvolsky, Chief of Division of Departmental Personnel John Ross, and Assistant Secretary of State G. Howland Shaw, 9 October 1943, Notter Papers, RG 59, box 8, NARA.

45. Notter, Postwar Foreign Policy Preparation, 96-97, 160-76.
CHAPTER 3

IMPLEMENTING A VISION, 1943-1945

After securing agreement among the Big Four in the Moscow Declaration to establish an international peacekeeping organization, the administration of Franklin D. Roosevelt spent the next eight months planning for its creation. The final provisions of the United Nations Charter, signed by almost fifty nations on 26 June 1945, reflected both inter-Allied bargaining and pressure from private organizations. The major discussions within the Roosevelt administration and with its wartime partners were not about human rights but instead touched upon national security, military, and jurisdictional concerns. Roosevelt and his successor, Harry S. Truman, Secretary of State Cordell Hull and his heir, Edward Stettinius, and even State Department planning agencies that had discussed human rights issues in the past, now focused on the procedural and security mechanisms by which the United Nations would come into existence and prevent a World War Three.
Concurrently, Roosevelt, British Prime Minister Winston Churchill, and Soviet Premier Joseph Stalin tried to harmonize future peace through collective security with maintaining national sovereignty, spheres of influence, and unilateral freedom of action. Given such concerns, old and new proposals for a global bill of rights and a human rights commission took on secondary importance to Roosevelt, met with indifference from Churchill, and generated opposition from Stalin. It remained for other nations and domestic religious, academic, and legal organizations to lobby for giving the international body the responsibility to define and protect human rights world-wide. They finally succeeded in convincing Truman and the State Department to adopt their cause and to persuade other skeptical Allies at the 1945 San Francisco Conference. The human rights clauses of the U.N. Charter are a tribute to the tenacious lobbying of lawyers, religious leaders, and internationalist-oriented activists who understood that a postwar peace would not last unless governments recognized the universality of basic human rights.

II

American planning for an international organization took on renewed importance by early December 1943 due to the Teheran Conference, the successful prosecution of the war, and
a reorganization of the State Department. At their first ever meeting in Teheran, the Big Three discussed a second front in Europe, the future of Germany, and the Polish-Soviet border. Roosevelt also shared his concept of a United Nations with Stalin, a vision that combined elements of the draft constitution, staff charter, and his own thinking. The President's plan looked to a world-wide general assembly that would discuss pressing topics; an executive council, comprised of the Big Four and a half-dozen other nations that would consider economic and social issues such as trade, health, and, presumably, human rights; and a peacekeeping body, composed exclusively of the Big Four, that could employ military force against real or potential aggressors. To facilitate Stalin's approval, Roosevelt stressed the latter component and promised that decisions of the executive council would not be binding on any nation. Although the final communique blandly stated that the participants "look with confidence to the day when all peoples of the world may live free lives, untouched by tyranny," Roosevelt's plan did little to promote human rights around the globe. Instead, as he told Congress in his 1944 State of the Union address, it revolved around "the one supreme objective for the future, for all the United Nations, [which] can be summed up in one word: Security."
The discussions with Stalin inspired Roosevelt to take a renewed interest in the possible security functions of an international organization. On 21 December, the President asked Hull for the latest State Department plans, which Hull forwarded eight days later. Informally entitled the "Outline Plan," the document had been prepared on short notice by the Informal Political Agenda Group (the former Informal Agenda Group) whose members sought guidance from the draft constitution, staff charter, and studies by the Division of Political Studies. Similar to Roosevelt's proposal at Teheran, the blueprint called for an Executive Council of the Big Four and possibly smaller nations to mediate security crises, a General Assembly of all members to promote international cooperation, an international court of justice, and technical agencies to investigate economic and social concerns. The plan emphasized the need to stop future wars through unified military action by Britain, the U.S., China, and the Soviet Union. Although its authors included Cohen and Hackworth, who had also participated in drafting the Legal Subcommittee's bill of rights, the final product omitted the entire topic. Instead, they presumably relegated future discussion to "an agency for cooperation in ...social activities, and such other agencies as may be found necessary."

Despite the objections of several advisors, State Department postwar planners ratified the exclusion of specific
human rights provisions. Law professor and Agenda Group member Quincy Wright proposed to create a commission of jurists that would accept petitions from individuals alleging violations of their rights. Norman Padelford, a co-author of the staff charter, dismissed Wright's suggestion as premature; he wanted any such bodies created at the discretion of a larger agency responsible for social issues. The Agenda Group divided on whether to vest the international security organization with economic and social responsibilities or to give the latter to a separate assembly of nations. Pasvolsky and Cohen favored the former, James Dunn and Myron Taylor the latter. The split meant that the group prioritized the security and peacekeeping functions of an international organization at the expense of its potential human rights responsibilities. Hull agreed with this focus, stating in a 29 December cover letter to Roosevelt that the entire plan was based on two assumptions: that the Big Four would cooperate with each other and with smaller nations to maintain global peace, and that each would contribute military force to punish aggressors. Roosevelt approved the Outline Plan without change on 3 February 1944.3

By 1944, continued Allied progress toward victory combined with a growing number of completed postwar planning studies necessitated a final State Department reorganization. On 15 January, Hull created two new entities to streamline planning for the creation of an international organization.
The Post War Programs Committee, led by him and Under Secretary of State Stettinius and including Bowman, Taylor, Hackworth, Pasvolsky, Dunn and twenty others, studied a list of two dozen long-range economic, social, and political issues. Meeting over sixty times between 1 February and 17 November 1944, the body reviewed all position papers for the Dumbarton Oaks conversations. To coordinate studies of all matters of international political concern, Hull replaced the Division of Political Studies with the Office of Special Political Affairs (SPA). Under this new entity, a Division of International Security and Organization drafted position papers for the path-breaking Dumbarton Oaks conference, including those on human rights. Notter chaired the division with assistance from Sandifer, who had authored the first bill of rights in 1942. These two groups, along with the Informal Political Agenda Group, did most of the American planning during 1944 for what became the United Nations Organization.

The new committees approached human rights topics with caution. By 9 February, one week after Roosevelt had signed the Outline Plan, Alice McDiarmid from the Division of International Security and Organization reviewed the department's existing human rights studies. She drafted nine policy summaries, similar to the "H-documents," that outlined all previous work done and by what State Department entity. The subjects surveyed included defining and implementing a
bill of rights, protecting ethnic minorities after the war, and developing the basic purposes of an international security organization. She noted that the Legal Subcommittee's bill of rights lay before the SPA, whose members, she thought, would soon revise it in light of suggestions from private groups.  

SPA never took that step because the Agenda Group chose in February to postpone all future work on a bill of rights and include only a token reference to human rights in their proposed charter for an international security organization. Ruth Russell, a Pasvolsky assistant, explained the decision as a result of a lack of time and the controversial nature of the subject. Postponing further discussion of a bill of rights meant avoiding inter-Allied debate over its content and shelving the thorny question of implementation that had divided even State Department planners. The group decided instead to grant the General Assembly jurisdiction over general human rights matters, "in accordance with declarations of principles or undertakings agreed upon" by its members. When pressed by Dunn, who dismissed the words as "good propaganda," Pasvolsky agreed, calling the statement "useful," but concluding that it "did not mean anything." The group rejected Sandifer's motion to create a human rights commission under the assembly's auspices, preferring to give the body complete freedom to establish subordinate units. They also decided against referring to human rights in the sections on
purposes and principles of the international organization. By 15 March, the Agenda Group had forwarded its work to the Post War Programs Committee, which made no additional recommendations on the topic.³

As State Department postwar plans matured, Hull began to discuss their minimal human rights components cautiously with the American public, concerned senators, and a skeptical Churchill and Stalin. In a 21 March 1944 press release, he all but dismissed any State Department desires to promote and protect human rights within a U.N. framework. The Atlantic Charter's promises of self-government and liberty, Hull declared, applied only to "qualified" peoples. In any event, the principles of non-intervention, national sovereignty, and the equality of all nations, which Hull made the themes of his statement, would severely limit any human rights jurisdiction given to an international organization. In a national radio address of 9 April, Hull further prioritized security issues at the expense of dwelling on ways to protect human rights. He only briefly mentioned the latter, describing the Atlantic Charter as a statement of common principles that did not apply literally to the postwar world. Most of the talk sketched the possibilities of bilateral cooperation with European nations and multilateral collaboration within an international organization. Hull's conservatism on human rights issues probably sprang from his desire to avoid repeating the
acrimonious debate after WWI over joining the League of Nations, to support ongoing talks with sovereignty-conscious congressmen, and to reassure security-conscious allies.7

Beginning in late March, Hull conferred with members of Congress on State Department plans for an international organization. The most important discussions involved a "Committee of Eight" senators that included Tom Connally (D-TX), Walter George, (D-GA) and Arthur Vandenberg (R-MI). Their main objective was to protect American freedom of action in the postwar world and prevent domestic interference by a transnational body. Vandenberg approved the Outline Plan because, as he wrote in his diary, it was "so conservative from a nationalist standpoint" and was "virtually based in a four-power alliance." This shared vision of the State Department and key senators precluded the establishment of an assembly with even the power to investigate human rights violations. Although disagreements arose over other parts of the plan, Hull realized that a blueprint containing only a vague reference to human rights would not provoke complaints from senators whose assent he would ultimately need.8

Hull also ascertained in the spring of 1944 that Great Britain and the Soviet Union did not want to grant an international organization the power to define or implement human rights. In February, Acting Secretary of State Edward Stettinius asked Churchill and Stalin to forward their own
plans for an international security body as soon as possible. The British government, which could not agree on even a general proposal until 1944 due to differences between Churchill and the Foreign Office coupled with the Prime Minister's own skepticism of the utility of long-range planning, responded five months later. Its five memorandums sketched a Rooseveltian vision of a World Assembly of member states, a World Council of the Big Four and several other nations, an International Court of Justice, and a Secretariat. The British relegated social and economic issues to a cursory memorandum that assigned such topics to specialized agencies that would answer to the council and secretariat. The British, fearing any transnational meddling in the affairs of their empire and far more concerned about the military aspects of postwar security, did not want to discuss the protection of human rights in connection with the United Nations. 

Stalin, also preoccupied with security matters, strongly wanted to strip the future body of any economic and social responsibilities. Although the Soviet Union had done little planning for an international body prior to the Dumbarton Oaks Conference, Stalin had an unadorned vision that did not require detailed proposals: he wanted a simply-organized, uni-focused security body in which he could veto all decisions contrary to Soviet interests. In concrete terms, he demanded an organization that would contain Germany. Any extraneous
economic and social functions granted to the U.N. could only further isolate his country and dilute the primacy of security issues. After ignoring several American inquiries, the Soviet government on 12 August sent a proposal for an "International Security Organization." The memo declared that the body would "devote itself wholly to the object of preserving the general peace and security of nations" by negotiations or military force sanctioned by the Big Four and France. Any multilateral consultations, it read, should concentrate only on defining procedures to accomplish this goal. The plan allocated economic and social issues for later discussion, but added that collaboration within those spheres could only occur in one or several separate transnational bodies.\(^\text{10}\)

Even human rights lobbying by private groups began to lag in the months prior to Dumbarton Oaks due to internal disagreements. In February, the American Law Institute's Committee of Advisors submitted a bill of rights to the institute's Council. Comprised of eighteen articles that combined parts of the U.S. Bill of Rights with guarantees of adequate food and housing, social security, and safe working conditions, the document incorporated the ideas of lawyers from several continents. The Council, though, unanimously refused to endorse the statement, probably because of objections to including economic and social rights that positivist legal scholars refused to recognize. In July, a
group of sixteen leading internationalists, led by Harvard law professor Manley 0. Hudson and including Shotwell, Eichelberger, and Wright, drafted a charter for a "General International Organization." The proposal, very similar to that advanced by the State Department, outlined an Assembly of all nations, a smaller Council, and specialized agencies to "promote the general welfare." Under the latter heading, the charter called on all nations to cooperate in measures to expand human rights and to treat their citizens "in a manner that will not violate the dictates of humanity and justice." The document lacked any provisions for a bill of rights, human rights commission, or transnational enforcement. Its authors, many of whom had worked on State Department planning committees, knew that Roosevelt and Hull objected to such measures. Roosevelt viewed the plan without comment. 11

Even the Commission to Study the Organization of Peace diluted its previously far-reaching human rights proposals. In May, the commission issued a very detailed report on the "International Safeguard of Human Rights." Declaring, "how easily the step has been taken from internal oppression to external aggression, from the burning of books and houses of worship to the burning of cities," the commission went on to advocate the immediate convening of a Conference on Human Rights. The convention would establish a permanent Commission on Human Rights to draft and revise general bills of
political, civil, and economic rights, investigate human rights violations, receive individual petitions, and create a permanent secretariat separate from a postwar security organization. In rather torturous language, though, the report left implementation to national governments, despite observing that "we cannot rely simply on the uninspired disposition of each nation." One hundred members signed on to its conclusions, including Shotwell, Wright, Eichelberger, Berdahl, and future San Francisco Conference delegate Dean Virginia Gildersleeve of Barnard College. Commission leaders, though, did not send a copy to the State Department prior to the Dumbarton Oaks talks.\textsuperscript{12}

The final American plan for Dumbarton Oaks, as revised during the summer of 1944 by several working groups in the State Department, still contained only one vague reference to human rights. The proposal allowed the General Assembly to "initiate studies and make recommendations for the promotion of the observance of basic human rights." One of the agencies, the International Organization Group, decided to omit as too controversial all references to a human rights commission and to the promotion of human rights as a function of the proposed economic and social council.\textsuperscript{13} Hull and Roosevelt implicitly agreed to these revisions by not mentioning human rights in speeches and press conferences and by assuring Americans that the U.N. would not meddle in domestic matters. Both themes
reaffirmed their reluctance to grant all but cursory human rights jurisdiction to a transnational organization. Hull transmitted the proposal to China, Britain, and the Soviet Union on 18 July, and invited them to begin talks as soon as feasible. After postponing the participation of China at Stalin's insistence, Stettinius, British Foreign Secretary Alexander Cadogan, and Soviet Foreign Minister Vyacheslav Molotov began the Dumbarton Oaks Conference on 21 August.\(^4\)

Although the American delegates possessed briefing books on human rights topics that contained the Legal Subcommittee's bill of rights and the detailed "H-documents," Roosevelt and the State Department showed no interest in disseminating these specific proposals. Some historians have argued that Roosevelt and the U.S. delegation actively fought for the inclusion of strong human rights planks over British and Soviet objections. Yet, a closer look at the historical record reveals that the Americans never favored a strong human rights plank, and they accepted a final provision that was even weaker than their proposed text. After first delaying all discussions on human rights, Stettinius first proposed a weak and awkward statement, then withdrew it, and finally accepted an impotent reference buried deep inside the conference's final product. The reasons given by historians for this result, from Soviet and British objections to possible congressional criticism, ignore the fact that Roosevelt and Hull had never wanted to
grant substantive jurisdiction over human rights to a transnational organization but had sought instead to use the vague rhetoric of human rights to stir up popular support for the United Nations. Although Hull stated in his opening address that all three nations must "support arrangements for promoting, by cooperative effort, the development of conditions of stability and well-being...essential for the maintenance of security and peace," in practice the American delegation worked to safeguard national sovereignty, focus on the military security functions of the U.N., and marginalize consideration of economic and social matters.  

From the beginning of the talks, the United States delegation wavered on whether even to include an economic and social council under the U.N.'s umbrella. On the conference's first day, Stettinius told a relieved Gromyko that the entire subject was "debatable," the contrary American proposal notwithstanding. Over the next three days, Roosevelt and his chief of staff, Admiral William D. Leahy, approved instructions that would allow the General Assembly to create bodies in the future that might include an economic and social commission. According to Stettinius, Leahy did not want any "social uplift frills" attached to the organization, as "the real job of the organization [was] to prevent war." Stettinius presented this revised position in the 25 August meeting of the Joint Steering Committee. When Gromyko objected to forming
any subsidiary bodies for economic and social issues, the
delegates agreed to delay further consideration of the matter.
By early September, though, the Soviet Union conceded in
principle to include an Economic and Social Council (ECOSOC)
under the umbrella of the United Nations. Now the delegates
could begin to discuss what specific issues might fall under
ECOSOC's domain, including human rights.¹⁶

The first human rights proposal, which fit within a list
of general U.N. principles, came from the Americans, though
its awkwardness and lack of support from its authors made its
existence brief. Two days before, Ben Cohen, Roosevelt's
personal representative, drafted a clause that the delegation
approved on 9 September. "The international organization
should refrain from intervention in the internal affairs of
any state," his amendment began, for each state had the
responsibility to ensure that domestic affairs "do not
endanger international peace and security and, to this end, to
respect the human rights and fundamental freedoms of all its
people." This rather clumsy statement tried to balance
international responsibility with national sovereignty, but
the latter clearly prevailed, as Pasvolsky baldly stated to
Cadogan and Gromyko. The two foreign ministers approved the
first part, which Cohen had added to assuage congressional
critics and prohibit foreign action against America's own Jim
Crow laws. Both, though, dissented from the second half,
preferring to focus instead on security questions. The awkwardness and reluctance Stettinius felt while defending this unwieldy and unpopular amendment grew after the Soviets appended a ban on admitting "fascist states and states of a fascist type" to the organization on 19 September.¹⁷

The climax of the human rights debate at Dumbarton Oaks provides a glimpse of what might have been accomplished had the United States insisted on specific human rights proposals. On 20 September, Stettinius reported to his colleagues that the Soviets would demand passage of their amendment unless the Americans dropped the human rights clause. Overriding strong objections by Cohen and Isaiah Bowman, the delegation reluctantly voted to do so. Undeterred, Bowman that afternoon proposed to add, in the list of ECOSOC's responsibilities, to "promote respect for fundamental rights and human freedoms." Knowing that the Soviets and British would probably dissent, Pasvolsky and Stettinius turned to subtle blackmail. If both nations rejected Bowman's proposal, the two men threatened to place human rights on a list (that they slyly predicted would become public) of outstanding topics, leaving all three governments open to criticism by a bewildered public that wondered why they could not agree to incorporate such an important topic. By the end of the day, Stettinius offered his two counterparts three places in which to refer to human rights: in the sections on principles, the General Assembly,
and the ECOSOC. Cadogan and Gromyko, taken aback, immediately cabled their governments for instructions. For the next week, the American delegation lobbied hard for the inclusion of a general, inconspicuous human rights clause somewhere in the outline for an international organization. Stettinius took a list of unresolved topics, including human rights, to Roosevelt on 21 September. The President expressed some disappointment in that omission, but agreed with Stettinius that the delegates should "press the matter as hard as we know how." Hull telegraphed the same list of open questions to the U.S. ambassadors in Moscow and London. Stettinius called Cadogan and Gromyko as they waited for responses from their capitals, and he also asked Alger Hiss, Special Assistant to the SPA's director, to express Roosevelt's disappointment to the British embassy. The lobbying paid off, for on 27 September Cadogan and Gromyko agreed to allow ECOSOC to "promote respect for human rights and fundamental freedoms." On the same day, the Big Three added a paragraph prohibiting the Security Council from intervening in matters that under international law fell within the domestic jurisdiction of nations. The timing was not entirely coincidental. Following the conclusion of a second phase of talks attended by U.S., British, and Chinese delegates, the Big Four published on 9 October the "Proposals for the Establishment of
a General International Organization," whose title was the "United Nations Organization." The document allowed for weaker U.N. human rights responsibilities than those in the initial American proposal of 18 July. The duty to promote human rights now lay primarily with the smaller and more feeble ECOSOC instead of the General Assembly of all member nations, a change that diminished the stature and importance of the subject. The delegates also relegated the outline of ECOSOC to chapter nine of the proposals and even excluded the body from the list of the organization's major components. The list of the international organization's purposes and principles lacked any direct reference to human rights. No wonder Roosevelt, according to Stettinius, was "gratified" by the final result: vague, circumscribed by the domestic jurisdiction clause, and uncoupled from any implementation machinery, the human rights plank, he thought, was not controversial. But Roosevelt was mistaken, for he had erred on the side of caution.²⁰

Over the next six months, an extraordinary public debate erupted, as individuals, groups, and nations not invited to the conference criticized the inattention given to human rights issues. The Roosevelt administration encouraged the discussion, knowing that such input could create a domestic consensus that did not exist after World War I. Acting Secretary of State Stettinius, for example, briefed the
leaders of over one hundred groups on 16 October. As a businessman who rose quickly through the ranks at U.S. Steel before becoming an administrator of the Lend-Lease program, Stettinius perfected a natural gift for public relations. He now had to sell the United Nations to the American people, Congress, and foreign leaders. Among other suggestions, many religious and internationalist groups proposed to add the protection of human rights to the list of purposes or principles of the organization, endorsed the creation of a human rights commission, and favored attaching a bill of rights. Joined by Latin American nations, their tenacious lobbying effort would force the adoption of all but the latter amendment at the 1945 United Nations Conference on International Organization.\(^2\)

The Commission to Study the Organization of Peace again led the charge for stronger human rights enforcement within the United Nations. On 15 September, William Allan Neilson, the chair of the group's executive committee, briefed Hull about the commission's May human rights report and a conference held soon after to discuss its conclusions. One month later, Neilson, Dr. Quincy Wright, and two others shared with SPA director Edwin Wilson a commission resolution that called for the convening of an international conference to draft a declaration of rights. Wilson did not respond directly, but he predicted that the ECOSOC would set up a
human rights commission on its own that would make recommendations to the parent body. Also in mid-October, the Commission released the third edition of a booklet for study in the nation's high schools. Entitled, *Toward Greater Freedom*, the text asked students to memorize the basic points of the Four Freedoms, the Atlantic Charter, and the purposes of the Dumbarton Oaks Proposals. The booklet even challenged students to think of ways the U.S. could apply those humanitarian ideals domestically to race relations and immigration policy.  

International lawyers, religious organizations, and a diverse group of U.N. supporters also implored Roosevelt and new Secretary of State Stettinius to invest the international organization with greater human rights responsibilities. Inserting themselves as technical experts into the debate, progressive lawyers such as William Draper Lewis and Quincy Wright welcomed the opportunity to revolutionize international law. In mid-December, Harvard Law Professor Manley O. Hudson forwarded to Stettinius a critique of the Dumbarton Oaks plan by Eichelberger, Shotwell, and Wright, among others. Although they endorsed the overall thrust of the plan, they concluded that it "slighted" the topic of human rights. They recommended adding the promotion of human rights to the lists of the General Assembly's purposes and responsibilities. William Draper Lewis from the American Law Institute informed Sandifer
on 27 December that he had arranged for the national
distribution of its 1944 bill of rights in cooperation with
the largest coalition of internationalist-oriented groups,
Americans United for World Organization. He enclosed a preface
by John Ellingsworth of Americans United that criticized the
Dumbarton Oaks plan for focusing on maintaining peace through
military force. The only way to obtain popular support for the
U.N., he stated, would be to give it proactive and practical
responsibilities that impacted ordinary peoples world-wide,
such as enforcing a bill of rights. Sandifer responded
favorably to Lewis, though he objected to using the latter
point to illuminate the shortcomings of Dumbarton Oaks.\textsuperscript{21}

Jewish, Catholic, and Protestant leaders, horrified at
the Holocaust, committed to the principle of human dignity,
and seeking to prevent another world war, also lobbied for the
international protection of human rights. The American Jewish
Committee, a very influential and politically-connected group,
invited Roosevelt to sign a "Declaration of Human Rights."
More of a guideline than a bill of rights, the document
proclaimed that human rights, due to the excesses of
"Hitlerism," were now an international concern, and it
appealed for refugee assistance to "those who wander the earth
unable or unwilling to return to scenes of unforgettable
horror." The group's leader, Judge Joseph Proskauer, asked
Stettinius to convene a conference to adopt a bill of rights.
The nation's Catholic bishops released a commentary that rejected "power politics" and called for a moral and democratic community of nations that would respect the "innate human rights" of individuals. O. Frederick Nolde of the Federal Churches of Christ in America pressed for a strong U.S. commitment to human rights in a meeting on 31 October with SPA Director Wilson. The Federal Council of Churches' Commission on a Just and Durable Peace held a national conference in Cleveland on the U.N. proposals in mid-January. John Foster Dulles, the group's leader, obtained promises from thirty-four Protestant denominations to lobby for nine changes, including the addition of a human rights commission that would formulate a binding bill of rights.

Following the lead of the Commission to Study the Organization of Peace, other internationalist-oriented secular groups took an interest in human rights issues. The World Peace Association, which favored the formation of a truly global government, submitted to Stettinius a "16-Point Program" for a durable peace. It called for the universal adoption by governments of economic and civil guarantees, such as freedom of speech, freedom of religion, and full employment. Notter, meeting in late October with leading members of the Council on Foreign Relations, discussed the duties and powers of ECOSOC. The group explored, without framing definite conclusions, whether to include a bill of
rights, to expand ECOSOC's recommendatory powers, and to form a human rights commission.\(^{25}\)

As domestic critics tried to convince Roosevelt to accept a stronger human rights plank, foreign governments and legal experts added their voices. Carl Berendsen, New Zealand's ambassador to the United States, met with Notter and other State Department officials on 17 October. In an extraordinary admission, Berendsen called the Dumbarton Oaks proposals a "failure," predicted the U.N. would last for five years, and concluded, "after the next war, there would be no opportunity to try again." The grounds for his gloomy prophecy were several: the concentration of power in the Big Four, the neglect of machinery to promote economic and social development, and the exclusion of moral principles necessary to arouse international public opinion. Carlton Hayes, U.S. Ambassador to Spain, reported that the Spanish press had been critical of the plan as well, for reasons that included the omission of principles embodied in the Atlantic Charter. The Inter-American Juridical Committee, at the request of Latin American foreign ministers, issued recommendations in early December. Declaring that "the time has come when it must be formally proclaimed that the community of nations has rights in its own name," the legal experts called upon the General Assembly to generate a bill of rights that all member nations
would pledge to uphold. The committee also proposed to add the protection human rights to the list of the United Nations' principles.  

In response, the State Department began preliminary studies on augmenting the human rights components of the Dumbarton Oaks plan. On 27 October, Alice McDiarmid, the former human rights specialist on the Legal Subcommittee and presently in the Division of International Security and Organization, completed a review of American wartime commitments to promote human rights. She concluded from speeches and declarations that U.S. policy assumed tyranny and oppression of peoples constituted a fundamental cause of war, and that therefore claims of national sovereignty could no longer automatically nullify transnational human rights enforcement. She proposed drafting a binding code of rights for incorporation into national constitutions and municipal laws and to make the acceptance of such a code a precondition for United Nations membership. Although McDiarmid recognized the controversial nature of her ideas, she concluded by quoting from Roosevelt's 1940 State of the Union address: "We ourselves will never be wholly safe at home unless other governments recognize such freedoms." Others in her division studied whether to specify the creation of a human rights commission under the ECOSOC and to grant the General Assembly the explicit power to promote human rights through
international agreements. The pressure from private groups and foreign governments may also explain Stettinius' emphasis on human rights in a 23 October speech at New York University.\textsuperscript{27}

By late 1944, this initial review yielded preliminary proposals that would have satisfied the lawyers, religious leaders, and internationalists that lobbied for human rights amendments. Sandifer met with several colleagues on 16 November to discuss possible human rights amendments. They endorsed adding a human rights commission under the ECOSOC and agreed to explore how to increase the general visibility of human rights within the proposals. An informal group entitled "Mr. Pasvolsky's Committee," which examined outstanding issues from Dumbarton Oaks, also considered guaranteeing religious liberty and the freedom of information in the charter.\textsuperscript{28}

As these developments occurred behind the scenes, though, Roosevelt committed a public relations blunder that again demonstrated his general lack of interest. In a 19 December press conference, he oddly ad libbed that no one had actually signed the Atlantic Charter, that no definitive copy existed, and that he would not commit himself to upholding its principles. Although the outcry by individuals and organizations caused him to issue a mild endorsement of the document at his next press conference and in his 1945 State of the Union speech, his statements made many wonder if he supported any human rights revisions.\textsuperscript{29}
By late spring, Roosevelt and his foreign policy advisors learned that his Latin American neighbors did not share the president's indifference toward the international protection of human rights. The State Department responded favorably to the increasing desire by its southern allies for a hemispheric conference, the first since 1938, to discuss regional security issues and Dumbarton Oaks. Stettinius led a delegation to the Inter-American Conference on Problems of War and Peace that met in Mexico City from 21 February to 8 March. He also chaired Committee II on the U.N. that proposed seven alterations in the name of all conference participants except the United States (which abstained due to the absence of the other Big Four nations). They included "amplifying and making more specific" the U.N.'s purposes and principles and increasing the powers of the General Assembly, suggestions that encompassed stronger human rights provisions. The proposal passed the plenary, as did a resolution endorsing the global enforcement of a "Declaration of the International Rights and Duties of Man" that the Inter-American Juridical Committee would draft. Many individual delegations also advanced human rights amendments. Cuba even submitted a lengthy "Declaration of the International Duties and Rights of the Individual" as an example of what ideals the U.N. should immediately undertake to protect. The conference voted to append the document to Committee II's resolution and send both
to all nations invited to the upcoming San Francisco Conference that would revise the Dumbarton Oaks plan.30

Other individual nations sent human rights comments to the State Department, and they fit into two categories: adding the promotion of human rights to the U.N.'s lists of purposes and principles and attaching a bill of rights to the U.N. charter. The first group included Polish and Danish proposals to append the Atlantic Charter to the document and Norway's desire to refer to the 1942 U.N. Declaration's call to protect religious freedom and defend human rights. Bolivia, Cuba, and Mexico wanted to annex a bill of rights to the U.N.'s constitution. In contrast, states that officially practiced discrimination, such as India and South Africa, wanted the topic of human rights discussed with extreme caution or not at all. Given that most nations also accepted or even favored strengthening the national sovereignty protections, it is not surprising that no nation advanced specific ways to implement a bill of rights.11

Cognizant that the San Francisco Conference was fast approaching, lawyers and political leaders who favored the transnational oversight of human rights began a final, furious lobbying effort. Unlike the amendments suggested by foreign governments, they recommended including a binding bill of rights and specific strategies for its implementation. In mid-January, Professor Quincy Wright notified the Informal
Political Agenda Group of his desire to append a human rights declaration. The Division on International Organization and Security considered comments from international law specialist Jacob Robinson, who recommended authorizing the Security Council or ECOSOC to investigate, advise, and intervene to "safeguard human rights and fundamental freedoms." Former Democratic presidential candidate John W. Davis read a statement over the CBS radio network on 4 February that endorsed the creation of a human rights commission. The announcement, prepared by the Commission to Study the Organization of Peace, was signed by 150 lawyers, academics, and political activists. On 9 March, Americans United sent Roosevelt a summary of revisions advanced by constituent organizations that contained the incorporation of a "Commission on Human Rights and Fundamental Freedoms" and the need to add a bill of rights. William Draper Lewis of the American Law Institute forwarded to the President a copy of his group's bill of rights, which Roosevelt's secretary personally handed to him. Even Roosevelt's predecessor, Herbert Hoover, published several "Hoover Amendments" that began with a human rights commission to promote a list of the "political rights of men and nations." 

The Roosevelt administration responded to this growing chorus with more cautious public statements and private feasibility studies. On 22 January, Henry Villard, chief of
the African Affairs division, gave one of the few State Department addresses on ECOSOC's human rights duties. Proclaiming that "the true progress of mankind is gauged by the advances in the realization of human rights," he nonetheless warned of a difficult road ahead as diverse nations struggled to define what constituted human rights and how to enforce them. He placed the U.S. at the discussion's epicenter, citing cooperation between the department and churches to promote religious liberty. Roosevelt responded favorably to an American Jewish Committee plan to create a human rights commission, and intimated in a White House meeting that he would refer obliquely to a bill of rights in his opening speech at the U.N. conference, an address he did not live to deliver. The State Department even explained in its Foreign Affairs Outlines that "leading citizens of several countries" wanted the U.N. to draft a bill of rights to guarantee freedom of religion, freedom of speech, and legal protections for defendants in criminal proceedings.33

The growing sensitivity within the State Department to these concerns led to the adoption of formal amendments to the Dumbarton Oaks Proposals in early April. Observing that domestic groups and foreign governments demanded more emphasis on human rights due to their heightened understanding of the Holocaust and the importance of social issues in maintaining peace, the Division of International Organization Affairs
recommended four changes. The first suggestion added the promotion of human rights to the charter's list of purposes and principles. The second would allow the General Assembly to make general human rights recommendations to members and initiate policies itself, such as writing a bill of rights. The third and fourth would specify the creation of a human rights commission staffed with experts who could initiate studies, formulate a bill of rights, and even receive petitions from individuals alleging human rights violations. The long lobbying effort by private organizations had temporarily succeeded, though they did not yet know of their success. After Stettinius announced that forty-two organizations would attend the conference as consultants to the U.S. delegation, their leaders sent a letter to the secretary imploring him to support several revisions, including the creation of a human rights commission and the drafting of a bill of rights.  

The American delegates, led by Stettinius, senators Tom Connally (D-TX) and Arthur Vandenberg (R-MI), and representatives Sol Bloom (D-NY) and Charles Eaton (R-NJ), conferred on the amendments in the three weeks before the 25 April opening of the conference in San Francisco. On 9 and 10 April, they inserted as a purpose of the U.N., "to develop respect for human rights and fundamental freedoms" and to drop as redundant a similar addition to the list of principles. The
next day, the group agreed to allow the General Assembly to "foster the observance of human rights and fundamental freedoms," with only Vandenberg cautioning that the Senate would reject a "world W.P.A. [Works Progress Administration]." Because of a disagreement over including a general or detailed list of the council's responsibilities in the charter, the delegation did not reach a final decision prior to the conference on adding a human rights commission. The approved revisions, which the State Department had weakly advanced and quickly dropped at Dumbarton Oaks, demonstrated the effectiveness of the domestic and international human rights lobby. But the results also illustrated the U.S. government's continued reluctance to include any human rights machinery that might provoke debates over national sovereignty.35

The San Francisco Conference marked a turning point in the history of American human rights policy. As domestic pressure groups continued their campaign to grant the new body jurisdiction over human rights issues, the State Department reluctantly assented and worked to achieve an international consensus, especially among the Big Four. By the end of the convention, the charter contained the promise to promote respect for human rights in four additional places: among the U.N.'s principles, as one of the General Assembly's powers, as a goal of ECOSOC, and as the responsibility of a specific ECOSOC commission. In addition to the lobbying by consultants,
the increased knowledge of the Holocaust, the pressure from other nations, and the passage of provisions protecting national sovereignty contributed to the policy shift by the State Department. If, as Stettinius told the first plenary session, a measure of the conference's success would be the formation and evolution of voluntary multilateral cooperation "to foster respect for basic human rights," the U.S. delegation and consultants had a catalytic role by default.36

The tug of war between the U.S. delegation and the consultants began just as the conference convened. On 26 April, Stettinius welcomed them and their ideas for charter revisions. "We want your assistance," he assured them, "we want your interest, we want your guidance, your counsel and advice. We are depending on it." Many consultants, though, grew increasingly skeptical that they had any real influence and would only be able to comment on decisions already made by the delegation. And their worst fears were confirmed on 1 May when delegate Virginia Gildersleeve announced that her colleagues wanted the charter to focus on security issues at the expense of a human rights commission and economic and social details. That evening, Eichelberger, Shotwell, Proskauer, Nolde, Jacob Blaustein of the American Jewish Committee, and Margaret Olson from the American Association of the United Nations drafted an earnest letter to Stettinius signed by twenty-one consultants. It distilled their previous
suggestions into four amendments: adding the obligation to respect human rights to the U.N.'s lists of purposes and principles and the General Assembly's powers, and to establish a human rights commission. They assured Stettinius that his sponsorship of these proposals would have the full support of the American people, for they asserted that "Hitlerism" had transformed human rights into an international concern.  

The next two days were crucial for the consultants. With a sense of desperation born from the uncertainty of success, impending deadlines for submitting amendments, and the knowledge that a 2 May meeting with Stettinius was probably their last chance, Nolde and Proskauer used both promises and gentle threats to lobby the secretary. Their organizational affiliations made them very knowledgeable of public opinion, they argued, that would either become thrilled or shocked at the presence or absence of their amendments in the charter. Knowing their proposals would not have unanimous support from other nations, they expressed faith in the delegation's lobbying skills. Proskauer implored him to pressure other countries, for Americans would understand failure, but only if it was preceded by sincere attempts at persuasion. Stettinius, reassuring them that he believed in their ideas "with all my heart," informed the rest of the delegation. The consultants immediately told their "home offices" to mobilize their members on behalf of these provisions.  

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The resulting pressure from across the country led the U.S. delegation to support the consultants' amendments. After senators Connally and Vandenberg endorsed the revisions and Bowman and Stettinius explained the consultants' resolve, the delegation approved on 2 May the creation of a human rights commission under the ECOSOC's authority. Though the delegation tabled the consultants' amendment to the list of principles, Stettinius introduced their remaining revisions that night to the Chinese, British, and Soviet representatives. The Big Four agreed that the U.N should promote and encourage "respect for human rights and fundamental freedoms." They also accepted a Soviet amendment that called upon nations to respect the self-determination of peoples. Finally, they permitted the General Assembly to "assist in the realization of human rights and basic freedoms for all, without distinction as to race, language, religion or sex." 39

The reference to a human rights commission, though, provoked Soviet and British objections, and once again the U.S. delegation at first retreated. On 3 May, Stettinius formally proposed that ECOSOC set up such a body. British delegate Clement Attlee and Molotov responded that the charter should merely grant to the ECOSOC the freedom to form any committees it wanted. To solve the impasse, the delegates formed a drafting subcommittee that included Bowman, who Bowman soon reported to Stettinius that the body had sided
against him. To placate the Americans, the subcommittee proposed to stipulate plainly ECOSOC's responsibility "to make recommendations for promoting respect for human rights and fundamental freedoms." With Stettinius' encouragement, Bowman spoke so passionately at that evening's Big Four meeting that he persuaded the other three nations to allow ECOSOC to "set up commissions in the fields of economic activity, social activity, cultural activity, promotion of human rights, and any other field within the competence of the Council." The long wartime struggle by U.S. non-governmental organizations had succeeded, and Stettinius was quick to recognize their crucial input. "I am sure that you recognize your own proposal," he added after reading to them the proposal for a human rights commission. Walter Kotschnig, a technical expert attached to the delegation, almost exclusively credited the consultants for the passage of the human rights amendments.  

Stettinius and the American delegation knew that securing the agreement of the forty-two other nations present might be hard to achieve, for several governments and American pressure groups thought the Big Four amendments too conservative. Cuba and Panama wanted to incorporate a bill of rights in the charter, and Chile proposed that human rights obligations supersede claims to national sovereignty by governments. Other nations wanted to cite the Atlantic Charter and add human rights as a principle of the United Nations. Radio commentator
Upton Close questioned the will of nations to protect human rights globally, thereby making the pious-sounding provisions "phrases of cynical hypocrisy or diabolical misrepresentation." William Green and Philip Murray, presidents of the American Federation of Labor and the Congress of Industrial Organizations respectively, asked Stettinius to incorporate specific economic rights, such as collective bargaining, full employment, and social security, in the charter. The American delegates would spend the rest of the conference trying to defeat these proposals.  

This balancing act required careful and constant attention, for the American media began to criticize what it perceived as the delegation's half-hearted support of the human rights amendments. Stettinius planned a press conference on 15 May to rebut this criticism. Ironically, the delegation, especially Representative Bloom, thought that the secretary's statement was too strong and pushed Stettinius to delete an affirmation that the amendments applied to "members of the Negro race." The revised version was still the most direct public endorsement of human rights since the Atlantic Charter. Despite his admission that the U.S. would oppose any attempt to draft a bill of rights at the conference (as he expected the human rights commission to do so later) and that the realization of the human rights provisions depended solely on voluntary international cooperation, the Secretary of State
strongly defended the proposals, predicting they "may well prove to be the most important of all the things we do here for peace and advancement of the peoples of the world." To dispel any cynicism, he added that the U.S. would "work actively and tirelessly...through the International Organization—for peoples generally, toward the protection and promotion of these rights and freedoms." The press covered his speech widely.42

Despite Stettinius' bold words, the delegation on 16 May voted to oppose any further mention of human rights in the charter beyond the Big Four amendments and, later, the preamble. For the rest of the conference, they pursued three goals: gaining approval for the joint amendments, mobilizing opposition to the more expansive Latin American human rights provisions, and defeating a Soviet proposal to guarantee full employment. The first task was the easiest by far, for all four joint human rights revisions to the U.N.'s principles, the General Assembly's powers, ECOSOC's mission statement, and the council's list of commissions, became part of the charter. The Americans also succeeded in the their third goal, for the council's approved mission included only the promotion of full employment.43 Partially in response to the latter and to the stronger human rights language, the State Department renewed its push for a concise domestic jurisdiction clause. It succeeded in securing passage of Article 2(7) and a similar
statement in the rapporteur's report of the ECOSOC committee. Under the former, the U.N. could not intervene in matters "which are essentially within the domestic jurisdiction of any state." Stettinius triumphantly expounded upon these duties and limitations of ECOSOC (and the charter in general) in a 28 May national radio broadcast, raising for the first time the metaphor of a compact of nations. Under this compact, though, it was clear that nations retained substantial sovereignty."

III

The U.S. Senate certainly thought so, for the body ratified the document with only two dissenting votes after obtaining reassurances that, on human rights and other matters, Article 2(7) controlled over any U.N. activities. Senator Eugene Millikin (R-CO) was a most persistent critic, interrupting Pasvolsky's article-by-article analysis before the Senate Foreign Relations Committee to ask how the U.N. could examine social issues without infringing upon American sovereignty. When the senator asked if the ECOSOC could investigate racial discrimination complaints, Chairman Vandenberg cut him off by having Pasvolsky read the domestic jurisdiction paragraph the U.S. had added to the rapporteur's report of the ECOSOC committee. Millikin's continued probing of Pasvolsky on this matter almost caused Vandenberg to rule
him out of order. After Millikin pressed Pasvolsky on whether a nation could deny admittance to U.N. investigators, an exasperated Vandenberg adjourned the committee. A few witnesses spoke on the human rights provisions. Dulles, Eichelberger, William Green of the American Federation of Labor, and Leo Cherne of Americans United commented briefly on the necessity of observing them if a lasting peace was to emerge from the ashes of World War II. When the entire Senate ratified the charter with only two dissenting votes on 28 July, the national sovereignty limitations on promoting human rights remained undefined. This open question would cause tremendous domestic controversy once the U.N. began to draft binding human rights treaties.45

The delegates who met inside the San Francisco Opera House on 26 June for the closing plenary session celebrated a document that gave the United Nations, on paper at least, unprecedented, though circumscribed, authority to expand the nascent field of international human rights law. Beyond including vague promises to promote and respect human rights, the charter authorized a three-tier system for their gradual realization. The human rights commission, the Economic and Social Council, and the General Assembly, in ascending order, had the responsibility to promote respect for human rights world-wide. Future delegations would have to establish an agenda. Harry Truman, for one, recognized this at the closing
session, predicting the body would soon draft an international bill of rights that "will be as much a part of international life as our own Bill of Rights is a part of our Constitution." Although U.S. wartime human rights policy was very conservative and even obstructionist at times, Washington's reluctant support of human rights language in the charter would help launch a revolution in international law. And in a significant policy change, the Truman administration, in cooperation with domestic groups and some foreign governments, would assist by leading the charge."


3. Wright, "Memorandum on the Charter," undated, and Padelford to Sandifer, Notter, and Gerig, 30 December 1943, Notter Papers, RG 59, box 90, NARA; Hilderbrand, Dumbarton Oaks, 34-37; Minutes of the Informal Political Agenda Group, 16 December 1943, Notter Papers, RG 59, box 170, NARA; Hull to Roosevelt, 29 December 1944, in FRUS, 1944, 1:615; and notes on Hull-Roosevelt meeting, 3 February 1944, in FRUS, 1944, 1:620-22. At Hull's suggestion, the Agenda Group drafted an attached "Principal Obligations of a Member State" that included the duties to refrain from using force, to settle all disputes through negotiation, and to participate in arms control agreements. The list did not include any human rights responsibilities. See FRUS, 1944, 620.


human rights matters see Doris Washington, secretary to National Association for the Advancement of Colored People leader Walter White to Harold Young, Administrative Assistant to Vice President Henry Wallace, 3 August 1944, Wallace Papers, box 75, FDRL.


16. Hilderbrand, Dumbarton Oaks, 86-87; and informal record of meeting of American delegation, 25 August 1944, Notter Papers, RG 59, box 174, NARA. See also Ibid., 87-90; personal diary of Edward R. Stettinius, Jr., 24 August 1944, in FRUS, 1944, 1:732; Hoopes and Brinkley, F.D.R. and the Creation of the U.N., 142-43; informal minutes of the Joint Steering Committee, 25 August 1944, Stettinius to Hull, 29 August 1944, Stettinius to Hull, 6 September 1944, Stettinius to Hull, 7 September 1944, and Stettinius to Hull, 8 September 1944 in FRUS, 1944, 1:734-36, 746-47, 771-72, 776-78, 783-84; and Hull to American embassies in London and Moscow, 30 August 1944, Records of the Office of U.N. Affairs, RG 59, box 30, NARA.

17. Stettinius to Roosevelt, 8 September 1944, President's Secretary's Files, box 131, FDRL. See also Stettinius Diary, 9 September 1944, Notter Papers, RG 59, box 190, NARA; notes on meeting of the American delegation, 9 September 1944, informal record of meeting of U.S. delegation, 9 September 1944, and minutes of meeting of U.S. delegation, 12 September 1944, Notter Papers, RG 59, box 174, NARA; informal minutes of the Joint Steering Committee; 9 September 1944, and informal minutes of Joint Steering Committee, 17 September 1944, Notter Papers, RG 59, box 178, NARA; Hilderbrand, Dumbarton Oaks, 91-92; Russell, History of the United Nations Charter, 423-24; Stettinius to Hull, 9 September 1944, and Stettinius to Hull, 19 September 1944 in FRUS, 1944, 1:789-91, 824-826.
18. Stettinius to Hull, 20 September 1944, Notter Papers, RG 59, box 182, NARA; Stettinius diary, 20 September 1944, Papers of Notter, RG 59, box 190, NARA; informal minutes of Joint Steering Committee, 20 September 1944, Notter Papers, RG 59, box 178, NARA; Hilderbrand, Dumbarton Oaks, 92-93; and informal record of meeting of U.S. delegation, 20 September 1944, Notter Papers, RG 59, box 174, NARA.

19. Informal minutes of Joint Steering Committee, 27 September 1944, Notter Papers, RG 59, box 178, NARA. See also Stettinius to Roosevelt, 20 September 1944, President's Secretary's Files, box 131, FDRL; Hull to U.S. embassies in London and Moscow, 21 September 1944, Records of the Office of U.N. Affairs, RG 59, box 30, NARA; Stettinius diary, 21 September 1944, in FRUS, 1941, 1:831-34; Stettinius to Roosevelt, 21 September 1944, and informal record of meeting of U.S. delegation, 27 September 1944, Notter Papers, RG 59, box 174, NARA; Stettinius Diary, 23 and 27 September 1944, Papers of Notter, RG 59, box 190, NARA; Alger Hiss, Special Assistant to the head of the Office of Special Political Affairs to Stettinius, 23 September 1944, and Stettinius to Hiss, 25 September 1944, Notter Papers, RG 59, box 181, NARA; and Russell, History of the United Nations Charter, 424.


For a concise history of human rights considerations at the Dumbarton Oaks Conversations see McDiarmid, "Promotion of Respect for Basic Human Rights and Fundamental Freedoms," 26 September 1944, Notter Papers, RG 59, box 162, NARA.


Stettinius stated that Americans sent over twenty thousand letters a week to the State Department by April 1945. Ibid., 27.

22. William Allan Neilson, chair of the executive committee of the Commission to Study the Organization of Peace to Hull, 15 September 1944, decimal file 500.CC/9-1344 (1940-44), RG 59, box 1461, NARA; Hull to Neilson, 28 September 1944, decimal file 500.CC/9-1544 (1940-44), RG 59, box 1461, NARA; Neilson
to Wilson, 7 October 1944, decimal file 500.CC/10-744 (1940-44), RG 59, box 1462, NARA; Wilson, memo of conversation with Neilson and others, 17 October 1944, decimal file 500.CC/10-1744, RG 59, box 1463, NARA; and Commission to Study the Organization of Peace, Toward Greater Freedom: Problems of War and Peace, 3d ed. (New York: Commission to Study the Organization of Peace, 1944).


25. Carl A. Ryan, Secretary-Treasurer of the World Peace Association to Stettinius, 21 September 1944, decimal file 500.CC/9-2144 (1940-44), RG 59, box 1461, NARA; and Notter to Sandifer, Gerig, and Blaisdell, 23 October 1944, Notter Papers, RG 59, box 9, NARA.

27. Alice McDiarmid, "Commitments of the United States Relating to the Promotion of the Observance of Basic Human Rights," 27 October 1944, Notter Papers, RG 59, box 74, NARA. See also Walter Kotschnig, Division of International Security and Organization, "Additional Commissions to be Appointed by Economic and Social Council," 7 November 1944, and Division of International Security and Organization, "International Cooperation in the Political Field," 20 November 1944, Notter Papers, RG 59, box 163, NARA; and Stettinius speech at New York University, 23 October 1944, records of the Office of U.N. Affairs, RG 59, box 31, NARA.

28. Stettinius press statement, 15 December 1944, records of the Office of U.N. Affairs, RG 59, box 30, NARA. See also Notter to Wilson, Pasvolsky, and Stettinius, 21 December 1944, Notter Papers, RG 59, box 9, NARA; and Sandifer to Gerig, Lawrence Preuss, assistant chief of section on judicial organization and legal problems of the Division of International Security and Organization, Charles Rothwell, executive secretary of the Committee on Post-War Problems, and the director of the Division of African Affairs Henry Villard, 28 November 1944, Notter Papers, RG 59, box 208, NARA.

"Mr. Pasvolsky's Committee" consisted of Pasvolsky, Notter, Wilson, Hiss, Sandifer, Gerig, acting chief of the Division of International Security Affairs Joseph E. Johnson, and Pasvolsky's assistant, Robert Hartley. See Notter, Postwar Foreign Policy Preparation, 386.


For general background and information about the conference see Russell, History of the United Nations Charter, 553-69; and Notter, Postwar Foreign Policy Preparation, 398-407.


31. Division of International Organization Affairs, "Comments and Suggestions by Other Governments," undated, Notter Papers, RG 59, box 164, NARA; telegram from U.S. embassy in Norway to State Department, 2 March 1945, Notter Papers, RG 59, box 185, NARA; Division of International Organization Affairs, "Comments and Suggestions on the Dumbarton Oaks Proposals," 28 March 1944, Notter Papers, RG 59, box 214, NARA; and Elbridge Durbrow, chief, Division of European Affairs to Sandifer, 5 February 1945, in FRUS, 1945 1:58-60.


Churches also participated in this final push. See National Catholic Welfare Conference, "Summary of the Statement Issued by the Archbishop and Bishops of the
Administrative Board," 17 April 1945, and E. Hilton Jackson, Chairman of the Joint Conference Committee on Public Relations of the Northern Southern, and National Baptist conventions to the U.S. delegation to the San Francisco Conference, 14 April, Notter Papers, RG 59, box 191, NARA.

For a text of Davis' statement, see Changing World 17 (January 1945), 5.


34. Division of International Organization Affairs, "Promotion of Respect for Human Rights and Fundamental Freedoms," 7 April 1945, Notter Papers, RG 59, box 208, NARA; and Division of International Organization Affairs, "Proposals and Suggestions for Consideration," 9 April 1945, Notter Papers, RG 59, box 213, NARA; Robins, Experiment in Democracy, 84-90, 196-99.

For a list of consultants invited to the conference see ibid., 200-202 and Stettinius press release, 10 April 1945, Records of the Office of U.N. Affairs, RG 59, box 31, NARA. The groups included the American Jewish Committee, Federal Council of Churches, Catholic Association for International Peace, National Catholic Welfare Conference, Church Peace Union, Commission to Study the Organization of Peace, Americans United, and the Council on Foreign Relations, all of whom had made previous human rights recommendations.

35. Minutes of fifth meeting of the U.S. delegation, 9 April 1945, minutes of sixth meeting of the U.S. delegation, 10 April 1945, minutes of the seventh meeting of the U.S. delegation, 11 April 1945, minutes of the meeting of the eighth meeting of the U.S. delegation, 11 April 1945, minutes of the twelfth meeting of the U.S. delegation, 18 April 1945, and Stettinius to President Harry S. Truman, 19 April, in FRUS, 1945, 1:223, 231, 250-53, 259-68, 338-44, 347, 353-55.

36. Stettinius, speech to the first plenary session of the San Francisco Conference, 26 April 1945, in Department of State Bulletin XII, 29 April 1945, 793.

37. Quoted in Robins, Experiment in Democracy, 104. See also Eichelberger, Organizing for Peace, 269-72; Robins, 106-8, 130.

For the text of the consultants' letter see ibid., 218-21.
38. Minutes of the meeting of consultants to the American delegation, 2 May 1945, Notter Papers, RG 59, box 195, NARA. See also Divine, Second Chance, 291-92; Robins, Experiment in Democracy, 112, 130-31; diary of Stettinius, 2 May 1945, Notter Papers, RG 59, box 30, NARA; National Catholic Welfare Conference press release on a bill of rights, 15 April 1945, National Association of Manufacturers, "International Economic Peace," 1 May 1945, World Jewish Conference, American Jewish Conference, and Board of Deputies of British Jews, "Memorandum," Reiff Papers, box 5, HSTL; Proskauer and Blaustein to Hiss, 4 May 1945, Notter Papers, RG 59, box 201, NARA; and American Veterans Committee statement, 1 May 1945, Notter Papers, RG 59, box 197, NARA.

39. Minutes of the first Four-Power Consultative Meeting on Charter Proposals, 2 May 1945, in FRUS, 1945, 1:551-52; and "Amendments to the Dumbarton Oaks Proposals as Suggested by the United States, the United Kingdom, the Soviet Union, and China," 3 May 1945, Notter Papers, RG 59, box 255, NARA. See also Notter, Postwar Foreign Policy Preparation, 442-43; minutes of the first Four-Power Consultative Meeting on Charter Proposals, 2 May 1945, in FRUS, 1945, 1: 554-57; diary of Stettinius, 3 May 1945, Notter Papers, RG 59, box 30, NARA; and minutes of the meeting of the U.S. delegation, 2 May 1945, FRUS, 1945, 1:532-40.

For the text of all U.S. amendments to the charter see Notter, Postwar Foreign Policy Preparation, 679-81.

40. Minutes of the U.S. delegation, 3 May 1945, in FRUS, 1945, 1:581; "Consultation of the United States, United Kingdom, Soviet Union, and China on their Amendments to the Dumbarton Oaks Proposals: Status of Consultation," 4 May 1945, Notter Papers, RG 59, box 197, NARA; minutes of the meeting of consultants, 5 May 1945, Notter Papers, RG 59, box 195, NARA. See also minutes of the second Four-Power Consultative Meeting on Charter Proposals, 3 May 1945, minutes of the U.S. delegation, 3 May 1945, and minutes of the third Four-Power Consultative Meeting on Charter Proposals, 3 May 1945, in FRUS, 1945, 1:570, 581, 584; minutes of the meeting of consultants, 22 May 1945, Notter Papers, RG 59, box 196, NARA; Robins, Experiment in Democracy, 132; Stettinius press statement, 5 May 1945, Notter Papers, RG 59, box 197, NARA; Stettinius, "Report to the President on the Results of the San Francisco Conference" as printed in Senate Foreign Relations Committee, Hearing Before the Senate Foreign Relations Committee on the United Nations Charter (Washington, D.C.: U.S. Government Printing Office, 1945), 47-49, 105; and minutes of meeting of Commission II, 11 June 1945, Notter Papers, RG 59, box 202, NARA. For a list of the Big Four
amendments see Notter, Postwar Foreign Policy Preparation, 681-85; Department of State Bulletin 12, 6 May 1945, 851-54; and Stettinius to Truman, 4 May 1945, box 139, President's Secretary's Files, General File, HST Library.


For the Big Four human rights amendment to the U.N.'s list of purposes (that would merge with the section on purposes) see summary record of the meeting of subcommittee A of Committee I/1, 16 May 1945, and summary reports of meetings of Committee 1/1, 1 and 2 June 1945, Notter Papers, RG 59, box 202, NARA; "Text as Passed by the Coordination Committee," 5 June 1945, "Technical Committee Text Submitted to the
Coordination Committee without Change," 7 June 1945, "Revision of Technical Committee Text Suggested by the Secretariat as Submitted to the Coordination Committee," 14 June 1945, and summary reports of meeting of the Coordination Committee, 15 and 16 June 1945, Notter Papers, RG 59, box 226, NARA; and verbatim minutes of Commission I, 15 June 1945, Notter Papers, RG 59, box 237, NARA.

For the General Assembly's human rights responsibilities see summary report of the third meeting of Committee II/2, 9 May 1945, Notter Papers, RG 59, box 229, NARA; "Texts Passed by the Technical Committee," 18 May 1945, Notter Papers, RG 59, box 225, NARA; and summary report of the meeting of Committee II/3, 25 May 1945, Notter Papers, RG 59, box 231, NARA.

For the amendments to ECOSOC's list of objectives (including a revision of the Dumbarton Oaks text) see Committee II/3, "First Report of Drafting Subcommittee," 16 May 1945, Notter Papers, RG 59, box 230, NARA; summary record of meeting of Committee II/3, 16 May 1945, summary record of the meeting of Committee II/3, 22 May 1945, and summary record of meeting of Committee II/3, 24 May 1945, Notter Papers, RG 59, box 203, NARA; minutes of meeting of U.S. Delegation, 22 and 23 May 1945, in FRUS, 1945, 1:837-39, 850-57; "Texts Passed by the Technical Committee," 26 May 1945, Notter Papers, RG 59, box 25, NARA; summary report of the meeting of Committee II/3, 24 May 1945, Notter Papers, RG 59, box 231, NARA; and "Texts as Considered by the Coordination Committee," 28 and 29 May 1945, "Text Adopted by Committee II/3," 6 June 1945, and summary record of the meeting of the Coordination Committee, 14 June 1945, Notter Papers, RG 59, box 226, NARA.

For the debate over a human rights commission see summary record of committee B of Committee II/3, 29 May 1945, Notter Papers, RG 59, box 203, NARA; summary report of Committee II/3, 31 May and 6 June 1945, Notter Papers, RG 59, box 232, NARA; "Text as Passed by the Technical Committee," 2 June 1945, and "Revision of Technical Committee Text Suggested by the Secretariat as Submitted to the Coordination Committee," 13 June 1945, Notter Papers, RG 59, box 225, NARA; and summary report of the meeting of the Coordination Committee, 15 June 1945, Notter Papers, RG 59, box 226, NARA.


The domestic jurisdiction clause was not new, though, for the Big Four had submitted a version with their other joint amendments on 4 May. For the official U.S. Government interpretation of the human rights clauses in the U.N. Charter see Stettinius, "Report to the President," 53, 56-57, 101-108.


For written comments in support of the charter's human rights clauses, see statements by the American Jewish Committee, the Federal Council of Churches, and the Catholic Association for International Peace to the Senate Foreign Relations Committee in ibid., 13 July 1945, 665-66, 698, and 703-04. See also Department of State Bulletin 13 (29 July 1945), 138.

46. Truman speech in the closing plenary of the San Francisco Conference, 26 June 1945, in Department of State Bulletin 13 (1 July 1945), 5. See also Divine, Second Chance, 297; and Stettinius, Report to the President, 36-45, 109-12, 118-19.
A month after Senate ratification of the United Nations Charter, P. Bernard Young, the editor of the Norfolk Journal and Guide, a black newspaper in Norfolk, Virginia, telegraphed President Truman. He endorsed Truman's call for free elections in Bulgaria, but asked if the president's comments applied to the disenfranchisement of blacks in the American South. "This newspaper is concerned," Young said, "lest our allies and other peoples whom we have liberated increasingly doubt the sincerity of our leaders who advocate a democratic way of life for them but refuse to make it a reality in this country." The hypocrisy identified by Young would haunt Truman's effort to lead the construction of the United Nations' human rights machinery and to draft the world's first international declaration of rights. Translating Roosevelt's soaring rhetoric into the legalistic, formal prose of multilateral agreements proved difficult because State Department legal experts had to satisfy several contradictory political
demands. They had to produce a list of human rights and a plan for their implementation that would inspire Americans and their allies while preventing domestic human rights activists from using their work to challenge the denial of such rights to African-Americans and Asian-Americans. Their work also had to incorporate American legal norms in order to satisfy a growing number of domestic critics while gaining the approval of nations with vastly different legal traditions and political agendas. The stakes were high, for the nation's credibility as the guardian of human rights was at stake as the Cold War dawned.¹

To solve this dilemma, Truman and his diplomatic advisors proposed to continue Roosevelt's policy of symbolism. They would push to create a human rights commission staffed by governmental delegates, instead of independent representatives, who would quickly draft a list of familiar civil and political rights, adding only vague economic and social promises. They would seek a non-binding declaration that could not overturn domestic law, and they would contain attempts by civil rights groups to have the U.N. investigate allegations of domestic human rights abuses. After accomplishing these goals moreover, they would trumpet the resulting document before a global audience as the beginning of a human rights revolution. The 1948 Universal Declaration of Human Rights is a paper monument to their success. The
major consequences, though, would be an increasingly emasculated United Nations human rights program, strained relations with allies in the United Nations Commission on Human Rights (UNCHR) and key African American leaders at home, and damage to U.S. credibility on human rights issues abroad. By 1948, as the Cold War expanded, these consequences mattered little to the Truman administration. Its appeals for domestic and foreign unity under the ideological banner of human rights successfully blunted much criticism at home and in the U.N.

II

Ironically, lawyers in the State Department drafted early proposals for protecting human rights world-wide that were quite progressive. Immediately following ratification of the Charter, Alice McDiarmid of the Division of International Organization Affairs and Harley Notter, Dean Rusk, and John Ross in the Office of Special Political Affairs began to sketch the possible responsibilities and structures of the Charter-authorized human rights commission. The fourteen-nation Executive Committee of the U.N. Preparatory Commission was due to meet in mid-August to discuss organizational details, and Edward Stettinius, the head U.S. delegate, needed position papers. McDiarmid's memo outlined a dozen-member body composed of experts chosen by the Economic and Social Council
(ECOSOC) in consultation with non-governmental organizations. Aided by a technical staff, the commission's mandate would include increasing public awareness of human rights issues, raising international standards, and "check[ing] discrimination and other abuses." To fulfill these tasks, McDiarmid suggested that members formulate human rights conventions, prepare studies and recommendations for other U.N. bodies, send investigators, and examine individual complaints of human rights abuses. By calling for a non-governmental, expert body that could send investigators and receive petitions, McDiarmid presented an outline that could, if accepted, have radically re-oriented U.S. and U.N. human rights policy. Her office passed the memo to Stettinius.

Stettinius and his State Department advisors, though, rejected two of McDiarmid's controversial provisions. Notter led the charge from SPA, warning in a memo that the "treacherous" petition provision could allow persecuted racial minorities in the U.S. to ask the U.N for redress. He also sought clarification that the human rights commission could not use its power to "check discrimination" to invade national sovereignty. The American delegation to the commission agreed with Notter and shelved McDiarmid's petition and investigation plans. Nonetheless, the Preparatory Commission's final report contained McDiarmid's other proposals for a liberal rights commission mandate. It could, at the request of the ECOSOC or
the General Assembly, undertake studies to draft a bill of rights, prevent discrimination, and examine other human rights issues with serious international consequences, though in all these activities it would be bound by the charter's non-intervention clause. In response to Soviet objections, Stettinius willingly abandoned plans to staff all ECOSOC committees with non-governmental experts. The Preparatory Commission, in its final report of 23 December, called for a body of "highly qualified governmental representatives" whose decisions, their report obliquely stated, were more likely to find favor with national governments. The policy shift on petitions and committee membership provided early evidence of the State Department's preoccupation with safeguarding national sovereignty that would create a dichotomy between visionary American goals and conservative American proposals.

The compromises made by the U.S. delegation did not find favor among domestic activists, whose lobbying continued after the San Francisco Conference. Having fought hard during the war for adding explicit human rights provisions to the charter, they were not about to turn over responsibility for their implementation to political appointees. Even before the Preparatory Commission published its report, Frederick Nolde of the Joint Committee on Religious Liberty (a lobbying arm of the Federal Council of Churches and the Foreign Missions Conference of North America), contacted the State Department.
He called for the ECOSOC to elect its own members from a pool of distinguished figures who, although nominated by governments, would serve in a private capacity. The Church Peace Union, an official consultant at San Francisco, appealed for a bill of rights that would grant and protect the rights of all minorities. The NAACP's Walter White echoed the latter sentiment in a 28 December letter. Eichelberger informed the State Department that a human rights committee of the Commission to Study the Organization of Peace rejected staffing the U.N. body with governmental representatives. Such tasks as drafting a bill of rights and reporting on alleged human rights abuses, Eichelberger asserted, were too delicate and important to be left to politicized diplomats. The commission recommended appointing non-partisan specialists in law, the arts, education, and public affairs.¹

As the State Department resisted domestic pressure on membership and mandate issues, its policy planners moved quickly to establish a human rights commission that would begin work on a bill of rights. Notter and Hiss spent much of late 1945 identifying issues likely to come before the new United Nations. By late November, Notter referred to "strong pressure for rapid preparation of a bill of rights," an urgency that came from domestic groups and other nations on the Preparatory Commission. The latter grew once the General Assembly gathered in London for its first session in February
1946. The Cuban delegate proposed that the Assembly pass his draft "Declaration on Fundamental Human Rights and the Rights and Duties of Nations." Led by the United States, the U.N. defeated the Cuban motion, established an eighteen-nation ECOSOC instead, and voted to form a "nuclear" or temporary human rights commission that would draft its own terms of reference and membership structure. The institutional prerequisites for drafting a bill of rights were rapidly forming, and work on the latter would soon begin.5

To guide American policy through this transition and beyond, Truman personally asked Eleanor Roosevelt to serve as a U.N. delegate. The decision was sound politics: the appointment was a memorial to her late husband, a reward for her own long-standing Democratic Party activism, and a strategem designed to cement progressive support for the Truman administration. The choice proved brilliant in retrospect for Truman. Although not a lawyer and instinctively bored by the intricacies of legal writing, Roosevelt possessed a tremendous capacity to learn and the patience and diplomatic tact needed to explain U.S. human rights policy while also serving as chair of the UNCHR. Her appointment brought instant credibility to the department's human rights program from internationalist groups who knew of her work against pre-war isolationism, her efforts on behalf of wartime refugees, and her support for postwar peace with the Soviet Union. Roosevelt
also channeled to the president political support from African-Americans, who both remembered her husband and her own work against segregation, disenfranchisement, and poverty. Appointed by the delegation to sit on the UNCHR, Roosevelt presided over its deliberations for four years, gaining the respect of its members for her dedication, modesty, and composure. Her acceptance of the appointment, though, meant she had to balance the conflicting goals of U.S. human rights policy, even when doing so deviated from her own views and those of her nongovernmental allies.

The continuing debate between the State Department, private groups, and other nations in the UNCHR over whether members should represent their governments or serve independently was really a struggle to control the drafting process for a future bill of rights. Responding to internal and external pressure, McDiarmid and Hendrick drafted a new position paper on 28 March that sought to occupy middle ground. Although they explained that practicality dictated some national control over their UNCHR representatives, they also identified the need for persons with varied expertise, renowned ability, and "progressive points of view" who would not represent any nation but "the principal races, religions, and linguistic groups of the world." Durward Sandifer, who became Roosevelt's closest advisor during her U.N. career, agreed, telling Roosevelt that members should serve as experts
rather than as spokespersons. Letters from Joseph Proskauer and William Ransom, leaders of the American Jewish Committee and the American Bar Association's Committee on Peace and Law through United Nations, also endorsed the idea of independent members on the human rights commission in order to have the best minds possible for the complex task of drafting a bill of rights. These organizations had learned from their wartime lobbying: The State Department would only listen to them if they had institutionalized access to policymakers, as they had enjoyed at San Francisco. The groups worried, prophetically as it turned out, that State Department diplomats in the UNCHR would isolate themselves from public opinion.

State Department officials responded that since governments ultimately had to approve the commission's work, it was impractical and even dangerous to rely on independent delegates. Notter and Ross led the opposition from SPA. In response to a memo from Hendrick endorsing the use of private experts, Notter scribbled in the margin, "For good work, yes, but for effective recommendations, no." Ross, who was responsible for forwarding the memo to Notter, called it a "two-faced approach" because the department would be responsible for briefing U.S. delegates who would then be free to reject any and all advice offered. Governmental representation, he concluded, meant "a far better chance" of American approval of the body's work. Although Ross and Notter
did not succeed in revising the position paper submitted to Roosevelt, they would find much satisfaction with the outcome of the debate at the United Nations.⁸

When the nuclear, or temporary, UNCHR convened on 29 April at Hunter College in New York City, Roosevelt tried to balance the State Department's position with Soviet insistence on governmental appointees and compromise proposals submitted by France and Great Britain. France wanted the ECOSOC to appoint commissioners from a list of experts nominated by U.N. members. Sandifer, Hiss, and Stinebower told Roosevelt to oppose the plan, asserting that only commission approval of its own members would guarantee and perpetuate an impartial, expert membership. Once they realized, though, that a majority in the UNCHR wanted to control nominations through their political appointees on the ECOSOC, they abdicated their position in a counterproposal that allowed the elected leaders of the ECOSOC and the UNCHR's president to make non-binding recommendations from a list of nominees submitted by council members. The defeat of this outline in the commission, caused at least in part by Sandifer's failure to brief Roosevelt adequately on its major points, forced Roosevelt to vote for the French and British position, which the ECOSOC later approved without debate. The result was a politicized commission whose members were as concerned with safeguarding national sovereignty as with protecting international human
rights. Given that the State Department would often favor the former over the latter, it would come to appreciate the wisdom of acceding to the majority on the membership issue. Another byproduct was the decline in effective lobbying by private U.S. organizations, whose influence withered as institutional access to the UNCHR declined.*

After disposing of the most controversial issue before the commission, the delegates quickly agreed on the full UNCHR's structure, mandate, and program of work. It would consist of eighteen members elected by the ECOSOC to three-year terms. Its broad mandate included submitting to the ECOSOC proposals for a bill of rights, conventions on the status of women and the freedom of information, recommendations for the protection of minorities and the prevention of discrimination, and decisions regarding "any matters within the field of human rights likely to impair the general welfare of friendly relations among nations." Once established as a full commission, the body's first priority would be to draft a bill of rights and circulate it to U.N. members for comment. Roosevelt and the State Department were pleased with these results, for they corresponded closely to their own proposals. They even accepted the liberal mandate, believing, as ECOSOC delegate John G. Winant underscored in his report to Secretary of State James Byrnes, that the
Charter prohibited the Commission from infringing on national sovereignty.¹⁰

The first domestic challenge to the UNCHR's limited jurisdiction arose a month after the human rights commission issued its report. In late May, the communist-dominated National Negro Congress held its tenth annual conference in Detroit under the banner, "Death Blow to Jim Crow." The gathering forwarded a damning nine-page petition to the ECOSOC, "The Oppression of the Negro: The Facts," by historian Herbert Aptheker. The report statistically documented occupational, income, housing, educational, and legal discrimination nation-wide against African-Americans. Citing the U.N. Charter and reports of the Preparatory Commission and the ECOSOC's first session, the congress asked the ECOSOC, through its human rights commission, to investigate and make recommendations for eliminating racial discrimination in the United States. On 6 June, Max Yergin, the congress' leader, personally presented the petition to Petrus Schmidt, the UNCHR's secretary. Schmidt informed Yergin that as the ECOSOC had not yet outlined procedures for receiving petitions, he could only promise to forward the document to UNCHR head Roosevelt and include it on a list of communications circulated to that body's members. Disappointed, lacking funds, and victimized by a growing domestic anti-communist witchhunt, Yergin soon joined mainstream civil rights
organizations, including the NAACP, to mount a more organized
campaign to have the UNCHR investigate American racial
discrimination.\textsuperscript{11}

Even moderate groups expressed disappointment with State
Department efforts to isolate them from human rights
policymaking. On 10 July, the Joint Committee of American
Agencies on Human Rights, a coalition of eighteen
organizations including the American Association for the
United Nations, the Commission to Study the Organization of
Peace, and the Church Peace Union, hosted a briefing by
Hendrick and UNCHR secretary Schmidt. The lobbyists expressed
"great concern" that UNCHR members would represent
governments, agreed to draft a letter of protest to the State
Department, and asked that the U.S. delegate to the UNCHR
serve without instructions. The need to prevent
politicalization of the commission's work, they agreed, made
it imperative that members have close contact with groups such
as theirs. They had worked too hard the past four years to
witness a bill of rights fall victim to partisan sniping in
the United Nations. Two months later, the NAACP sent a
strongly worded letter to Truman comparing a wave of lynchings
with the "savagery equalled only at Buchenwald." Such barbaric
acts, the letter declared, made a mockery of pious words and
deeds at the U.N. on behalf of human rights. And when Dr. Metz
Lochard, editor of the influential black newspaper, the
Chicago Defender, requested a meeting with Roosevelt and U.N. Secretary General Trygve Lie to pass on additional evidence of racial discrimination, Roosevelt declined. Her increasing isolation from civil rights groups caused by the time and perceived protocol demands of her U.N. position dovetailed with the State Department's determination to keep domestic controversies from reaching the United Nations. 12

Efforts by civil rights groups to petition the U.N. spawned a dual response from the Truman Administration. On the one hand, the State Department lobbied to render the UNCHR powerless to investigate such charges while Truman undertook modest federal initiatives to pacify the NAACP and others. By fall 1946, the issue of what to do with one thousand communications on human rights received by the Secretary-General was near the top of the human rights commission's agenda. When it met as a full body for the first time in late January, Roosevelt joined the Soviet Union against France and India to pass a declaration of inaction. The commission voted to "recognize that it has no power to take any action in regard to any complaints concerning human rights" and instructed the Secretary-General to compile a list of communications received. Passage of what became known as the "self-denying rule" marked another victory for American efforts to prevent the UNCHR's work from impinging on domestic sovereignty. The strategy had dual costs, however: it made the
nation open to internal and external charges of hypocrisy and caused the State Department to pursue a reactionary course on human rights matters before U.N. bodies. ¹³

The General Assembly debate over the discriminatory treatment of Indian laborers in South Africa dramatically revealed both consequences. In June 1946, India charged South Africa with violating bilateral treaties and the Charter's human rights clauses by prohibiting land ownership by Indians in white communities. Pretoria responded by declaring the matter outside of the U.N.'s authority and privately reminding the American delegation that "other nations" had racial problems that the assembly might discuss. Agreeing with South Africa, U.S. delegate and Senator Arthur Vandenberg (R-MI) remarked that little difference existed between "Indians in South Africa and Negroes in Alabama." Desiring to avoid a precedent-setting vote on the charter's domestic application and condemnation of an American non-communist ally, the U.S. tried first to limit discussion to existing bilateral treaty obligations and then to adjourn debate by asking the International Court of Justice for an advisory opinion. A coalition of Third World and Soviet bloc nations rejected both suggestions. After declaring that the charter obligated signatories to respect human rights, the U.N. approved in December a weakly-worded resolution directing South Africa to observe its bilateral and U.N. Charter obligations. The U.S.
voted against the rebuke. Although Roosevelt went along, she asked a month later in her syndicated column, *My Day*, "Are we going to put ourselves in the position of having the world think of us as a backward nation? A nation that discriminates, and takes away political rights from a large group of its citizens?"^14

As the State Department fought to limit potential U.N. oversight of its own human rights violations, the Justice Department and Truman moved gradually to prevent the most serious from recurring. Limited by the possibility of a schism between Northern and Southern Democrats and largely lacking statutory authority to prosecute violent racists, Truman nonetheless had to propose limited measures to maintain crucial support from increasingly vocal African-Americans, co-opt civil rights initiatives from opportunistic congressional Republicans, and ameliorate international criticism. He cautiously, though unsuccessfully, proposed a permanent Fair Employment Practices Commission, promised to support an anti-lynching bill, and announced that he would use available legal channels to punish those responsible for murdering African Americans in the South. His most notable achievement, though, was the creation on 5 December of the President's Committee on Civil Rights. Composed of private citizens from the fields of education, religion, law, labor, and industry, the committee's task was to discover how federal, state, and local governments
could better protect civil rights. Its report ten months later would help launch the most ambitious attempt by civil rights groups to petition the United Nations.15

To mollify criticism from civil rights groups and other countries, the State Department tried to make progress on outlining an international bill of rights. But its inability to do so, due to interdepartmental turf wars, only caused this dissent to grow. Navigating the complex legal and political issues involved in drafting a bill of political, economic, and social rights necessitated the formation of an interdepartmental body. In August 1946, discussions began between the departments of state, interior, agriculture, commerce, justice, and labor and the Federal Security Agency (FSA) on what would become the Interdepartmental Committee on International Social Policy (ISP). The ISP's broad mandate included studying the foreign policy aspects of health, labor, science, education, cultural relations, and social welfare issues. This ambitious plan, though, triggered a bitter fight between Labor and State over the chairmanship of ISP and other jurisdictional issues that delayed the ISP's founding for three months. Finally, by late December, the ISP had met for the first time and established five subcommittees, including a subcommittee on Human Rights and the Status of Women (HRW). Led by Walter Kotschnig and staffed by representatives from the State, Labor, Interior, and Justice Departments and FSA,
the HRW sketched position papers on issues before the UNCHR, including a bill of rights.\textsuperscript{16}

While Labor and State bickered, an ad hoc working group began the first discussion of possible drafting procedures, contents, and implementation mechanisms. Sandifer presided over the group's preparations for the UNCHR's first session. Even though other bills were before them, including two introduced by Cuba and Panama, the group wanted to start from scratch by having the UNCHR first discuss rules of procedure and enforcement issues. Its first major position paper on the subject called for the commission to decide whether the bill should be binding on nations or merely a statement of principles, what rights it should include, and who should serve on a drafting committee. The group also decided what would become two cornerstones of future U.S. human rights policy: its members favored the completion of a non-binding declaration of rights before approving a shorter binding covenant, and they proposed very conservative enforcement procedures that would not override national sovereignty. They hoped the General Assembly could approve relatively quickly a non-binding proclamation of political, economic, and social rights that would "command the respect of people throughout the world."\textsuperscript{17}

The conservative American approach won acceptance by UNCHR members who, lacking time, home government instructions,
and a clear alternative proposal, favored a non-binding declaration first. Roosevelt, with assistance from the Soviet Union and Great Britain, successfully opposed motions by the Secretariat, India, and Australia to formulate implementation recommendations that would guide the drafting committee. Such measures, Sandifer and Whiteman concluded, were not an "immediate, practical objective" due to their complex and controversial nature. The commission's report, as approved by the ECOSOC, called for UNCHR's officers (later expanded to include several other members), in cooperation with the Secretariat, to compose an international bill of rights for submission to the UNCHR's fall session. The paper recognized that as the UNCHR was not ready to propose enforcement measures, the document should be a non-binding General Assembly resolution. With its format settled, the State Department turned to the bill's contents. According to Hendrick, "Our policy was to get a declaration which was a carbon copy of the American Declaration of Independence and Bill of Rights." To achieve this end, the State Department counted on Roosevelt to influence the drafting committee's work while lawyers penned the department's own version.¹⁸

But just as Roosevelt in New York and legal advisors in Washington began to prepare separate declarations, two events occurred that starkly demonstrated the existing limits of U.S. policy. On 20 March, two representatives introduced concurrent
resolutions in Congress that asked the State Department to raise at the General Assembly the unjust imprisonment of Yugoslav Archbishop Aloysious Stepinic. Stepinic's trial for treason and sentence of sixteen years of hard labor, the bills declared, violated the U.N. Charter. Marshall told House Foreign Affairs Committee Chair Charles Eaton (R-NJ) that domestic jurisdictional boundaries of the charter prevented the discussion of individual human rights cases. His reply omitted a major concern of his advisors, especially Notter, that such an initiative could backfire by allowing the Soviet bloc to charge the U.S. with indifference toward "the cruelest forms of lynching." Marshall blandly promised, though, that the department would "seek a favorable opportunity through other means for making known its views in a manner which might be conducive to good results." This disgraceful episode, in which the State Department equated even the discussion of human rights abuses with a violation of Article 2(7), underscored the department's unwillingness to propose any initiatives that might have domestic repercussions.¹⁹

Ironically, while the State Department fought to keep the U.N. out of domestic affairs, the President's Committee on Civil Rights examined how the federal government might use the U.N. charter and future bill of rights to expand domestic civil rights statutes. On 24 April, the committee's executive secretary, Robert Carr, requested Acting Secretary of State
Dean Acheson to outline American obligations to protect civil rights under the U.N. charter. After ignoring several follow-up requests, State Department Legal Advisor Charles Fahy finally responded two months later. Echoing Marshall's reply to Eaton, he denied that the U.N. charter placed any legal responsibility on any nation to promote human rights internally, but hinted, nonetheless, that a moral responsibility existed, if only to protect America's global reputation as a human rights pioneer. The committee's final report, though, would cast doubt on Fahy's reading of the charter and cite the need to protect America's prestige to recommend stronger federal enforcement of civil rights laws.

The first bill of rights generated by the State Department reflected the desire to protect U.S. sovereignty by supporting only the inclusion of rights guaranteed by the Constitution. Just two weeks after the UNCHR's session ended, Fahy's assistant, John Howard, forwarded an outline to Fahy. The ten-article document, written as a General Assembly resolution, fulfilled Hendrick's goal. Beginning with the words, "We the Peoples of the United Nations," the bill incorporated a list of guarantees lifted from the U.S. Bill of Rights: "equal protection of the law," "probable cause" for search and seizures, and a ban on "cruel and inhuman punishments." It contained, in short, the basic elements of the First, Fourth, Fifth, Sixth, Eighth, Thirteenth, and
Fourteenth Amendments with two additions: the right of peoples to self-government through periodic and free elections, and the freedom to find a job, receive a public education, and collect social security. The latter article, Howard carefully provided, did not guarantee employment, education, or social security; it only prevented the state from arbitrarily denying some of life's economic and social necessities. In a cover letter to Fahy, Howard also expressed an interest in adding asylum and property rights, which, when added to the economic and social provisions, would be the object of much domestic and international debate over the next seven years.  

Howard's draft generated a last ditch effort by Harley Notter, who had not known of its existence, to stop all work on an international human rights agreement. Notter had always doubted the utility of spending the necessary time and expertise on a document whose contents few nations would execute. He warned that forging ahead would only decrease respect for the U.N. and falsely raise the hopes of those living behind the Iron Curtain. To avoid both, he proposed that the U.N. only ask members to report domestic efforts to promote and protect human rights. "We need to help the doers of good will stay down to earth in this field," he concluded. Although Notter's memo found wide circulation within SPA and the Division of International Organization Affairs, no one responded. Work continued on a bill of rights, and Notter, who
had been so active in wartime study groups and international conferences on the proposed United Nations, soon stopped participating in human rights discussions.\textsuperscript{22}

Despite Notter's criticism, the HRW forged ahead to mold an unenforceable list of rights that fit within existing U.S. law for submission to the UNCHR's drafting committee. Laying aside Fahy's outline, the HRW decided to revise a forty-eight article bill of rights written by John Humphrey of the Secretariat's Human Rights Division. Not all of their amendments were regressive: HRW members proposed to expand the prohibition against unauthorized searches and seizures, augment the ban on unusual punishments to include inhumane prison conditions, and add the rights of criminal defendants to bail and to a speedy trial. They tried to re-fashion unfamiliar rights, such as to own property and to enjoy racial equality, into state guarantees of due process and equal protection. The latter change was crucial, for such an article could not then touch Jim Crow statutes, which the U.S. Supreme Court had declared in harmony with the Constitution's Fourteenth Amendment, or private acts of discrimination in the South. Finally, the HRW voted to delete guarantees that were totally foreign to domestic law, including the rights to "resist oppression," to acquire a nationality, and to emigrate and gain asylum in any country.\textsuperscript{23}
Most importantly, the HRW revised articles that outlined the responsibility of national governments to maintain free primary public education, to furnish medical care, to dispense social security, and to provide "socially useful work." HRW members, recognizing that such guarantees did not fit traditional American jurisprudence, framed them as goals that governments should strive to satisfy given their available resources and economic ideology. For example, the HRW continued American opposition, dating back to the San Francisco Conference, to requiring governments to guarantee full employment. The final draft approved by the HRW and ISP included the duty of governments only to promote "full employment" and "adequate" levels of health care, food, housing, and education. This policy of favoring procedural and civil rights while seeking to eliminate or severely limit the recognition of economic and social rights would be a major source of tension within the UNCHR, even among U.S. allies.²⁴

HRW members furthermore agreed to include economic and social duties only if the human rights declaration was non-binding on U.N. members. Although the UNCHR had postponed debate over implementation, Humphrey's bill allowed individuals to petition the U.N. for redress and stated that its contents were now "fundamental principles of international law and of the national law" of U.N. members. Although other HRW members, especially from the Interior Department, approved
allowing U.N. petitions, the State Department cited national sovereignty concerns and fears that Americans would file appeals to justify its vehement opposition. Disingenuously, the department argued that the UNCHR would not accept petitions; it also did not want to "stimulate unwarranted hopes" by recognizing such a right. Although a majority of HRW and ISP members approved of petitions, the State Department's view would prevail in the UNCHR. Both bodies deleted both the assertion that human rights were now part of international law and the specified duty of states to protect the enumerated rights. As a substitute for the former, they offered to allow the U.N. to act upon violations in accordance with its charter. This alternative meant little, as the State Department had always maintained that Article 2(7) prevented domestic intervention by the U.N. absent a looming international crisis. As the ISP frankly concluded in its position paper, "The charter imposes no duty to refrain from violations of human rights within the borders of a state."

Equipped with detailed position papers and possessing formidable diplomatic skills, Roosevelt successfully lobbied for her government's positions when the UNCHR's Drafting Committee met at Lake Success, New York, from 9 to 25 June. The most important and divisive issue for the eight-person body was whether to formulate a binding treaty or a declaration of principles. Great Britain, desiring to discuss
the former only, submitted a convention containing mostly political rights for consideration. Australia seconded the need for a treaty, proposing to set up an international court of human rights to implement it. Roosevelt and the Soviet Union led the charge for a declaration. To break the impasse, the committee decided to submit texts of both simultaneously and let the full UNCHR decide which to approve. The committee then asked renowned French jurist Rene Cassin, after examining the Secretariat's proposal, to forge a non-binding declaration and revise it in light of comments by committee members.26

Due to Roosevelt's determined lobbying, Cassin's version, as amended and forwarded to the full UNCHR for discussion at its December meeting, included most of the major changes proposed by the HRW and ISP. Of its thirty-six articles, only seven articulated economic and social rights. Moreover, the state had no responsibility to fulfill the rights to "adequate" health care, "socially useful work," social security, higher education, safe working conditions, rest and leisure, and participation in a nation's cultural life. The declaration did not grant individuals the right to own property but merely banned expropriation absent due process. Finally, committee members excluded an article on immigration, allowed states to determine their own asylum laws, included an equal protection article, and recognized an individual's general right to acquire a nationality. Due to the drafting
committee's concurrent work on a binding treaty, its members agreed to delete all references to international law and a nation's responsibility to incorporate legally the enumerated rights from the declaration. Roosevelt also successfully changed the right to petition the U.N. into a promise by governments that they would not interfere with citizens who chose to do so. "The U.S. views were accepted on virtually every point," Austin concluded. Marshall agreed and proclaimed to Roosevelt that the outcome was "a very real tribute to your ability as United States Representative and as Chairman."

Yet the inclusion of even a modified right to petition led the State Department to fight pre-emptively against efforts by U.N. members and domestic groups to define and practice it. The first step was to ensure that the ECOSOC approved the UNCHR's "self-denying rule." Knowing that even allies like France and India opposed the rule as too restrictive, Marshall had Roosevelt lobby the council's Latin American bloc while Gerig and Kotschnig developed a supporting position paper. On 5 August, the ECOSOC passed Resolution 75(V). After approving the UNCHR's proclamation that "the commission has no power to take any action in regard to any complaints," the ECOSOC endorsed a clumsy process that required the Secretariat to compile confidential lists of petitions for UNCHR's members. The U.S. victory came with intense criticism. Humphrey sarcastically remarked that the
resolution made the commission "an elaborate wastepaper basket" for petitions while even State Department official James Frederick Green called its contents "exceedingly restrictive." The decision moved Hersch Lauterpacht, a renowned international lawyer, to find the UNCHR and ECOSOC guilty of renouncing "an obligation grounded in the Charter." The State Department, brushing off such remarks, now had another weapon to employ, eerily similar to the infamous "gag rule" that prevented federal action on anti-slavery petitions a century before, to prevent the U.N. from discussing allegations of human rights abuses brought by Americans.26

Congress, civil rights groups, and the federal courts raised several challenges to State Department assertions that the U.N. charter granted no authority to the U.N. or the federal government to take action against human rights violations. The State Department first had to weather renewed domestic pressure to bring Archbishop Stepinic's imprisonment to the General Assembly's attention. On 20 July, the head of the San Francisco Archdiocese's International Relations Committee of the National Council of Catholic Women inquired as to what "other measures" Marshall had taken as promised in his 11 June letter to Representative Eaton. The department had done nothing, he replied, for Yugoslavia regarded the case as an internal matter. He did not add that, in principle, the United States agreed. Three months later, after receiving
"thousands" of letters, petitions, and resolutions asking for U.S. action on behalf of the Archbishop, Representative Robert Ross demanded that Marshall submit the case to the General Assembly. Again, the department provided an evasive reply, maintaining that Article 2(7) prevented discussing specific human rights violations. The real reason for sidetracking public debate, Rusk told Legal Advisor Ernest Gross, was that such a debate "would leave the United States vulnerable to similar charges against it by other states." 29

As the State Department moved to prevent discussion of human rights violations at the U.N., it also denied that domestic racial discrimination damaged U.S. credibility and moral leadership overseas. Privately, in discussions on how to reply to letters from the President's Committee on Civil Rights, members of the Division of International Organization Affairs admitted that "the conduct of our foreign policy is handicapped by our record in the field of civil rights and racial discrimination." But they refused to concede this to Carr and to send him requested excerpts from the foreign media that might undermine their denial. Marshall concurred, and told Charles Wilson, the committee's chairman, that whatever discrimination existed reflected badly on the nation. But, he added, much of the publicity originated from communist sources, was politically motivated, and was therefore illegitimate. To prove his point, Rusk appended a list of
unclassified quotations from "communist or acknowledged left-wing organs" and classified transcripts of largely Soviet radio broadcasts monitored by the Central Intelligence Group, forerunner to the Central Intelligence Agency. Carr, clearly frustrated, wanted a confession that racism at home unequivocally harmed American interests abroad. He proposed three alternatives: Marshall could write a new letter, Carr could quote selectively from Marshall's letter, or Carr could cite a 1946 statement by Acheson to the Fair Employment Practices Committee in which Acheson made the connection clear. Carr received no reply.  

The committee's final report, To Secure These Rights, issued on 29 October to large audiences at home and abroad, made public the private concerns of the State Department. After detailing the economic, political, and judicial discrimination suffered by African-Americans, the report declared that the repercussions of such treatment "echo from one end of the globe to the other." How, it asked, could U.S. diplomats demand free elections overseas if American citizens remain disenfranchised? Most controversially, the committee concluded that the Truman Administration could derive federal authority to pass civil rights laws from the U.N. Charter. Because the charter, as a treaty, was now "the supreme Law of the Land," Congress and the Truman Administration could cite the duty of U.N. members to promote "respect for, and
observance of, human rights and fundamental freedoms" as the statutory basis for passing civil rights laws. The committee rejected the State Department's contention that Article 2(7) emasculated any authority for human rights intervention that might otherwise radiate from the charter.31

Although Congress and Truman did not test the new doctrine, domestic civil rights groups pressed the issue at the United Nations. Building on the work of the National Negro Congress, several NAACP leaders compiled an extensive report on the discriminatory treatment of African-Americans across the country. Part history, part socio-economic study, and part legal treatise edited by W.E.B. DuBois, An Appeal to the World was a powerful and detailed indictment that revealed the hypocrisy of the free world's leading nation. DuBois asked Dr. Rayford Logan, a history professor at Howard University, to argue why the U.N. had a responsibility to accept and act upon the petition. Logan, unable to cite precedents that did not exist, fell back on the words of the charter, the UNCHR's terms of reference, and the debate over Indian nationals in South Africa. Unless the charter's human rights articles meant nothing at all, he concluded, Article 2(7) "must be liberally interpreted" to allow the U.N. to at least receive petitions from oppressed minority groups around the world. After a year of supervising the compilation and editing of the petition, DuBois contacted Trygve Lie, every U.N. delegation, and NAACP
board member Roosevelt to ask their assistance in bringing the
document before the General Assembly.32

Cowled by the State Department, which informed U.N.
officials that "no good would come" of the petition, Lie and
the Secretariat's Human Rights Division head John Humphrey
retreated behind the walls of ECOSOC Resolution 75(V) and
refused to accept the document. Humphrey went farther,
iccorrectly telling DuBois that only U.N. members could submit
petitions. Roosevelt contended that her position as the
UNCHR's chair prevented her from helping. A defiant DuBois
then leaked the petition to major newspapers, including the
New York Times. The resulting interest of U.N. delegations
ranging from Great Britain and India to the Soviet Union,
Mexico, and Liberia, forced Humphrey to retreat. On 23
October, Humphrey and Assistant Secretary-General Henri
Laugier listened impassively as DuBois implored them not to
bury the petition in their archives. Humphrey, still "afraid
of the document" according to DuBois, countered with ECOSOC's
instructions that it remain confidential as one of thousands
of communications passed to a powerless UNCHR. Although the
resulting publicity embarrassed the State Department,
Resolution 75(V), sponsored by the U.S. delegation, had
prevented the U.N. from acting on the petition. Their victory
would be total: the NAACP soon retreated from U.N. activity
while Roosevelt remained a hero to many African-Americans who provided the critical votes for Truman's re-election a year later.33

Despite these victories, Marshall, Roosevelt, and their legal advisors feared the U.S. Supreme Court might apply the charter's human rights clauses to federal, state, and local laws. One day before DuBois released the NAACP study, former Undersecretary of State Dean Acheson argued before the court the unconstitutionality of California's Alien Land Law, which banned land ownership by Japanese nationals. The petitioners' brief in *Oyama v. California* and an amicus brief filed by the American Civil Liberties Union (ACLU) asserted that the charter's human rights clauses could invalidate the hostile state law. According to the petitioners, that statute was "a law which flaunts, for all the world to see, a conflict with the Charter." Although Truman's assistant David Niles urged the Justice Department to file its own amicus brief, it declined to do so. One week after the NAACP's petition, Acheson's presentation, and the release of *To Secure These Rights*, however, Attorney General Tom Clark publicly announced that he would file an amicus brief in four cases adjudicating the constitutionality of restrictive covenants. The evidence suggests that these events caused a change of direction for the nascent civil rights movement. Clark's amicus briefs,
future NAACP legal strategy, and the lead Supreme Court opinion in Oyama all maintained that racist statutes were obnoxious to the U.S. Constitution, not to the U.N. Charter. The State Department's innocuous reading of the charter had triumphed again, although the hard struggles had reinvigorated the department's push for a simply-written, non-binding human rights declaration. 

In their search for such a declaration, HRW members abandoned the UNCHR's Drafting Committee text for its own shorter version. Although Roosevelt and Marshall were generally pleased with the former, several members of the HRW thought the latter too complex, unworkable, and lacking in inspirational appeal. By 5 September, the HRW's commentary on the declaration had grown to over sixty pages. Its authors wished to delete the unfamiliar clauses on resisting oppression, and the responsibility of governments to promote full employment. HRW proposed to add an article on eminent domain and a general limitation clause that would allow nations to restrict the enumerated rights in the interest of the public good. Most of the commentary, though, looked to stylistic revisions of almost every article proposed by the Drafting Committee. The irony of conducting such careful and detailed study of a non-binding document that already contained substantial American language was not lost on
Hendrick, Earle Simrell from the FSA, and Department of Labor representative Rachel Nason. "We could continue to discuss and make changes from now until Doomsday," an exasperated Hendrick told Kotschnig. Within a week of obtaining the HRW's approval on 22 August, the three submitted a ten-article declaration that fit on a single page.  

Hendrick, Simrell, and Nason strove to encapsulate the thus far irreconcilable goals of obtaining world approval on a simply-written, concise document informed by U.S. constitutional jurisprudence that nevertheless placed no obligations on the federal government. Their "short form" declaration as approved by the ISP on 12 November was, like Fahy's attempt nine months earlier, mostly a re-statement of the Bill of Rights and the Thirteenth and Fourteenth amendments. Their willingness to include several additional rights rested on two overlapping safeguards. As a non-binding statement, they could add articles that permitted U.N. petitions (that the UNCHR could not act upon anyway) and prohibited racial discrimination without worrying about any domestic effects. As an outline of individual rights and not governmental guarantees, they could add the rights to work, health care, social security, and education without questioning their compatibility with a freeenterprise economy. Yet even these limitations did not satisfy Acting Secretary of State Robert Lovett, who refused to clear the
short form until the ISP deleted two preambulatory statements. He restored one excision, though, when he embarrassingly discovered it to be a quotation from the charter's human rights clauses. His last-minute editing caused a firestorm in the ISP, where Kotschnig had to defend Lovett's last-minute deletions to a document prepared after months of study and approved by Kotschnig himself.36

Although UNCHR members decided to discuss the Drafting Committee's text rather than the short form in their December session, Roosevelt's skillful lobbying still resulted in a declaration that fit within the confines of State Department policy. A lack of time for careful review, the special interests of some delegations, and the desire by many for a detailed declaration in case the UNCHR failed to approve a binding treaty all mitigated against adoption of the short form. To meet the last concern, the delegates divided into three working parties to discuss a declaration, a convention, and implementation measures. Roosevelt chaired the six-member declaration group, whose forty article document differed only slightly from the Drafting Committee's work. Due to Soviet bloc abstentions on votes for individual articles, the working group easily deleted the right to resist oppression. Roosevelt also successfully lobbied against a Soviet amendment to ban miscegenation laws. The body approved U.S.-backed articles on property, work, and marriage that made all individual claims
subject to statutory regulation by national governments. To further defend national sovereignty, the group approved Roosevelt's suggestions for a general limitation clause that made all rights limited "by the just requirements of the democratic State."

The greatest source of tension, the issue of implementation, divided the U.S. and Soviet Union against the French, Australian, and Latin American delegates. Aware of the covenant working group's slow progress and fearful the U.S. would reject any proposed draft convention, a majority in the declaration working group approved an article calling on U.N. states to "ensure [that] their law[s were] brought into, and maintained in, conformity with the principles of the present Declaration." Due to Roosevelt's determined opposition, the full UNCHR agreed that state laws should conform instead to the vague human rights clauses in the U.N. Charter. After making minor revisions, the UNCHR sent its thirty-three article declaration to all U.N. members for comment. Roosevelt and the State Department, although still disappointed in the length and complexity of the document as a whole, found its contents acceptable. Truman agreed, congratulating Roosevelt just before Christmas on "the valiant fight" she had waged "on behalf of our ideals." The ISP issued a qualified statement, proclaiming that the U.S. "should be in a better position than almost any other country to show compliance with the standards
set forth, with the single exception of problems relating to discrimination."\(^{38}\)

By February 1948, the State Department and Supreme Court had blocked final attempts by the NAACP and others to combat this "single exception" with the U.N. charter. The department, arguing that no machinery existed to study petitions, defeated a Soviet move in December 1947 to introduce *An Appeal to the World* into the UNCHR's Sub-Commission on the Prevention of Discrimination and Protection of Minorities. With that defeat, the NAACP left the U.N. arena to find victory in federal court. On 19 January, four justices published two concurring opinions in *Oyama* adopting the petitioners' claim that California's Alien Land Law violated the U.N. Charter in addition to the Constitution. Justice Frank Murphy's opinion was so strident that several other justices, including Chief Justice Frederick Vinson and Justice William O. Douglass, worried the Soviets would circulate it to embarrass the United States, and they unsuccessfully pressured Murphy to revise it. Vinson, though, who wrote the lead opinion, strongly disagreed that the charter imparted a binding obligation on California's government.\(^{39}\)

The Supreme Court accepted the State Department's and Vinson's views once and for all in *Shelley v. Kramer*, an NAACP challenge to the constitutionality of restrictive covenants.
The American Association for the United Nations (AAUN), in an amicus brief, forcefully argued that the charter's human rights clauses nullified the enforcement of such discriminatory contracts by federal and state governments. In response, Hendrick, Gross, and Whiteman worked with the Justice Department to prepare a reply. Prominently bearing Attorney General Tom Clark's name, their brief conceded only that racial discrimination embarrassed the U.S. abroad and was "inconsistent with the public policy of the United States." More pointedly, the National Association of Real Estate Boards' brief for the respondents denied that the charter could overturn a state law that was "outside the field of international affairs." The Supreme Court implicitly agreed, for its unanimous decision on 3 May 1948 relied only on the Fifth and Fourteenth Amendments to find state and federal enforcement of restrictive covenants unconstitutional. The court was "thunderously silent," in the words of human rights lawyer Bert Lockwood, on claims raised by the AAUN. Between 1948 and 1955, the court consistently rejected claims of U.N. Charter violations in eight other civil rights cases.¹⁰

After the Supreme Court denied that the U.N. Charter had any legal effect, the State Department sought to reaffirm the same for the UNCHR's declaration. Rusk and Kotschnig advocated re-introducing the short form in the drafting committee's May 1948 session, despite its prior rejection by the UNCHR.
Roosevelt and Hendrick objected, the latter observing that even allies in the UNCHR thought the U.S. "was trying to ram down the throats of other countries a declaration so devoid of substantive content as to be virtually meaningless." In a compromise, the HRW chose Hendrick, Nason, and Simrell to revise the UNCHR's draft. The three suggested changing all mandatory language to declaratory phrases so as to eliminate any semantic suggestions that the declaration had legal force. The HRW and ISP approved their report, which Truman initialled and sent to the U.N. Secretary-General on 13 April. "It is inappropriate to state the rights in the Declaration in terms of governmental responsibility," the letter proclaimed, due to different national philosophies on the proper functions of the state. The declaration should only list goals to inspire peoples around the world. In a thinly veiled reply to critics of U.S. racial discrimination, Truman quoted President Abraham Lincoln, who defended the authors of the Declaration of Independence and their statement that "all men are created equal." The phrase was not meant for literal application, Lincoln surmised. "They meant simply to declare the right, so that the enforcement of it might follow as fast as circumstances permit."

To obtain a shorter declaration and minimize any possible domestic legal fallout, the HRW and ISP sought to delete all provisions that could upset the racial status quo. The HRW,
citing inconsistency with federal enforcement of restrictive covenants, desired to delete the freedom of residence clause and recast the non-discrimination clause into an equal protection article similar to the Fourteenth Amendment. To banish any possibility that U.S. courts might find the declaration justiciable, Hendrick proposed to delete articles obligating nations to codify the enumerated rights and allow U.N. petitions. Not all on the ISP agreed with this extremely narrow view. Labor Department representative Thacher Winslow derided Hendrick for arguing that "international progress could be achieved merely by bringing the laws of other countries up to the level of U.S. laws" and ignoring other policy determinants such as domestic and world opinion. Hendrick and an ISP majority overruled Winslow and approved a forty-page list of detailed, previously suggested alterations. If the UNCHR adopted their recommendations, the U.S. judiciary would have to demolish three barriers before using the declaration to challenge Jim Crow: the declaration's non-binding legal status as a General Assembly resolution, its conservative language largely consistent with the U.S. Constitution, and its clause permitting governmental derogations according to "the just requirements of the democratic state."

The polarizing politics of race, as well as the conservative legal philosophy of Fahy, Hendrick, and others,
added to the extremely cautious policy recommendations by the Truman Administration. Facing an uphill re-election bid, Truman needed the support of both African-American voters and the white Southern wing of his party. On 2 February, he delivered a ten-point civil rights message to Congress that incorporated several recommendations from Wilson's committee, including the passage of anti-lynching and anti-poll tax bills. The reaction from Southern Democrats was shrill disapproval; influential Senator James Eastland (D-MS) threatened to leave the party altogether. His colleagues were also distressed by the 3 May Shelley decision, Senator John Rankin (D-MS) declaring the Supreme Court had handed the Soviet Union its "greatest victory." Given the turmoil, few heard the first public statement opposing the declaration by the most prestigious body of lawyers, the American Bar Association (A.B.A.). Southern Democrats would soon join the A.B.A. in criticizing the document as communistic, with disastrous results for Roosevelt and others who believed in the utility of human rights treaties. Given this political atmosphere, the State Department saw the declaration as a potential civil rights landmine that might explode if went beyond a non-binding statement of utopian goals.¹³

Roosevelt continued her fight to shorten the declaration and delete all implementation articles when UNCHR's drafting
committee met from 3 to 21 May 1948. Its members seconded her dissatisfaction with the length and complexity of the document by moving to standardize its abstract declaratory language ("everyone has the right to...") , shorten articles, and postpone a discussion of implementation. As UNCHR members assumed the General Assembly would vote on their work in December, they struggled to achieve a timely consensus on complex issues. Four lawyers sat behind Roosevelt alone, quickly handing her notes before committee votes. Given this atmosphere, Roosevelt had little difficulty advocating both a freedom of residence article that would protect restrictive covenants and deferring consideration of U.N. petitions until the UNCHR and the drafting committee agreed on a separate set of implementation articles. This session also saw a rise in verbal combat between the emerging Cold War antagonists. Soviet representative A. P. Pavlov tried Roosevelt's patience by repeatedly asking the committee to reject the declaration and start from scratch. He also gave long polemical speeches and offered numerous amendments to create a binding obligation upon national governments to fulfill the enumerated rights. The running conflict between Roosevelt and Pavlov would last until the UNCHR, ECOSOC, and General Assembly rejected most of Pavlov's amendments and approved the declaration.  

With the Communist bloc outnumbered and the majority satisfied with the non-binding declaration, the UNCHR's third
session produced a document that contained few substantive changes. The commission standardized the declaration's language and added a preamble proposed by Roosevelt, which referred to the document as a "common standard of achievement." UNCHR members, to the State Department's relief, overwhelmingly voted to delete a call for nations to harmonize their own laws with the declaration's contents. In a major defeat for the communists, the majority, led by England, India, and the U.S., omitted all specific obligations by nations to fulfill economic and social rights, which now comprised just six of the twenty-eight articles. The latter were void of context and merely stated that individuals had the rights to food, clothing, housing, a basic education, medical care, property, social security, rest and leisure, and employment opportunities. Overall, the UNCHR approved more than eighty percent of almost fifty recommendations offered by Roosevelt. The State Department had successfully completed its quest for an inspiring but ultimately hollow list of basic human needs. "Americans will find in the Declaration a good many things with which they are very familiar," Roosevelt reassured in a press release, "A good deal of good, sound American tradition and law are wrapped up in it." Even Hendrick wondered if it was a truly international document. While such a result might have led to disapproval by other nations, the declaration's non-binding character and, with
work on the covenant bogged won, its intrinsic value as the first international human rights code, combined to ensure its passage.45

With American credibility as a human rights pioneer intact due to Roosevelt's leadership and the State Department's silencing of domestic critics, Foggy Bottom could now join the Soviet Union in using human rights as a Cold War propaganda weapon. The State Department used Roosevelt to scuttle DuBois' last attempt to place the NAACP's petition before the 1948 General Assembly. On 30 June, Roosevelt told DuBois in a private meeting that "no good could come from such a discussion" that would only embarrass the U.S. and might even force her to resign from the State Department. Walter White, the group's secretary, backed down over DuBois' objections and shelved future U.N. initiatives. The U.S. could now argue, without concern for domestic repercussions, that Article 2(7) did not obstruct U.N. discussion of specific human rights abuses. In first presenting this argument during 1948 General Assembly debates over Soviet emigration restrictions, the State Department repudiated its previous stand that the article prevented debates on the South Africa-India conflict, the Stepinic case, and the NAACP petition.46

In voting to censure Moscow for prohibiting the spouses of foreign nationals to emigrate, the U.S. now argued that the ECOSOC and the General Assembly could endorse some petitions
that asserted specific violations of the U.N. Charter. Chile, whose Soviet ambassador's son had married a Soviet citizen, asked the ECOSOC to deplore in principle all emigration restrictions placed on the spouses of foreigners. Pavlov countered with an amendment that not only proclaimed that Article 2(7) prohibited the U.N. from acting on this matter but condemned "the racial practice [of some nations] of prohibiting mixed marriages between persons who are subjects of the same State" as a violation of the U.N. Charter. Knowing that thirty states had miscegenation laws, U.S. delegate Willard Thorp had to tread carefully. After weakly rebutting that all U.N. action infringed on national sovereignty to some degree, he joined the Western bloc to delete the first half of Pavlov's proposal. Thorp then silently watched as France and England rendered meaningless the provision that denounced miscegenation laws. The resolution adopted by the ECOSOC on 23 August still deplored legislative obstacles to mixed marriages but focused its condemnation on emigration restrictions.

As the struggle over the resolution pointed out, the human rights work of the U.N. became increasingly hijacked by the Cold War agendas of the United States and the Soviet Union. Truman and Marshall wanted Roosevelt's international prestige and liberal credentials for this ideological battle which had recently been heightened by the Berlin Blockade and a descending Iron Curtain. They suggested that she deliver a
major speech on human rights as the General Assembly convened in Paris in late September. But Roosevelt resisted efforts by Sandifer, Rusk, and Notter to enlist her in a Cold War crusade. Notter, who wanted the department to "blast the ground from under the whole Soviet position" on issues including human rights, wanted her speech to contrast "the concepts of free nations and the concepts of totalitarian police states." Rusk agreed and sent a thematic outline to Roosevelt, who added two divergent points. The first stated her sympathy for the Russian people, who "have more opportunity for advancement and greater security" than in any previous era and who will eventually, after losing a justified fear of foreigners, embrace those human rights "useful to them." She also frankly stated American shortcomings, "recogniz[ing] that our minorities have not yet achieved the full rights which this [Declaration] will make the essential rights of every human being." Sandifer objected to both addenda, describing the first as "inaccurate" grist for the Soviet propaganda mill and the second as erroneous because "in large areas of our country discrimination has already been practically eliminated." Even in the South, Sandifer commented, "great changes have also come about."49

Roosevelt's speech, delivered on 28 September at the Sorbonne, clearly showed the influence Rusk, Notter, and Sandifer. More than half of her address compared the existence
of freedom in the U.S., which she defined as the fulfillment of political and civil rights, with its denial in the Soviet Union. The critical struggle of this age, predicted Roosevelt, would be between the "forces of reaction, retreat, and retrogression" who sought to distort or hide their brutal, totalitarian nature and the forces of capitalism, democracy, and freedom. The maintenance of global peace and human rights was at stake and was possible only by utilizing the United Nations. As a delegate, she concluded, she prayed that her side of the battle "may win another victory here for the rights and freedoms of all men." To ensure that these themes captured the world's attention, Marshall also addressed the General Assembly in a speech entitled, "No Compromise on Essential Freedoms," that was the strongest statement yet for the internationalization of human rights by an American secretary of state. The U.N. must protect human rights for both moral and security reasons, Marshall proclaimed.

It is not only fundamentally wrong that millions of men and women live in daily terror of secret police, subject to seizure, imprisonment, or forced labor without just cause and without fair trial, but these wrongs have repercussions in the community of nations. Governments which systematically disregard the rights of their own people are not likely to respect the rights of other nations and other people and are likely to seek their objectives by coercion and force in the international field.  

The State Department's use of the declaration as a Cold War weapon generated unexpected opposition from the American Bar Association, which viewed the U.N.'s human rights work as
engendering, rather than isolating, the spread of Soviet communism. On 7 September, the A.B.A.'s House of Delegates approved a report by its Committee on Peace and Law Through United Nations that called for a one-year delay in U.N. passage of the declaration. The postponement was necessary, the ABA stated, due to the declaration's confusing language and the inclusion of economic and social rights, both of which its lawyers would revise if given time. After the Oyama decision, the A.B.A.'s fear that U.S. courts would try to apply the declaration led the group to demand prior congressional approval of whatever emerged from the General Assembly. Two weeks later, ABA President Frank Holman stridently characterized the declaration as part of a scheme to "promote state socialism, if not communism, throughout the world." The double irony of advocating that the U.S. join the Soviet bloc in opposing the declaration and having Congress give legislative sanction to a non-binding document did not escape Hendrick's recent replacement, James Simsarian, who privately chastised the A.B.A. for fundamentally misunderstanding the purpose and character of the declaration. Undeterred, Holman continued pleading with Marshall to postpone any final action, observing that it took a full eleven years to formulate the U.S. Bill of Rights.50
As Marshall and Roosevelt publicly trumpeted the American commitment to freedom and democracy and privately held off Holman, the HRW worked to keep the declaration a symbolic list of mainly civil and procedural rights. Although the HRW on 24 June approved six minor amendments for the upcoming sessions of the General Assembly and ECOSOC, its members were willing to forego them to forestall changes by other nations, especially the Soviet Union and several European countries. State Department officials found out how a difficult task that would be by listening to two days of criticism in the ECOSOC. The Soviet bloc predictably railed against the exclusion of governmental responsibility to fulfill the enumerated economic and social rights. But even U.S. allies, such as France, Turkey, and the Netherlands, demanded that the declaration impose real obligations on U.N. members, and the latter even proposed sending it back to the UNCHR for the attachment of implementation provisions. Other nations, including Great Britain, wanted to postpone consideration until the UNCHR completed work on the covenant. On 26 August, the ECOSOC sent the declaration without a recommendation to the General Assembly. Turning aside all objections expressed in the ECOSOC, Roosevelt, Sandifer, Simsarian, and Gilbert Stewart of the U.N. mission now decided to lobby intensively for final passage of the declaration with minimal debate and no amendment. To accomplish these goals, they joined the non-
Soviet bloc members of the UNCHR to form an anti-communist caucus.\textsuperscript{51}

Although the assembly's Third (Social, Humanitarian and Cultural) Committee discussed the declaration in eighty-six meetings between late September and early December, the State Department was pleased that the declaration underwent few revisions. The length of debate was due to discussion of over one hundred fifty ultimately unsuccessful amendments proposed by Western, Latin American, and Soviet-bloc nations, lengthy speeches (especially by countries that had not been able to comment), and the committee's decision to examine the declaration almost word-by-word. Much of the often acrimonious debate was between Cold War antagonists, especially Great Britain and the Soviet Union, over allegations of human rights violations. Despite disappointment over the length and format of the debate, during most of which Roosevelt remained silent, the State Department succeeded in omitting articles allowing U.N. petitions and granting the right to asylum. The informal caucus also defeated all substantive Soviet amendments, and European, Australian, and New Zealand attempts to make the declaration legally binding. Finally, on 7 December, the Third Committee passed the human rights declaration with no dissenting votes and seven abstentions from mostly the Soviet bloc.\textsuperscript{52}
The approval of the Universal Declaration of Human Rights by the General Assembly three days later in a similar vote not only amounted to a U.S. victory, but also to a milestone in world history. For the first time, nations around the world had agreed on a voluntary code of conduct toward their own citizens. "We stand today at the threshold of a great event both in the life of the United Nations and in the life of mankind," Roosevelt hopefully told the assembly, "This declaration may well become the international Magna Charta of all men everywhere." Forty years later, Humphrey asserted that "its impact on world public opinion has been as great if not greater than that of any contemporary international instrument." Both its content and legal status reflected substantial American influence. Several State Department officials, including Roosevelt, John Foster Dulles, and legal advisor Ernest Gross even compared this pronouncement of ideals to the U.S. Declaration of Independence in its significance and purpose. The next logical step, according to them, was to draft a binding covenant of political and civil rights like those contained in the U.S. Constitution.\footnote{53}

The limited scope, content, and applicability of the Universal Declaration of Human Rights testified to the State Department's successful lobbying at the United Nations. Having
fought to prevent the human rights clauses of the U.N. Charter from impinging on national sovereignty and invalidating discriminatory domestic laws, Roosevelt, Acheson, and Truman sought the same goals for the declaration. Their first steps were to lobby for a human rights commission composed of governmental representatives rather than independent experts and equipped with no power to review petitions from U.S. civil rights organizations. Having achieved both, Roosevelt and her legal advisors next proposed that UNCHR draft a non-binding statement of primarily political and civil rights that was based upon the principles of American jurisprudence. The document approved by the U.N. General Assembly, which contained a minimum of economic and social guarantees, no enforcement mechanisms, and phrases liberally borrowed from the U.S. Constitution, pleased the Truman Administration enormously. Roosevelt and her legal advisors would now try to replicate their success as UNCHR members formulated a binding covenant.

As State Department lawyers pondered how to proceed on a covenant, though, they began to realize that they had embraced a legal cul-de-sac in discussions over the declaration, the charter, and human rights abuses in South Africa and the Communist bloc. Crafting a non-binding list of "guarantees" only temporarily solved the internal contradictions of U.S. human rights policy. The State Department now insisted that
the diverse membership of the UNCHR draft a binding treaty of American constitutional rights that it, and American courts, could nonetheless not enforce within the United States. The international consensus that had made the declaration possible was disappearing, though. France, India, and Australia, concerned that American moves to weaken the declaration masked a skepticism toward all binding human rights commitments, commenced pressing for a covenant that would permit individual petitions. A growing number of non-aligned, underdeveloped nations began to criticize Washington for polarizing human rights debates along Cold War lines and for refusing to attach economic and social guarantees to the covenant. In spite of these developments, the State Department continued to demand, for domestic political reasons, that any human rights treaty rigidly conform to current U.S. law. It was now up to Truman, Acheson, Roosevelt, and her advisors to discover a synthesis of progressive and reactionary domestic pressures, Cold War imperatives, and U.S. legal doctrine that could command the acceptance of a changing balance-of-power within the United Nations.
1. P. Bernard Young, editor of the Norfolk Journal and Guide, to Truman, 28 August 1945, White House Central Files, Truman papers, box 10, HSTL.

2. McDiarmid, "Status, Scope, and Functions of the Commission for the Promotion of Human Rights," 5 September 1945, Eleanor Roosevelt Papers, box 4575, FDRL. See also Notter to Ross and Hiss, 8 and 17 August 1945, Notter Papers, RG 59, box 9, NARA; and U.S. Delegation to the United Nations Preparatory Commission, "Tentative and Partial List of Topics for Discussion with Reference to the Economic and Social Council," 4 September 1945, Notter Papers, RG 59, box 273, NARA.


4. Nolde, "Memorandum Suggesting a Program of Action for the Commission on Human Rights of the United Nations Organization," 14 November 1945, Henry Atkinson, General Secretary of the Church Peace Union, to Roosevelt, 27 December 1945, Eichelberger to Roosevelt, 28 December 1945, and Walter White to Roosevelt, 28 December 1945, Eleanor Roosevelt Papers, box 4561, FDRL; and Truman to Roosevelt, 21 December 1945, Eleanor Roosevelt Papers, box 4560, FDRL. See also Constance Sporborg, Chair of the Department of International Relations of the General Federation of Women's Clubs to Eleanor Roosevelt, 28 December 1945, Eleanor Roosevelt Papers, box 4561, FDRL; Eichelberger to Truman, 23 December 1946, official files 421, box 1270, HSTL; and G. Bromley Oxnam, President of the Federal Council of the Churches of Christ in America, to Truman, 15 March 1946, official file 213, Truman papers, box 803, HSTL. Nolde expanded upon the points in "The Commission on Human Rights: Possible Functions," Annals of the
American Academy of Political and Social Science 243 (January 1946), 144-49. In 1945, the Commission on the Organization of Peace became the research arm of the American Association for the United Nations.


6. For biographies that cover Eleanor Roosevelt's life after her husband's death (though all examine her U.N. activities in barely adequate detail with the exception of Mower) see Jason Berger, A New Deal for the World: Eleanor Roosevelt and American Foreign Policy (New York: Columbia University Press, 1981); Allida Black, Casting Her Own Shadow: Eleanor Roosevelt and the Shaping of Postwar Liberalism (New York: Columbia University Press, 1996); Joseph P. Lash, Eleanor: The Years Alone (New York: W.W. Norton, 1972); Eleanor Roosevelt, On My Own (New York: Harper & Brothers, 1958); and A. Glenn Mower, Jr., The United States, the United Nations, and Human Rights: The Eleanor Roosevelt and Jimmy Carter Eras (Westport, CT: Greenwood Press, 1979, 11-52. For two excellent interviews of people who knew her well see oral histories of Durward Sandifer and Porter McKeever by Emily Williams, FDRL; and Arthur Vandenberg, Jr., The Private Papers of Senator Vandenberg (Boston: Houghton Mifflin Co., 1952), 240-41. For an intimate account of Roosevelt's human rights work by her legal advisor see Marjorie M. Whiteman, "Mrs. Franklin D. Roosevelt and the Human Rights Commission," American Journal of International Law 62 (October 1968), 918-21. Two examples of private dissent in addition to those examined here later were letters to Truman and Secretary of State George Marshall decrying the loyalty program and the American abandonment of the U.N. partition plan for Palestine respectively. She offered her resignation after the latter, but Marshall refused
to accept it. See summary of correspondence between Roosevelt and Truman, 13-26 November 1947, Official Files 85, box 533, HSTL; and Roosevelt to Marshall and Marshall to Roosevelt, 22 and 24 March 1948, Eleanor Roosevelt Papers, box 4560, FDRL.

7. Sandifer memo of conversation, 19 March 1946, and Proskauer to Stettinius, 19 April 1946, decimal file, 501.BD/3-1946 (1945-49), RG 59, box 2186, NARA; Sandifer to Hiss and Leroy Stinebower, 28 March 1946, and Sandifer and Kotschnig to Hiss, Stinebower, and Benton, 22 April 1946, subject files of Sandifer, lot file 55D 429, box 8, NARA; Ransom to Roosevelt, 4 May 1946, Roosevelt Papers, box 4587, FDRL; and Durward V. Sandifer, interview by Emily Williams, 27 April 1979, FDRL.

8. Hendrick, "Commission on Human Rights," 19 April 1946, and Ross to Hiss, "Commission on Human Rights," subject files of Sandifer, lot file 55D 429, box 8, NARA. See also Hiss to Acheson, 23 April 1946, decimal file 501.BD/4-2346 (1945-49), box 2186, NARA; and Sandifer to Roosevelt, 22 April 1946, Roosevelt Papers, box 4593, FDRL.


12. Summary of the Conference on Human Rights," 10 July 1946, and Dr. Metz Lochard, editor of the Chicago Defender, to Roosevelt, 25 October 1946, Roosevelt Papers, box 4587, NARA; and Channing Tobias, member of the N.A.A.C.P. Board of Directors et al to Truman, 19 September 1946, President's Secretary's files, White House central files, box 131, HSTL.


The working group included, in addition to Sandifer, Hendrick, Marjorie Whiteman from the department's legal office, specialist on dependent area affairs Elim Sady, William Brown from the Division of International Labor, Social, and Health Affairs, two representatives from the Justice Department, and a Department of Labor delegate.


Marshall's assertion that Article 2(7) controlled over Articles 55 and 56 of the Charter would not survive once U.N. members began to ratify the first of numerous human rights treaties. Those conventions implicitly and explicitly "internationalized" certain specific human rights, making domestic jurisdictional arguments increasingly suspect. For the benchmark ruling see the International Court of Justice, Advisory Opinion on Nationality Decrees Issued in Tunis and Morocco (1923), in 1 Hudson World Court Reports (Washington, D.C.: Carnegie Endowment for International Peace, 1934), 143-62.


22. Notter to Rusk and Thompson, 14 March 1947, Notter papers, box 10, NARA; and Thompson to Notter, Rusk, Miner, Kotschnig, and Hendrick, 18 March 1947, decimal file 501.BD/3-1847 (1945-49), box 2187, NARA.


International Bill of Rights," ISP D-95/47 20 June 1947, files of Subcommittee on Human Rights and Status of Women, RG 353, box 100, NARA.


27. Austin to Marshall, 26 June 1947, decimal file 501.BD 6-2547 (945-49), box 2187, NARA; and Marshall to Roosevelt, 8 July 1947, Notter papers, box 10, NARA. See also Drafting Committee on an International Bill of Rights, "Suggestions of the Drafting Committee for Articles of an International Declaration on Human Rights," in Drafting Committee on an International Bill of Rights, "Report of the Drafting
Committee to the Commission on Human Rights," 1 July 1947, E/CN.4/21, Annex F; and Hendrick to Fahy, Rusk, and Halderman, 22 and 23 June 1947, papers of James Hendrick, box 2, NARA.


30. Samuel DePalma, Office of International Organization Affairs to Marshall, 15 July 1947, decimal file 501.BD/7-1547, box 2187, NARA. See also Marshall to Wilson, 25 July 1947, and Rusk to Carr, 29 July 1947, decimal file 501.BD/6-547 (1945-49), box 2187, NARA; L.K. White of the Central Intelligence Group to Milton B. Stewart, Director of Research for the President's Committee on Civil Rights, 5 August 1947, White to Harry Krould of the State Department's Program Planning and Evaluation Board, 18 June 1947, and Krould to John Ottemiller, head of the State Department's Reference Division, 19 June 1947, papers of the President's Committee on Civil Rights, box 6, HSTL; President's Committee on Civil Rights memo to its subcommittee 1, 5 March 1947, papers of Philleo Nash, box 202, HSTL; Will Maslow, Director of the Commission on Law and
Social Action of the American Jewish Congress to the President's Committee on Civil Rights, 1 May 1947, papers of the President's Committee on Civil Rights, box 9, HSTL; and Carr to Rusk, 11 August 1947, decimal file 811.BD/8-1147 (1945-49), NARA.

Acheson's letter is quoted in Brief for the United States of America as Amicus Curiae, Shelley v. Kramer, 334 U.S. 1, 19-20.

31. President's Committee on Civil Rights, To Secure These Rights, 100; U.S. Constitution, Article VI, section 2; U.N. Charter, Article 55. See also ibid., 100-01, 110-11; Pratt, The Influence of Domestic Controversy, 98-100; Berman, The Politics of Civil Rights, 67-73; "Public Interest in the President's Civil Rights Program," undated, Niles papers, box 27, HSTL; and Justice Department to President's Committee on Civil Rights, "Federal Criminal Jurisdiction over Violations of Civil Rights," 15 January 1947, papers of David Niles, box 26, HSTL.


Brief of American Civil Liberties Union as Amicus Curiae on Petition for a Writ of Certiorari to the Supreme Court of the State of California, Fred Y. Oyama and Kajiro Oyama, Petitioners, in the Supreme Court of the United States, 1946, 6-9; American Civil Liberties Union, Brief of American Civil Liberties Union as Amicus Curiae on Writ of Certiorari to the Supreme Court of the State of California, Fred Y. Oyama and Kajiro Oyama, Petitioners, in the Supreme Court of the United States, 1947, 13-14; A.L. Wirin, Charles Horsky, and Ernest W. Jennes, Brief for Petitioners on Writ of Certiorari to the Supreme Court of California, Fred Oyama and Kajiro Oyama, Petitioners, in the Supreme Court of the United States, 1947, 52-53; David K. Niles, Administrative Assistant to the President to the President's legal counsel Clark Clifford, 8 April 1947, and George Elsey, Clifford's assistant, to Clifford, 19 May 1947, Clark Clifford files, box 1, HSTL; and Oyama v. California, 332 U.S. 633.


41. Hendrick to Kotschnig, 8 January 1948, subject files of Bureau of United Nations Affairs, lot file 55D 323, box 15, NARA; and Interdepartmental Committee on International Social

December 1947," ISP D-58/48, 23 April 1948, Roosevelt papers, box 4579, FDRL; and minutes of the Subcommittee on Human Rights and Status of Women, 1 April 1948, files of HRW, RG 353, box 112, NARA.

43. Quoted in Pratt, The Influence of Domestic Controversy, 117. See also New York Times, 3 and 26 February and 11 May 1948; Berman, The Politics of Civil Rights, 82-91; Pratt, The Influence of Domestic Controversy, 100-18; Shelley v. Kramer, 334 U.S. 1 (1948); N.A.A.C.P., "Declaration of Negro Voters," 27 March 1948, official files 413, box 1235, HSTL; and statement by twenty-one black organizations to the Platform Committee of the Democratic Party, 8 July 1948, Niles papers, box 27, HSTL.


46. DuBois to Roosevelt, 1 July 1948, Roosevelt papers, box 3337, FDRL. See also Richard Winslow of U.S. delegation to U.N. to Hendrick, 25 May 1948, and Lovett to U.S. delegation to United Nations, 22 April 1948, Roosevelt papers, box 4579, FDRL.


50. New York Times, 18 September 1948. See also American Bar Association, "Report and Recommendations to the House of Delegates by the Committee on Peace and Law Through United Nations with Action Voted by the House of Delegates upon the


Hendrick left the Office of U.N. Affairs in late June due to disagreement with Kotschnig over the quality of the former's work. See Hendrick memo, September 1978, "Report of Efficiency Rating" for Hendrick, 31 March 1948, and Hendrick's handwritten comments on Rusk to Hendrick, 7 July 1948, Hendrick papers, box 2, HSTL.


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CHAPTER 5

OPPOSITION AT HOME AND AT THE U.N., 1948-1951

The decision by the United Nations Commission on Human Rights (UNCHR) to complete the Universal Declaration postponed the debate between the United States and other commission members over the content and implementation of a binding human rights covenant and gave American neo-isolationist groups time to mobilize opposition to the treaty. As with the declaration, Roosevelt and State Department lawyers strove to craft a document that would consist of only the political and civil rights guaranteed by the U.S. Constitution. Worries that other nations would inject additional provisions, combined with a need to protect domestic discrimination statutes, led them to propose weak enforcement schemes, a federal-state article, and a non-self-executing clause. These amendments would create obstacles to the domestic implementation of the covenant. Roosevelt successfully persuaded UNCHR members to incorporate these recommendations into a Covenant on Human Rights.

By late 1950, however, American human rights policy began to come under attack in the United Nations and at home. A
coalition of Communist and underdeveloped, non-aligned nations, which constituted a majority in the Economic and Social Council (ECOSOC) and the General Assembly, voted to add economic guarantees, the right of self-determination, and detailed enforcement mechanisms. Concurrently, American secular and religious human rights activists demanded that the State Department attach economic and social rights and allow individuals and NGOs to petition the U.N. for redress of human rights violations. These changes, in turn, prompted a growing number of U.S. congressmen and private organizations to criticize the covenant. Senator John Bricker (R-OH) and the American Bar Association (ABA) urged the U.S. to reject all human rights treaties, predicting that they would spread communism, overturn segregation laws, and create a strong national government at the expense of states' rights. President Harry S. Truman's dual response, which required the State Department to fight harder in the UNCHR for conservative U.S. proposals while it deflected domestic and foreign criticism by decrying human rights violations in the Soviet bloc, was largely ineffective. Bricker's crusade soon forced the incoming administration of President Dwight D. Eisenhower to make major changes to American human rights policy.
Eleanor Roosevelt and her advisors James Simsarian and Durward Sandifer could not have predicted these troubles prior to 1948, because up to that point the UNCHR had largely adopted American proposals for a human rights covenant. Although the State Department had wanted the UNCHR to complete the declaration first, a majority of commission members voted in late 1947 to work on both simultaneously. In anticipation of this decision, members of the State Department's Committee on International Social Policy (ISP) and its Subcommittee on Human Rights and the Status of Women (HRW) labored for months before submitting a draft treaty to the UNCHR on 26 November. As with early American proposals for a declaration, it essentially re-stated the procedural, political, and civil rights enshrined in the Constitution. Its status as a binding treaty, though, meant that the State Department had to be very cautious in proposing non-discrimination articles and implementation schemes. In order to obtain Senate ratification, HRW and ISP members knew, the treaty's contents and any U.N. enforcement bodies must not mandate desegregation, enfranchisement, or legal equality. Both bodies soon suggested legally creative, though at times questionably effective, measures that would condone or permit the worst forms of racial discrimination. Their proposals included a
vaguely-worded non-discrimination clause, a plan for non-binding enforcement machinery, and a federal-state clause, all of which the UNCHR would approve for the covenant in late 1947.¹

As with prior discussions over the human rights declaration, fears of ISP and HRW members that the U.S. would face foreign condemnation or legal nullification of its Jim Crow laws led them to insert weak non-discrimination articles in their draft treaty. Worried that hostile Southern Senators would prevent the ratification of any human rights treaty, State Department Legal Advisor Howard Fahy and Dean Rusk of SPA even fought to omit a non-discrimination article entirely. On 1 July, a fractured HRW agreed to postpone discussion until it could discern the views of other nations. The decision of the UNCHR's Drafting Committee in late 1947 to include such a provision forced HRW to re-examine its position. After sharp debate, HRW and ISP approved a clause similar to Article I of the U.N. Charter, which did not state a right but merely affirmed the principle that all people should enjoy the enumerated freedoms regardless of race, sex, language, or religion. The UNCHR covenant working group ratified the basic thrust of the U.S. proposal in December.²

To avoid the possibility that domestic courts might use even this weak clause to invalidate Jim Crow laws, State Department officials sought to emasculate any enforcement
plans. Secretary of State George Marshall and Roosevelt wanted nations to fulfill only limited implementation requirements, such as submitting to non-binding mediation, filing reports on their own enforcement progress, and encouraging other nations to incorporate human rights into their constitutions. ISP and HRW fused these demands into a complicated but conservative implementation scheme. Under it, covenant signatories could file complaints that a UNCHR subcommittee would discuss secretly with the parties involved. If mediation failed, the full UNCHR could ask the ECOSOC, International Court of Justice, or General Assembly to take further action. Signatories also had to submit biennial reports to the Secretary-General on their progress in implementing the treaty. In December 1947, the UNCHR's covenant and implementation working parties voted to accept the substance of these proposals for further study.3

Marshall, Rusk, and Under Secretary of State Robert Lovett above all did not want any covenant enforcement body to consider petitions from private individuals. Fearing embarrassment and damage to America's image as the leader of the free world if their own citizens petitioned the U.N., they refused to compromise despite strong internal and foreign support for such a right. The Secretariat's 1947 bill of rights and reports by the UNCHR's working group on implementation all permitted petitions lodged by individuals
and NGOs. Even HRW members disagreed with their superiors. After concluding that the risks of allowing petitions were worth taking because, on human rights issues, "the difficulty with the United Nations to date has not been that it went too far but that it did not go far enough [so that] inaction has proven to be a worse danger than action," the HRW approved on 24 October a British plan that admitted individual petitions. Rusk and Lovett had the final word, though. Just one month after the NAACP's unsuccessful petition confirmed their fears, and without notifying the HRW, they struck all pro-petition language from Roosevelt's position papers before the UNCHR convened in November. The UNCHR drafting committee turned aside American objections, though, and voted to allow petitions under the covenant a month later.⁴

State Department officials also debated the utility of supporting a federal-state clause, which would erase many of the national government's obligations to enforce the covenant. The 1947 U.S. proposal to the UNCHR, borrowed from the International Labor Organization's (ILO) Constitution, stated that federal authorities would enforce all provisions currently under their jurisdiction, and they would ask state governments to enforce rights that fell under the latter's domain. Roosevelt and Marshall publicly asserted that it would prevent the federal government, under the guise of enforcing the covenant, from infringing on powers reserved to the states
under the Constitution's Tenth Amendment. Privately, most HRW members touted the clause's political importance in reassuring conservative senators from the South and Midwest that the treaty would not upset segregation statutes or create a more powerful federal government. This debate merged with a larger discussion over the intersection of state and federal power. By the late 1940s, the U.S. Supreme Court had only partially applied the Bill of Rights, via the Incorporation Doctrine of the Fourteenth Amendment, to the states; the enforcement of procedural and civil constitutional rights fell mostly to state governments. The federal-state clause would maintain this separation of powers, Roosevelt and Marshall believed, and leave covenant enforcement largely to the discretion of officials from the forty-eight states.\(^5\)

Not all Truman Administration officials agreed that a federal-state clause would protect states' rights, however. By examining legal precedents, State Department lawyer Marjorie Whiteman identified two constitutional limits on the treaty-making power. First, as cited by U.S. Supreme Court justices repeatedly in dicta, treaties could not invalidate any part of the Constitution. Second, she agreed with John C. Calhoun that treaties were "strictly limited to questions \textit{inter alios}; that is, to questions between us and foreign powers which require negotiations to adjust them." The covenant met the latter requirement, but did its contents unconstitutionally
federalize powers granted to states? Whiteman cited the blockbuster 1920 case of Missouri v. Holland to answer in the negative. In validating a treaty with Great Britain that protected migratory birds, the Court ruled that congressional legislation that implemented a treaty could override state statutes even if the Tenth Amendment forbade such federal laws in the absence of a treaty. Given the international importance of the subject, Justice Oliver Wendell Holmes stated, the treaty was not "forbidden by some invisible radiation from the general terms of the Tenth Amendment." This case made a federal-state clause legally anachronistic and useless, Whiteman concluded, for Congress had the power to enforce a human rights covenant. But, she added, it might be politically necessary to reassure states' rights senators.⁶

HRW members Robert Carr of the President's Committee on Civil Rights and Labor Department delegate Rachel Nason went further to argue that a federal-state clause was dangerous. If some state governments balked at enforcing the covenant in order to protect racial discriminatory laws, they asserted that other nations would charge Washington with evading its international obligations. After a long and pointed debate, the HRW was unable to discover a textual compromise that could protect racist statutes for political reasons, America's human rights credibility for diplomatic reasons, and the Tenth
Amendment for perceived constitutional reasons. Instead, it turned for guidance to the Justice Department, where one official, agreeing with Whiteman, told the HRW that a federal-state clause had only political, and not legal, ramifications. A majority in HRW, believing that a provision was both legally and politically necessary, agreed to recommend the ILO formula to the UNCHR. By rejecting Whiteman's analysis, the HRW asserted that it was not "sound policy" to nationalize civil rights issues immediately; a federal-state clause might temporarily prevent domestic courts from using the treaty to invalidate racial discrimination. In December 1947, the UNCHR approved the federal-state article. Again, the State Department revealed its hypocrisy by proposing what was probably (though they hoped otherwise) a legal smokescreen to protect de jure discrimination.

Despite the UNCHR's adoption of American enforcement, non-discrimination, and federal-state proposals, the State department and private groups renewed their opposition to petitions and sought still weaker clauses that would protect Jim Crow statutes in early 1948. Truman's falling domestic popularity and the need to unify Northern and Southern Democrats behind his re-election bid all argued for striking provisions that might embarrass the nation or alter U.S. law. Lovett and Rusk, fearing humiliation at the U.N. after the
NAACP petition fiasco, renewed their opposition to individual and NGO petitions, as recommended by the UNCHR drafting committee. On 25 February 1948, the ABA's House of Delegates agreed with the State Department, obliquely calling the proposal a "pandora's box of international friction and provocations." Only the Interior Department, worried that the omission itself would bring scorn upon the U.S., dissented. Faced with internal division and hoping to avoid international criticism, Truman deleted from the published American critique of the covenant the State Department's anti-petition statement. On 1 May 1948, citing the need to "preserve the integrity of domestic jurisdiction," Truman initialled a separate, secret statement that rejected petitions.⁹

HRW and ISP members also sought to bring the covenant's non-discrimination articles, as their instructions to Roosevelt summarized without irony, "in general accord with the Constitution and law of the United States." After long and contentious debate on whether granting freedom of residence would nullify restrictive covenants, the HRW decided to delete the guarantee if UNCHR members agreed. Cognizant that no federal court had ruled that segregation violated the Fourteenth Amendment, it recast a freedom from discrimination article into an equal protection guarantee. HRW and ISP members also struck a ban on arbitrary discrimination, stating it was impossible to identify the laws that the clause might
invalidate. Even adding the basic right to participate in
government, which would mandate the enfranchisement of blacks
in the South, troubled members. When Hendrick asserted that it
was "inconceivable that the U.S. Senate would accept a
covenant which included such a provision," Daniel Goldy from
the Interior Department replied that its omission would rob
the U.S. of a sword with which to attack the Soviet Bloc.
After a tie vote, ISP asked Lovett to settle the impasse. He
concluded that Roosevelt should not introduce such an article
and should oppose its inclusion unless unilateral American
opposition would be "embarrassing." 9

Not satisfied with making revisions to specific articles,
HRW and ISP members proposed to transform the covenant into a
second non-binding human rights declaration by adopting
changes to whole document. They proposed to delete from the
UNCHR's 1947 draft provisions that obligated signatories to
incorporate the rights into domestic law and to permit
judicial authorities to enforce it. Even more ominous, the HRW
declared that Article 2(7) of the U.N. Charter controlled over
the entire covenant, thereby defining as domestic matters most
of the complaints that nations would file in the UNCHR. The
ISP agreed to these changes, stating that the covenant should
"not expand the authority of the United Nations in the human
rights field." Instead, nations should only promise to protect
the enumerated rights "through appropriate laws and
procedures." Further diluting the covenant, the ISP and the HRW passed a general limitation clause that allowed countries to restrict all rights in order to preserve "peace, order, security, or the promotion of the general welfare." With Lovett's and Truman's approval, the State Department forwarded these "minimum positions" to other UNCHR members in advance of the body's spring 1948 session.\(^\text{10}\)

Worried by weeks of this legal-wrangling that generated forty pages of covenant analysis, the Justice Department proposed yet another wall to protect inconsistent federal and state laws: a non-self-executing article. The proviso would make the covenant unenforceable domestically until Congress had translated all or part of it into federal statutes. Under U.S. law, the federal judiciary examined a treaty's contents and the intent of its drafters to ascertain if it could enforce the treaty directly (making it self-executing) or if it must wait until Congress had incorporated the treaty into federal statutes (non-self-executing). To avoid any misinterpretation, the ISP and the HRW desired to define the covenant's contents as non-self-executing in the text. Although ISP members worried that any delay by Congress in applying the ratified covenant might cause "serious embarrassment," they understood, particularly after the Oyama ruling on the U.N. Charter, the political and legal need for
congressional input. The non-self-executing clause, like the federal-state article, soon became a lightning rod for criticism by other nations who charged the U.S. with trying to evade its covenant responsibilities.11

Due to the presence of the U.S., Great Britain, France, Lebanon, China, and Chile on the eight-nation drafting committee, most of the State Department's proposals found a receptive audience. The body, meeting in May 1948, approved texts for non-self-executing, federal-state, and equal protection clauses. Because strong British, Australian, and Chilean objections blocked passage of a general limitation clause, the committee appended to each article all of the exemptions proposed by U.N. members (twenty-five alone for the freedom of information article!). The drafting committee referred consideration of enforcement plans, including petitions, to the full UNCHR, which convened in late May. But the discussion on all aspects of the covenant had to wait until 1949, as the UNCHR spent its entire spring session finalizing the human rights declaration.12

Finally satisfied that the covenant mirrored the Bill of Rights and contained several obstacles to its domestic enforcement, the HRW now struggled to find a politically acceptable implementation scheme. France and Australia had already proposed to create small committees or a human rights court to hear complaints, and the U.N. Secretariat had even
submitted a detailed petition plan. The State Department needed a credible, but more impotent, alternative. To meet possible congressional objections, HRW members knew that any plan had to exclude petitions, omit any provision for on-site investigations, make all findings by U.N. bodies non-binding, and refer all unsolved disputes to the International Court of Justice (whose jurisdiction the U.S. recognized only on a case-by-case basis). By early December, the HRW had replaced its 1947 mediation plan with a proposal that allowed a complaining state to file a suit before the ICJ if informal U.N.-brokered negotiations failed. The new proposal dovetailed with ABA opposition to the creation of any supranational enforcement bodies, as reaffirmed in a September House of Delegates resolution and nation-wide speeches by the ABA's new president, Frank Holman.13

Although Roosevelt predicted that passage of the human rights declaration would allow nations "to move on with new courage and inspiration" to complete and ratify a treaty, the State Department worried that the Senate might defeat those hopes. The 1948 elections, although favorable to the Democratic Party, did not diminish the combined strength of isolationist Midwestern and Southern legislators. Sandifer, Simsarian, and Whiteman, working with the Justice Department, began plotting political strategy in meetings with ABA leaders and with senators John Connally (D-TX) and Arthur Vandenberg
(R-MI). They would fight hard for federal-state, general limitation, and non-self-executing clauses and for a weak non-discrimination article, they reassured the lawyers and legislators. In a 14 January briefing, Foggy Bottom informed and solicited the views of 170 NGOs. Their members, Hendrick and Roosevelt hoped, would form the core of a covenant ratification drive. Realizing it would take time to mobilize foreign and domestic support for these changes and the covenant as a whole, they recognized as early as January 1949 the need to delay U.N. passage of the treaty for two years.\(^{14}\)

Despite the briefing by Whiteman, Sandifer, and Simsarian, relations between the State Department and the politically powerful ABA began to deteriorate over the covenant. The ABA leadership and many of its most active members had for decades held very conservative political views. Part of the reason lay in the nature of a profession that demanded respect for precedents and rarely supported challenges to the legal status quo. As a cause and reflection of that conservatism, the organization admitted few African Americans (thirteen of 41,000 total ABA members in 1949). To maintain that tradition, all prospective candidates had to identify their race on the membership application, a provision retained by the House of Delegates in a 1949 vote, and four negative votes from the sixteen-member Board of Governors could block admittance. Moreover, typical ABA members lived in
small towns and handled civil cases in state district courts. Thus they had little or no exposure to international law, foreign policy issues, or the discrimination suffered by racial minorities. The combination bred skepticism toward the Truman Administration's treaty-based human rights policy. The doubts soon turned to anger and disgust once Holman and other ABA leaders began to exaggerate the revolutionary changes that the covenant would force upon American jurisprudence.  

The ABA backlash against the covenant started after Marshall rebuffed Holman's demand to postpone a U.N. vote on the declaration until ABA lawyers could review it. In the months following, Holman used educational meetings, co-sponsored with the State Department, and articles in ABA publications to inveigh against passage of the covenant. The House of Delegates approved a Holman-supported resolution on 31 January 1949 that censured the State Department for hastily supporting the declaration and called for a one-year study of the more complicated issues raised by the covenant. Holman and other ABA leaders worried that the treaty would erode national sovereignty, create a world government, and replace the Constitution with a vaguely-worded bill of rights imposed and enforced by foreign bodies. Although Sandifer, Tate, and Whiteman offered to participate in two dozen regional meetings with ABA members, Holman lamented that only one would occur before the department's 15 February deadline for submitting
covenant critiques. Subsequent attacks on the treaty by Holman and others were so strident that it appeared to some that the ABA had "fallen into the hands of a lot of crotchety old men approaching senility." ABA member (and future Secretary of State) John Foster Dulles more tactfully called their demand for prior review of the covenant untenable.\(^{16}\)

As if opposition from the ABA wasn't enough to handle, Simsarian, Tate, and Sandifer also had to fight liberal Interior and conservative Justice department objections to the covenant's most controversial articles. Some in the Interior Department wanted the covenant to apply automatically to all dependent territories of signatory nations, a position Sandifer and Simsarian knew would anger America's colonial allies. The HRW voted to table this proposal and a plan by the Interior Department to allow petitions. To reassure states' rights senators, Justice Department official George Washington proposed weakening the federal-state article to let Congress, and not the executive or the judiciary, determine which parts of the covenant federal and state governments would implement. He also endorsed an ABA suggestion that Congress pass legislation to implement each individual covenant provision. Simsarian objected that such a process "would be so vast that Congress would probably never finish its job" and the delay involved would embarrass the U.S. internationally. Tate, rejecting what he termed an ABA "blocking tactic," knew that
any change in the federal-state clause would cause suspicion in the UNCHR. In the end, the ISP overrode Washington, though Acheson had to intervene to ensure the outcome.  

While his lawyers whittled away at the covenant, the Secretary of State began to criticize human rights violations by Soviet bloc nations. Acheson had already responded militarily to the expansion of European communism with the Berlin airlift and the formation of NATO, but he also wanted to battle communism ideologically through diplomacy. The catalyst was a decision by the Hungarian government to arrest Joseph Cardinal Mindszenty on charges of sedition. The National Conference of Christians and Jews and the U.S. Senate quickly passed resolutions urging Acheson to organize a U.N. condemnation of Eastern European communist governments for imprisoning and killing political and religious dissenters. Bolivia and Australia agreed, citing the U.N. charter's human rights clauses to justify General Assembly action. Although sympathetic, Acheson opposed such a move that might lead to a U.N. denunciation of U.S. racial discrimination. Besides, the State Department had consistently argued that the charter's article 2(7) prevented the U.N. from addressing human rights violations in specific nations. Acheson told Warren Austin, the U.S. assembly delegate, to accuse the governments of Bulgaria, Hungary, and Rumania of violating World War II peace treaties with the Allies instead, under which they promised to
guarantee religious liberty and freedom of expression. The gambit worked, as Austin persuaded the body to discuss the issue as an inter-state treaty dispute, and not an abridgement of the charter's human rights provisions.\textsuperscript{19}

Other nations, readily agreeing with Acheson's reading of the charter, joined the U.S. to express the U.N.'s first rebuke of a country's human rights record. After Hungary and Bulgaria categorically denied Acheson's charges, the assembly's Ad Hoc Political Committee, in a series of meetings, discussed possible courses of action. Benjamin Cohen, the U.S. delegate, awkwardly asserted the assembly's right to discuss human rights violations under WWII peace treaties but not the U.N. Charter. Nevertheless, the committee approved a resolution, passed a week later by the General Assembly, that expressed "deep concern" about human rights abuses in Hungary and Bulgaria and commended the U.S. for basing its case on the WWII peace treaties. Acheson announced that he would begin the formal treaty grievance procedure.\textsuperscript{19}

Despite this U.N. victory, careful observers of the UNCHR's 1949 sitting began to witness an anti-American backlash underneath the otherwise U.S.-dominated debate. The committee spent most of the session between 9 May and 20 June polishing the list of civil and political rights from its 1948 draft. Roosevelt lobbied to add a general limitation clause that allowed derogations "reasonably necessary" to protect
other rights, national security, and the general welfare. The text, she proposed, would replace over one hundred exceptions proposed by UNCHR members to specific articles. When the British objected that such a clause would render the entire document meaningless, Roosevelt replied that enumerating specific exceptions "would give the impression that the limitations were being emphasized rather than the right itself." As the UNCHR waded through each article, though, she was able to find a middle ground by attaching specific, concise exceptions that encapsulated American jurisprudence. The UNCHR also unanimously approved the covenant's first non-self-executing article. But the victories were tenuous. Foreshadowing a bitter debate, the Western bloc defeated by only one vote (as most non-aligned nations abstained) a Soviet effort to attach economic and social rights to the covenant.20

In another sign of increasing unhappiness with State Department positions, NGOs and other nations continued to propose strong covenant enforcement mechanisms. ISP again proposed in April 1949 to create a fact-finding committee that would mediate complaints of alleged covenant violations brought by signatories and issue non-binding recommendations. France, joined by Asian, Latin American, and Middle Eastern nations, argued that the U.N. could not rely solely on foreign governments to raise cases of human rights abuses. The American Civil Liberties Union (ACLU), the American Federation
of Labor (AFL), and human rights activists James Shotwell, Clark Eichelberger of the American Association for the United Nations (AAUN), and Dulles agreed, the latter characteristically stating that governments, which lacked "souls," made poor human rights advocates. Only hard lobbying by the United States and the Soviet Union prevented, in a tie vote, the covenant from allowing individuals to petition the U.N. The strange alliance was possible because Soviet bloc, which opposed sacrificing any national sovereignty to the world body, wanted to exclude all implementation machinery. Deadlocked, the UNCHR decided to forward all enforcement plans and the rest of the covenant to U.N. member governments for comment. Commission members hoped that they, the ECOSOC, and the assembly could revise and pass the covenant in 1950.21

Embarrassed by denunciations of American human rights abuses by the Soviet bloc in debates over the covenant and human rights in Eastern Europe, the State Department endorsed Truman's cautious civil rights program. Congress, with Dixiecrats leading key committees, had bottled up the president's proposals to ban poll taxes, establish a Fair Employment Practices Commission, and strengthen existing civil rights laws. Frustrated by this inaction, the State Department tried to inform Congress of the damage racism caused to the nation's image abroad. In a letter to all members of the House of Representatives, for example, Gross bluntly stated that the
Department was "frequently embarrassed by the apparent conflict between the principles of nondiscrimination and the protection of human rights...and instances of discrimination which occur in this country." To answer such humiliating charges in the UNCHR, the HRW also prepared an outline that Roosevelt used to describe recent political and economic progress by African Americans. In addition, the Justice Department, with State's input, continued to file amicus briefs in civil rights cases. Segregation "has furnished material for hostile propaganda," Solicitor General Philip Perlman wrote to the U.S. Supreme Court for the plaintiff in Henderson v. U.S., "and raised doubts about our sincerity even among friendly nations." ²²

When none of these efforts led to congressional or judicial action, Acheson sought to deflect foreign attention and score Cold War propaganda points by pursuing charges of peace treaty violations against Bulgaria, Hungary, and Romania. After the three denied Acheson's allegations of 2 April by claiming a sovereign right to punish fascists and enemies of "democracy," the secretary invoked the treaty dispute resolution process. It required the creation of commissions staffed by an American, a delegate from the Communist nation involved, and a third either chosen by the two sides or the U.N. Secretary-General. The three countries
and the Soviet Union continued to deny the allegations, published newspaper articles on U.S. human rights abuses, and refused to appoint delegates to the commissions. Acheson again went to the General Assembly, and in an impassioned speech to the Ad Hoc Political Committee, Benjamin Cohen deplored a pattern of a minority group seizing the instrumentalities of government through force and intimidation and maintaining itself in power through the suppression of every one of the human rights and fundamental freedoms which these states have so solemnly undertaken to observe.

Cohen then asked the assembly to authorize the ICJ to decide if a legitimate dispute existed under the peace treaties and if so, if the commissions could discuss the human rights abuses without a delegate from the nation involved. The body overwhelmingly passed such a resolution on 22 October.

Ironically, the pursuit of a Cold War-focused agenda left American diplomats ill-prepared by 1949 to respond to a gradual shift in the U.N. balance-of-power. The U.S.-led European, Latin American, and Asian non-communist coalition now commanded fewer votes than the union of independent, non-aligned nations that often voted with the Soviet bloc. HRW members worried most about the latter's support for economic and social rights and petitions from aggrieved individuals and NGOs. As the price of tabling a move during the UNCHR's 1949 session to add economic and social rights, Roosevelt had promised to discuss them in 1950. The HRW quickly agreed that differing levels of development and divergent ideas on the
proper role of government in fulfilling such guarantees made international agreement problematic. Given the tight timetable for completing the covenant, HRW members recommended placing such guarantees in a second covenant or in a separate protocol to the original covenant. They soon expanded on the latter, proposing to put the petition, non-self-executing, federal-state, and non-discrimination articles in different protocols that nations could accept or reject. Steering these articles into appendices, HRW members predicted, would allow the UNCHR to approve the covenant quickly in 1950 and would allow the Senate to reject the more controversial components. For example, the U.S. "was not likely to become party to such a protocol" on petitions, Kotschnig reassured John Boyd, the First Secretary of the British Embassy in Washington.\(^{24}\)

Expecting this new atmosphere to influence the covenant's final contents, ABA and State Department lawyers cautiously predicted the treaty's impact on the nation's complicated, federalist system of government. Chairman Carl Rix of the ABA's Peace and Law Committee asserted that the covenant could recast the current balance of state and federal jurisdiction. He wondered if the powers of the U.N. and the federal government would grow in order to enforce the treaty, thereby eroding the sovereignty of nations and the forty-eight states. Rix speculated that federal courts would rule parts of the covenant self-executing, and thus allow unelected judges to
invalidate, under the Constitution's treaty supremacy clause, prior acts of Congress, state laws, and state constitutions. Given these possibilities, he prophetically hypothesized, only a constitutional amendment that made all treaties non-self-executing would safeguard the status quo.²⁵

The ABA's opposition almost unmasked the tortured reasoning used by the State Department to support a federal-state clause. Marjorie Whiteman privately agreed with Rix, explaining to Roosevelt that, given the Missouri decision, the covenant would nullify all inconsistent state constitutions and laws. But, she stated, for reasons unexplained, it would not alter the balance of federal and state powers. Therefore, she concluded, a federal-state clause was unnecessary but for political reasons: so the department could "tell the Senate that the covenant does not disturb States' rights." When law professor Quincy Wright asked why the department would propose a legally meaningless provision, Simsarian responded that "it will be appreciated that important political considerations are involved." Whiteman, though, refused to send this reply, substituting a note thanking Wright for an "interesting letter." This initial skirmish was significant in two ways. It demonstrated the defensiveness of State Department lawyers in responding to critics and marked the first detailed explanation by covenant opponents of the need for a
constitutional amendment to minimize the internal legal effects of human rights treaties.26

Acheson and Roosevelt, expecting tough opposition from non-aligned and Communist nations in the ECOSOC and General Assembly, pressured allies in the smaller, Western-dominated UNCHR to exclude petitions and economic rights and to add general limitation and non-self-executing articles. After the secretary lobbied Paris to reign in pro-petition delegate Rene Cassin, the French government agreed to place petitions in a separate protocol. The British, who favored detailed lists of exceptions to the right to life and to the procedural rights of criminal defendants, rejected a U.S. move to replace them with a vague ban on "arbitrary" governmental acts. London preferred no covenant, U.S. minister Julius Holmes warned, to one that contained such vague and easily abused language. Both sides found compromise impossible, even after Roosevelt submitted a lengthy list of additional exceptions to show the absurdity of British policy. Great Britain also asserted that a non-self-executing article was unnecessary since, they professed, nations could not ratify a treaty unless and until their domestic laws adapted to the treaty's requirements. Contending that it would be impossible to reform U.S. law before ratification, Acheson claimed that such a view would prevent American accession to the covenant. U.S. diplomats
also strongly urged the Philippine, Chilean, Lebanese, and Uruguayan governments to omit economic and social rights.\textsuperscript{27}

While the State Department worked privately to dilute the covenant, Acheson again publicly used the U.N. twice to criticize Communist bloc human rights violations. In November 1949, the Soviet Union introduced a General Assembly resolution rebuking the U.S. and Britain for preparing for World War III by launching a new arms race, raising military budgets, and building a global chain of military bases. London and Washington responded with their own "Essentials of Peace" proclamation, which called on all nations to settle disputes by negotiation, cooperate with U.N. mandates, and respect human rights. The assembly's First Committee decisively rejected the Soviet resolution on 25 November. The U.S.-British text, though, sailed through on the same day and passed the General Assembly on 1 December. A month later, after again urging Bulgaria, Hungary, and Rumania to cooperate in settling their human rights dispute, Acheson asked allies around the world to make oral or written statements before the ICJ. The court ruled on 30 March that, because a legitimate international dispute existed under the treaties, the three nations had to appoint treaty commission delegates to resolve the conflict. The court awaited a reply from all parties before it would rule whether the commissions could proceed absent representatives from the three East European nations.\textsuperscript{28}
The 1950 UNCHR session marked the climax of U.S. human rights influence as delegates adopted a general limitation clause, rejected petitions, and agreed to place economic and social articles in a separate covenant. One reason was the absence of the Soviet delegate, who had left after the body refused to seat a representative from Communist China. After adding to Britain's list of restrictions to the rights to life and liberty (including some British law recognized but London had omitted!), the body deleted both. The U.S.-U.K. enforcement plan, which allowed states to bring charges before ad hoc human rights committees, received much criticism from other nations and NGOs. France and several non-aligned nations attacked the committees' inability to issue binding recommendations or investigate alleged violations. The International League for the Rights of Man and World Jewish Congress faulted the omission of petitions. In a compromise that Roosevelt proposed, the UNCHR created a permanent committee of private individuals to discuss complaints submitted by covenant signatories. Nations could allow the body to receive petitions from their citizens only if they ratified a separate protocol. Finally, the UNCHR voted to draft, in consultation with the ILO, World Health Organization, and other specialized agencies, a separate treaty of economic and social rights in 1951. The only
disappointment was that UNCHR members postponed a vote to add a federal-state clause.  

Roosevelt and the State Department had no time to relish their success because their drafting policies had fed a domestic backlash from both liberal human rights activists and reactionary lawyers and congressmen. As the UNCHR met, the AFL, the Catholic Association for International Peace, the American Jewish Committee, and the American Association for the United Nations (AAUN) implored Simsarian and Whiteman to place individual and NGO petitions and economic and social rights in the covenant. Rabbi Irving Miller of the American Jewish Congress warned that a covenant without the former would be "gravely defective and likely to remain largely ineffective." Hickerson and his advisors worked out a compromise: the U.S. would support (but not propose) a General Assembly resolution asking the UNCHR to study the issue further. This did not satisfy UNCHR consultants such as the World Jewish Congress and the International League for the Rights of Man, who continued pressing for petitions, an investigative body to probe alleged human rights abuses, and the inclusion of economic and social rights. At no time did Roosevelt or her advisors consider adopting these measures, especially as petitions from American civil rights groups that condemned lynchings, loyalty oaths, and McCarthyite purges arrived in the UNCHR.  

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Critics on the right from the ABA and Congress renewed their attacks on the covenant after a California appeals court ruled on 24 April that part of the U.N. Charter was self-executing. In *Sei Fujii v. California*, the court found that the charter's human rights provisions invalidated part of the California Alien Land Law, which banned some Japanese aliens from owning land. Reaction came quickly from columnists, politicians, and lawyers who warned that *Sei Fujii* allowed the U.N. to intervene in American internal affairs. *New York Times* writer Arthur Krock wondered if courts could cite the charter to implement Truman's civil rights program. If he had known about the *Sei Fujii* decision in 1945, Senator Connally stated, he would have voted against charter ratification. Rep. Paul Shafer (R-MI) made a similar point to his colleagues. "Our sovereignty," he stated, "is too sacred to be lightly tossed away for a mess of international pottage." To Holman, the charter, Universal Declaration, and future "blank check" human rights treaties could allow a foreigner to become President, overturn race-based immigration laws, and change the federal government "from a republic to a socialistic and centralized state." The opposition had turned from philosophical to polemical, but its leaders had not yet chosen Rix's idea of sponsoring a constitutional amendment to prevent the domestic enforcement of human rights treaties.31
Roosevelt and her advisors, caught off-guard by Sei Fugii, struggled to defend the non-binding nature of the charter while defending their work on a binding covenant. It was a most awkward and delicate task. Complicating this assignment, the ISP had disbanded and the HRW had become inactive due to interdepartmental rivalries that had existed from its inception, leaving the State Department to set policy by itself. Sandifer and Notter rejected a suggestion by Simsarian and Kotschnig that Roosevelt testify before the U.N. Subcommittee of the Senate Foreign Relations Committee. They thought her appearance might ensnarl the covenant in the Sei Fujii backlash and the ongoing filibuster over Truman's proposed FEPC, especially since the treaty lacked a federal-state article. Simsarian tried to downplay the omission in the State Department Bulletin,

"Although the United States is not prepared to undertake all the obligations of the Covenant...[it will] undertake as many of the obligations of the covenant as are determined in accordance with the constitutional processes of the United States to be appropriate for federal action."

After learning that the Justice Department planned to file a Sei Fujii amicus brief in the California Supreme Court, Tate submitted a memo arguing the non-self-executing nature of the charter and Universal Declaration. One event did please the department's lawyers: The U.S. Supreme Court decided three
civil rights cases on 5 June, including *Henderson v. U.S.*, without any reference to the U.N. Charter's obligations.\textsuperscript{32}

At this critical juncture in domestic politics, the ECOSOC and the ICJ dealt the State Department two severe setbacks. American opposition to adding petitions and economic and social rights and its demand for a federal-state article had nourished dissent in a bloc of non-aligned nations. Instead of voting to send the covenant to the General Assembly without comment, as it had done in 1949, the larger, diverse ECOSOC held two weeks of substantive debate on these three issues in July and August. The proceedings shocked the State Department's lawyers, as even some allies rejected their positions. When the ECOSOC voted (over strong U.S. objections) to ask the assembly, most of whose members were non-aligned, to discuss the three issues at its fall session, U.S. delegate John Cates warned, "we must have a complete review of our whole position on the Covenant." The department implored its ambassadors to lobby for a reversal of the ECOSOC's instructions. A growing domestic campaign against the Genocide Convention, then before the Senate, and an International Court of Justice ruling on 18 July against the U.S. in its human rights dispute with Hungary, Bulgaria, and Rumania added to the gloom. The peace treaty mediation system could not proceed, the ICJ decided, until all parties to the dispute had
appointed commission members. As the three Communist nations refused to do so, the ICJ forced Acheson to stop his use of the WWII treaties to condemn their human rights abuses.\textsuperscript{33}

The 1950 session of the General Assembly, which passed resolutions on human rights in Eastern Europe, South Africa, and the covenant, marked a gradual decline in American human rights leadership. The session started well, with the U.N. acting quickly after the unfavorable ICJ decision. Sandifer and Simsarian proposed that the assembly either create a committee of jurists to decide if the three nations had violated the treaties or pass a censure resolution. British opposition to the former and Undersecretary James Webb's fear that it might stimulate "GA inquiries into [the] state of HR [human rights] in many other countries" caused the U.S. delegation to advocate the latter. In another passionate speech before the Ad Hoc Political Committee, Cohen proclaimed the "right and duty of the assembly to condemn in no uncertain terms this default of the Bulgarian, Hungarian, and Rumanian Governments and to expose their bad faith before world public opinion." On 3 November, the assembly passed Resolution 385(V), which denounced the three nations for refusing to carry out their treaty obligations and for their "indifference" to world opinion.\textsuperscript{34}

On the other hand, the State Department failed to persuade the U.N. to move slowly against South Africa for its
continued discrimination against Indian nationals. In May 1949, the assembly had invited India, Pakistan, and South Africa to hold a round-table conference. Passage by Pretoria of the Group Areas Act, which prohibited non-whites from owing land and living in certain areas, stung India's hopes for productive talks. India hoped the assembly would ask Pretoria to rescind the law until trilateral discussions could begin. The U.S. delegation knew its assent would please the non-aligned bloc, whose votes it coveted, but it might also lead South Africa, an anti-communist ally, to withdraw from the United Nations. In a tense U.S. delegation meeting, Henry Cabot Lodge, sensing an opportunity "to overcome some of the grave disadvantages under which our country labored because of the civil rights question," agreed with India and refused to defend segregation. Cohen seconded Lodge, noting that they should campaign for human rights in South Africa as they had in Eastern Europe. Roosevelt, Hickerson, and Dulles, though, asserted that the U.S. could not be self-righteous in light of racism at home and the Senate's refusal to pass the Genocide Convention (and, probably, the covenant too). "We have a beam or two in our own eyes," Hickerson added. The group reached an awkward compromise: On 2 December, after voting unsuccessfully to strike a request to repeal the Group Areas Act, the delegation voted for a resolution that encouraged tripartite discussions under U.N. auspices.35
In the most stark renunciation yet of American human rights policy, the General Assembly, led by the developing nations, voted to add economic and social rights to the covenant, affix a mandatory colonial clause, and affirm the right of all peoples to self-determination. The State Department had wanted only a general discussion on the treaty's contents, the placement of economic and social rights in a separate treaty, and the inclusion of petitions in a protocol. American hopes rose when the General Assembly's Third Committee voted to accept the U.S. positions in principle. On 14 November, though, the committee adopted a Yugoslav amendment that asked the UNCHR "to include in the Covenant a clear expression of economic, social, and cultural rights." The move should not have surprised Washington, for the debates on the Universal Declaration clearly showed that underdeveloped and Communist nations conceived those rights as important as political and civil guarantees. The U.S. position, that the former were different qualitatively, required disparate implementation mechanisms, and dictated gradual fulfillment, sounded like excuses to avoid sharing the world's resources. Developing countries, Roosevelt told Acheson a month later, "have been largely visited for purposes of exploitation" by American businessmen. Accepting defeat, the U.S. delegation did not even speak before the full assembly ratified the decision by a four-to-one ratio.
The backlash against the West grew in debates over the federal-state and territorial clauses. The UNCHR could not agree on their texts and had asked the ECOSOC and the assembly for guidance. The Third Committee acrimoniously debated the federal-state article for two days, with Roosevelt arguing its necessity and the Soviet bloc, joined by some non-aligned nations, declaring that it was an escape clause to allow some countries to shirk their treaty obligations. Due to a rare combination of American-West European unity and non-aligned abstentions, the committee told the UNCHR to add a provision under which federal nations would enforce the covenant to the maximum extent permissible under their constitutions. Attempts by the U.S. delegation to repeat the voting pattern on its territorial article, which mandated that colonial nations implement the covenant in their dependent territories as soon as possible, failed miserably. England and France demanded the right to implement the covenant as and when they saw fit, which Roosevelt termed a "perfectly indefensible" position, while former colonial nations rejected the "go slow" approach of their ex-imperial rulers. The committee passed, by a three-to-one margin, a Syrian-Philippine recommendation that obligated nations to extend the covenant to all of their dependent territories. On 4 December, the assembly passed the federal-state and territorial compromises by large margins.37
The most severe rebuke to the West occurred when the assembly asked the UNCHR to study "ways and means which would ensure the right of peoples and nations to self-determination." Introduced by Saudi Arabia and Afghanistan, supported by the Soviet and the non-aligned blocs, and resisted by the U.S. and every Western European nation, the resolution passed the Third committee on 10 November. Its supporters claimed that self-determination was a prerequisite to the enjoyment of all other human rights. Moreover, the U.N. Charter mentioned it in several places, including in the human rights clauses that defined the UNCHR's raison d'être. Opponents, such as Roosevelt, argued that the rights of nations and groups were fundamentally different from those in the covenant that applied to individuals. Roosevelt, though, was embarrassed to oppose the principle that had laid the legal basis for her country's independence. Even President Truman had recently reaffirmed this part of the Wilsonian tradition, telling the National Council of Negro Women, "We welcome the recognition of [self-determination]...and are deeply interested in the encouragement it has provided to the political aspirations of many peoples." Roosevelt weakly insisted that other bodies, like the Trusteeship Council, were more competent to examine the issue. The assembly easily passed the proposal anyway on 4 December.38
Roosevelt and Green tried to identify the causes of these stunning defeats, finally settling on the new ideology of a post-colonial bloc of nations. These Asian, Latin American, and Arab nations, led by India, Mexico, and Saudi Arabia, refused to take sides in the Cold War and chafed under Western economic and political imperialism. As Roosevelt explained to Truman, "We are classed with the Colonial Powers as having exploited them because our businessmen in the past have exploited them." The existence of racism, which these nations accused the U.S. government of condoning in the American South and South Africa, also widened the diplomatic gap. "The Near East, India, and many of the Asiatic people have a profound distrust of white people," she told Acheson. In a "Post-Mortem on the Third Committee," an exasperated Green made a similar point. The polarization was racial, political, and economic, he said, in that the issue pitted "the colored peoples in opposition to the white, the newly independent countries against the administering powers, and the underdeveloped against the industrialized nations." He recommended more flexible U.S. positions, greater sensitivity to these dynamics, and more diplomatic contact with the "Third World." Though Green's recommendations were sound, the domestic political storm brewing over the covenant would prevent their execution.39
The 1950 assembly actions and the defeat of the Genocide Convention in the Senate caused American NGOs and the State Department to re-evaluate a treaty-centered human rights policy. At a meeting called by the Carnegie Endowment and attended by leaders of the ABA, AAUN, ACLU, NAACP, and other NGOs, as well as Tate, Simsarian, and Whiteman, a majority endorsed moving beyond (but not abandoning) the covenant, which the U.N. and U.S. Senate would take years to accept. Many delegates backed the creation of U.N. commissions of inquiry to study human rights in specific nations. Searching for an alternative, the AAUN, in a late February 1951 policy statement, made implementing the declaration at home the focus of its human rights efforts. U.S. shortcomings, the statement observed, "now provide powerful weapons of anti-American propaganda." A gathering of over ninety labor, religious, women's, and human rights organizations in Chicago ratified the AAUN's focus. The coalition's human rights resolution recommended the world-wide "practical application" of the declaration by the U.N.'s specialized agencies. This global education campaign would "strike at the tyrannies of the police state, whether Communist of Fascist...and constitute one of the greatest hopes for human progress through the United Nations." The statement condemned McCarthyism and racism for compromising American human rights leadership.\textsuperscript{40}
The changing domestic and international landscape forced the Truman administration's two-track human rights policy to change in emphasis and tone. As Roosevelt and her legal advisors tried to re-capture the initiative in the UNCHR, Truman, Acheson, and high-ranking State Department officials concentrated on exploiting, for its intrinsic propaganda value and to unify anti-communist nations, the poor human rights records of communist nations. Rejecting the importance of UNCHR standard-setting, the new course required strident rhetoric that divided the world into U.S.-led free and Soviet-dominated Communist nations. Acheson coined this approach "total diplomacy," which included selling "with a thousand voices and using all the resources of modern science... the doctrine of freedom" abroad through movies, newspapers, and diplomacy. To implement this policy, Acheson continued to publicize Communist human rights violations and began to replace treaty-drafting in the UNCHR with a full-scale psychological warfare campaign against the Communist bloc.41

Fearing a loss of support for the UNCHR's work by Truman, domestic NGOs, and the Senate, Roosevelt and her advisors tried to revise policy in light of the unfavorable assembly decisions. The internal debate was so intense that the State Department did not submit any covenant comments to the Secretary-General before the UNCHR's 1951 session began. To assuage critics who characterized the federal-state provision
an "escape clause," the department appended a requirement that all nations publicly report on their progress in enforcing the covenant. Sandifer, Tate, Green, and Simsarian, seeking to prevent a Communist-non-aligned bloc from coalescing, accepted the mandatory territorial clause and economic and social rights in the covenant. They wanted the latter cloaked in promotional and generic language however, that would not force governments to undertake specific commitments. They still opposed adding petitions and the right of self-determination, arguing that the former should be placed in a protocol and the latter in a separate UNCHR resolution. Ironically, given the themes of the emerging propaganda campaign, they opposed inserting a guarantee of free elections. The Senate, they knew, would reject a treaty that overturned the disenfranchisement of Southern blacks.  

The 1951 UNCHR session, the first without Roosevelt as chair, was most notable for what did not happen: its members did not have time to revise articles on self-determination, civil and political rights, and the application of the covenant to dependent territories and federal-states. The only agenda item completed was the drafting of a list of economic and social rights, and the ensuing debate demonstrated that the U.S. had not lost its influence in the UNCHR. In a polarized atmosphere that mirrored earlier discussions on including economic and social rights in the Universal
Declaration, the Soviet bloc's emphasis on state enforcement lost dismally. Roosevelt emerged victorious, as in 1948, because she compromised in light of committee opinion, approving such "rights" but only with minimal governmental responsibility and U.N. oversight. She set aside her delegation's first proposal, a single article that called on nations to "promote conditions of economic, social, and cultural progress and development," for a list of specific promises. 43

This pragmatic approach enabled the U.S. to capture the initiative in the UNCHR and isolate the Soviets, at least until Acheson and Roosevelt reversed course and again rejected adding economic and social rights. After consulting several NGOs and U.N. specialized agencies, Roosevelt submitted a revised text. Each covenant party, it read, "undertakes, with due regard to its organization and resources," to promote education, higher living standards, social security, the opportunity to work, decent working conditions, and employee-employer cooperation through trade unions. These were not individual legal "rights," Roosevelt remarked, but merely general obligations that governments would promote to the best of their ability. Most nations agreed, and after the most bitter, partisan debate yet between the two rivals, the UNCHR approved fourteen articles and an enforcement system that required nations to submit progress reports. Despite the
promotional language of the articles, their subordination to a federal-state clause, and the conservative implementation scheme, Acheson and Roosevelt were disappointed by their "sweeping scope and loose language" and their status as "rights," which nations had to satisfy using "the maximum of their available resources." Roosevelt backed an unsuccessful request to have the ECOSOC reconsider its decision to combine economic and political rights in one covenant. 4

The addition of economic and social rights and UNCHR inaction on other items left Roosevelt even more doubtful that the Senate would accede to the covenant. To increase the chances of Senate ratification, she introduced a covenant protocol for the receipt of petitions from individuals and NGOs. If the UNCHR approved it, the Senate could ratify the covenant without the protocol. The UNCHR, though, only had time to make several minor changes to the implementation machinery it had added to the covenant in 1950, and it took no action on her proposal. Its veto of a right to own property soon gave American covenant opponents another issue to capitalize upon. On 24 April, as the committee began discussing economic and social rights, Roosevelt wrote Truman that she thought "ratification of whatever is agreed upon is a distant hope." In an analysis of the session, Roosevelt repeated her December dilemma: the U.S. was caught between the needs and desires of underdeveloped nations that placed a
premium on these rights and what the Senate and ABA would surely find politically and constitutionally unacceptable.45

Senator John Bricker (R-OH) fulfilled those fears by launched launching a zealous campaign to discredit the human rights covenant. On 17 July, the isolationist and militant anti-New Dealer introduced a resolution calling for the U.S. to withdraw from the covenant drafting process. The treaty would eliminate constitutional rights such as the freedom of information, Bricker told the Senate, and therefore should be called a "Covenant on Human Slavery." Quoting from the general limitation clause, he warned that the covenant would allow the federal government to override the First Amendment and punish those who published information that endangered "national security, public order, safety, health or morals." Acheson and Truman favored such language, he added, to stifle attacks on the Fair Deal. Citing Sei Fujii, Bricker concluded that federal courts would use the covenant to re-write the Constitution. Within three days, Holman and ABA Committee on Peace and Law president Alfred Schweppe had congratulated Bricker on his "excellent" speech and offered their expertise and assistance. Bricker replied by telling both of his larger plan: the non-binding resolution was only a "stop-gap" measure to a problem that required a constitutional amendment. The
push for such a Bricker Amendment, which would prohibit treaties from changing domestic law, had now begun.⁴⁶

III

The State Department, growing more disillusioned with the covenant as non-Western nations acquired voting strength and as domestic NGOs complained that it was too conservative or too radical, began to examine alternative policies to promote human rights. The inclusion of economic and social rights and the guarantee of self-determination made senatorial ratification of the covenant even more remote. Moreover, the existence of these provisions fuelled a growing domestic backlash led by Senator John Bricker and the American Bar Association that threatened to disrupt American participation in very U.N. treaty-writing process that the U.S. had helped to launch. Unable to satisfy their foreign and domestic critics, the State Department and began to use the rhetoric of human rights as a Cold War propaganda weapon and shift from endorsing the treaty-making process to promoting human rights education programs. Under the administration of Dwight Eisenhower, the State Department and the intelligence community would develop both options. New Secretary of State John Foster Dulles soon submitted an outline for human rights education and advisory programs to the UNCHR as various
intelligence agencies began a psychological warfare campaign to publicize Soviet bloc human rights violations. The era of U.S.-led human rights standard-setting at the United Nations was coming to an end.

Predating and reinforcing these trends was the Senate's defeat of the U.N.'s first human rights treaty, the Convention on the Prevention and Punishment of the Crime of Genocide. Passed by the General Assembly on 9 December 1948, with substantial State Department input and support, the treaty defined genocide, banned its practice, and mandated punishment in national or international courts for its perpetrators. Truman submitted it to the Senate, and he expected its quick approval. His optimism soon vanished, though, as the ABA almost single-handedly persuaded key senators to oppose the treaty by exaggerating its possible impact on domestic law. ABA leaders including Holman, citing arguments they first employed against the covenant, claimed that the genocide treaty would deprive Americans of their constitutional rights, outlaw Jim Crow laws, and emasculate the Constitution's Tenth Amendment by shifting power from the states to the federal government. The ABA's successful drive to defeat the ratification of the Genocide Convention provided lobbying experience, political connections, and momentum that its leaders soon utilized against the human rights covenant, with equally significant consequences. The ratification debate over
the Genocide Convention, then, foreshadowed an even larger and important domestic struggle over who, the Senate or the State Department, would define U.S. human rights policy at the United Nations.


For the origin of the non-self-executing treaty doctrine see Foster & Elam v. Neilson, 2 Pet. 253 (1829).


conversation with Sandifer, Tate, and other State Department representatives, 26 January 1949, decimal file 501.BD/1-2649, and Simsarian memo of conversation with State and Justice Department representatives, 24 January 1949, decimal file 501.BD/1-2449 (1945-49), box 2189, NARA; minutes of the Board of Directors of the American Association for the United Nations, 14 January 1949, Roosevelt papers, box 3249, FDRL; minutes of ISP, 13 January 1949, files of ISP, RG 353, box 108, NARA; and minutes of HRW, 23 February 1949, files of HRW, RG 353, box 112, NARA.


22. Quoted in Pratt, The Influence of Domestic Controversy, 109. See also Berman, Politics of Civil Rights, 137-64; Pratt, The Influence of Domestic Controversy, 102-09; HRW, "Statement in Answer to Possible Charge that the United States Discriminates Against Negroes in this Country," S/HRW D-40/49, 18 May 1949, files of HRW, RG 353, box 113, NARA; Brief of the United States as Amicus Curiae on a Writ of Certiorari to the Supreme Court of the United States, Elmer Henderson, Petitioner, October 1949; and Brief of the United States as Amicus Curiae on a Writ of Certiorari to the Supreme Court of the United States, George W. McLaurin, Petitioner, February 1950.


26. Gross to Wright, undated, decimal file 340.1 AG/2-1750 (1950-54), box 1326, NARA. See also Whiteman to Roosevelt, 26 August 1949, Roosevelt papers, box 4588, FDRL. See also Wright to Austin, 17 January, Simsarian to Green and Gross, 7 February 1950, Tate to Whiteman, 17 February 1950, Whiteman to Gross, 10 March 1950, decimal file 340.1 AG/2-1750 (1950-54), box 1326, NARA; and Whiteman to Gross and Tate, 20 February 1950, decimal file 340.1 AG/2-2050 (1950-54), box 1326, NARA.


For communications between the American and French governments see Charles Bohlen, Charge d'Affaires of the American Embassy in Paris, to State Department, 19 February 1950, and Acheson to U.S. embassy in Paris, 3 and 14 March 1950, decimal file 340.1 AG/2-1750 (1950-54), box 1326, NARA; and U.S. Ambassador to France David Bruce to Acheson, 16 March 1950, decimal file 340.1 AG/3-1650 (1950-54), box 1326, NARA.


For communications between the United States and its allies see Gross to U.S. Mission to the U.N., and Acheson to U.S. embassy in Chile, 24 February 1950, decimal file 340.1 AG/2-2450 (1950-54), box 1236, NARA; Sandifer to Minister of Lebanon Charles Malik, 13 March 1950, decimal file 340.1 AG/3-1350 (1950-54), box 1326, NARA; Simsarian memos of conversation with diplomats from Lebanon and Uruguay, 7 March 1950, Roosevelt papers, box 4588, FDRL; Carlos Hall, First
Secretary to U.S. Embassy in Chile, to State Department, 31 March 1950, decimal file 340.1 AG/3-3150 (1950-54), box 1326, NARA; and Austin to Acheson, 3 April 1950, decimal file 340.1 AG/4-350, Hall to Acheson, 6 April 1950, decimal file 340.1 AG/4-650, Austin to Acheson, 15 April 1950, decimal file 340.1 AG/4-1550, Acheson to U.S. Embassy in Chile, 24 April 1950, decimal file 340.1 AG/4-2050, and Hall to State Department, 27 April 1950, decimal file 340.1 AG/4-2750, (1950-54), box 1327, NARA.


For the debate on a general limitation clause see minutes of UNCHR, 30 March and 3, 5, 6, and 11 April 1950, E/CN.4/SR.139, 144, 146, 147, 148, 149, 152; "Human Rights Commission," Department of State Bulletin (1 May 1950), 703;


For petitions from the United States to the U.N. see Chairman of the Non-Senate Academic employees of the University to Roosevelt, 29 April 1950, decimal file 340.1 AG/5-2650, letter from an international non-governmental organization to UNCHR on Dr. Sheppard Thierman, 24 April 1950, decimal file 340.1 AG/5-2350, Earl Koger to UNCHR on his inability to use a Baltimore park due to his race, 16 August 1950, decimal file 340.1 AG/8-1650, letter from a French non-governmental organization to UNCHR protesting the firing of three dozen college professors from the University of California who refused to take anti-communist loyalty oaths, 15 September 1950, decimal file 340.1 AG/10-2350, and World Federation of Democratic Youth to UNCHR on the imminent execution of seven young black men in Virginia, 8 November 1950, decimal file 340.1 AG/12-750, (1950-54), box 1327, NARA; Committee to Defend Victims of the Committee on Un-American Activities, In Defense of Human Rights: A Petition Presented to the Commission on Human Rights (New York: Committee to Defend Victims of the Committee on Un-American Activities, 1950); and Ellen W. Schrecker, No Ivory Tower: McCarthyism and the Universities (New York: Oxford University Press, 1986, 116-25.

Many petitions addressed the Virginia executions of the so-called "Martinsville Seven," a group of young black men convicted of raping a white woman. See telegram from a U.S. NGO to the U.N. Secretary-General, 15 January 1951, decimal file 340.1AG/1-3151, telegram from a Germany NGO to the U.N. Secretary-General, 12 January 1951, decimal file 340.1AG/2-551, and excerpts of letters from individuals and NGOs in Great Britain, the U.S., and Cuba to the U.N. Secretary-General, 23 January-4 February 1951, decimal file 340.1AG/2-2151, (1950-54), box 1327, NARA. See also Eric Rise, The Martinsville Seven: Race, Rape, and Capital Punishment (Charlottesville: University Press of Virginia, 1995).


For State Department strategy on the covenant see Notter to Sandifer and Hickerson, 9 May 1950, Simsarian to Sandifer, 26 April 1950, and Sandifer to Simsarian, 11 May 1950, decimal file 340.1 AG/4-2650 (1950-54) box 1327, NARA; Cates memo of conversation with Hickerson, Sandifer, Tate, Kotschnig, and legal advisor Marcia Maylott, 10 May 1950, decimal file 340.1 AG/5-1050 (1950-54), and Tate to Solicitor General Philip Perlman, 28 June 1950, decimal file 340.1 AG/6-2850 (1950-54), box 1327, NARA.

The three civil rights cases were Henderson v. United States, 339 U.S. 816; Sweatt v. Painter, 339 U.S. 629; and McLaurin v. Oklahoma State Regents, 339 U.S. 637.

340.1 AG/8-1850, and Acheson to embassies in London and Paris,
"Draft International Covenant on Human Rights and Draft
Freedom of Information Convention in 1950 United Nations
General Assembly," 26 August 1950, decimal file 340.1 AG/8-
2650, box 1327, NARA; Sandifer to Roosevelt, 14 September
1950, decimal file 340.1 AG/9-1451, and Webb to U.S. embassy
in Denmark, 4 October 1950, decimal file 340.1 AG/9-2750
(1950-54), box 1328, NARA; minutes of ECOSOC, 4 and 5 July and
9 August 1950, E/SR.377-79 and E/SR.404; minutes of ECOSOC's
Social Committee, 17 to 31 July 1950, E/AC.7/146-55; and
ECOSOC Resolution 303 I (XI).

For replies to the State department circular see Bernard
Connally, First Secretary in U.S. embassy in Pretoria, to
Acheson, 31 August 1950, decimal file 340.1 AG/8-3150,
unsigned telegram from U.S. embassy in Haiti to Acheson, 8
September 1950, decimal file 340.1 AG/9-850, Julius Holmes,
U.S. Minister to Great Britain, to Acheson, 11 September 1950,
decimal file 340.1 AG/9-1150, Karl Rankin, counsel-general in
Taipei, to Acheson, 12 September 1950, decimal file 340.1
AG/9-1250, Simsarian memo of conversation with J.M. Cote from
the Canadian Embassy to the U.S., 13 September 1950, decimal
file 340.1 AG/9-1350, Eugenie Anderson, U.S. ambassador to
Denmark, to Acheson, 27 September 1950, decimal file 340.1
AG/9-2750, and Harold Schantz, counselor to U.S. embassy in
Denmark, to Acheson, 28 September 1950, decimal file 340.1
AG/9-2850 (1950-54), box 1327, NARA.

For the second phase of the ICJ decision see ICJ,
"Interpretation of Peace Treaties with Bulgaria, Hungary, and
Rumania (Second Phase)," 18 July 1950, in International Court
of Justice Reports (1950), 221-61; idem, International Court
of Justice Yearbook (1949-50), 78-80; State Department press
release, 29 June 1950, in State Department Bulletin 23 (7
August 1950), 233-35; Acheson press statement, 21 July 1950,
in State Department Bulletin 23 (31 July 1950), 190-91; and
Acheson to U.S. embassies, 29 July 1950, decimal file 340.1
AG/7-2950 (1950-54), box 1327, NARA.

34. Acheson to U.S. embassies in Great Britain, Australia,
Canada, and New Zealand, 28 August 1950, in FRUS, 1950, 4:55;
and Benjamin Cohen, speech to the Ad Hoc Political Committee
of the U.N. General Assembly on human rights in the Balkans,
2 October 1950, in State Department Bulletin 23 (23 October
1950), 670. See also John Campbell, State Department's officer
in charge of Balkan affairs, memo of conversation with Owen L.
Davis, First Secretary of Australian Embassy in Washington, 9
August 1950, decimal file 340.1 AG/8-950, and Holmes to
Acheson, 13 September 1950, decimal file 340.1 AG/9-1350
(1950-54), box 1327, NARA; Webb to U.S. Delegation to the
United Nations, 22 September 1950, in FRUS, 1950, 4: 56-57;
"General Assembly," *State Department Bulletin* 23 (9 October 1950), 597; and "Reports of the Ad Hoc Political Committee," in *State Department Bulletin* 24 (22 January 1951), 143.

For the text of the resolution see "Bulgaria, Hungary, and Rumania Condemned on Human Rights Issues," in *State Department Bulletin* 23 (27 November 1950), 872.


40. Eichelberger to the A.A.U.N.'s Board of Directors, 20 February 1950, Roosevelt papers, box 3249, FDRL; and unsigned, "Resolutions Adopted at the Chicago Conference," 25-27 February 1951, official file 421, box 1270, HSTL. See also Joseph E. Johnson, President of the Carnegie Endowment for International Peace, to Whiteman, 22 January 1951, decimal file 340.1 AG/1-2251, and Johnson to Tate, 30 March 1951, decimal file 340.1 AG/3-3051 (1950-54), box 1327, NARA; and Eichelberger to A.A.U.N. Board of Directors, 12 March 1951, Roosevelt papers, box 3249, FDRL.


45. Roosevelt to Truman, 24 April 1951, quoted in M. Glen Johnson, "The Contributions of Eleanor and Franklin Roosevelt," 44. See also UNCHR, "U.S.A.: Proposal on a

46. U.S. Congress, Senate, 82nd Cong., 1st sess., 17 July 1951, Congressional Record, 97:8255, Article 14(3) of the covenant, and Bricker to Holman, 23 July 1951, papers of John Bricker, box 160, Ohio Historical Society [hereafter referred to as Bricker papers, OHS). See also Alfred Schweppe, chair of the ABA Committee on Peace and Law through United Nations, to Bricker, 20 July 1951, and Bricker to Schweppe, 24 July 1951, Bricker papers, box 160, OHS; and Pratt, The Influence of Domestic Controversy, 170-91;

For two excellent sources on Bricker and his amendment see Richard O. Davies, Defender of the Old Guard (Columbus, Ohio: Ohio State University Press, 1993); and Duane Tananbaum, The Bricker Amendment Controversy: A Test of Eisenhower's Political Leadership (Ithaca: Cornell University Press, 1988).

For a hagiographic account of Bricker's early years see Karl B. Pauly, Bricker of Ohio: The Man and His Record (New York: G.P. Putnam's Sons, 1944.)
CHAPTER 6

U.N. SUCCESS BREEDS FAILURE AT HOME, 1945-1950

As the United Nations Commission on Human Rights (UNCHR) drafted the Universal Declaration of Human Rights and early versions of the covenant, other U.N. bodies pieced together the organization's first human rights treaty. Memories of the Holocaust and of other atrocities committed during World War II led member states to focus on drafting a convention to identify and punish those who tried to destroy religious, national, racial, or ethnic groups. The State Department strongly supported what would become the Convention on the Prevention and Punishment of the Crime of Genocide, and its U.N. delegation was very influential in the drafting process. As with the prior two U.N. human rights instruments, U.S. diplomats demanded that the Genocide Convention incorporate a conservative American jurisprudence that placed a premium on defending national sovereignty and limiting the definition of genocide to physical acts committed against individuals. The final draft, approved by the U.N. on 9 December 1948, defined "genocide," declared it to be a violation of international
law, and proposed that perpetrators be punished by national courts or a special international tribunal. President Harry S. Truman submitted the treaty to the Senate for ratification and expected its quick approval.

Ironically, given the heavy American handprint on the Genocide Convention and the Truman Administration's strong support, the treaty never passed the Senate Foreign Relations Committee. A coalition of conservative Southern Democrats and isolationist-oriented Republicans, supported by the American Bar Association (ABA), interpreted the Convention as a dangerous assault on the American Constitution and national sovereignty. Castigating the performance of the American U.N. delegation, Senators Tom Connally (D-TX), Walter George (D-GA) and Bourke Hickenlooper (R-IA) denigrated the Convention as communist-inspired propaganda designed to eclipse the constitutional rights of states and individuals, embarrass the United States, and make its citizens vulnerable to scurrilous charges of genocide. Their successful drive to bury the convention in the Foreign Relations Committee provided the inspiration, political experience, and language for a movement, led by Senator John Bricker (R-OH), to restrict the ability of all treaties to invalidate domestic laws. Although Bricker's crusade failed, sympathetic lawyers, private organizations, and powerful senators forced President Dwight D. Eisenhower to abandon the convention in 1953. As a result,
the United States increasingly lost its leadership role in the U.N. human rights movement during the early Cold War years.

II

Although the idea for a Genocide Convention did not originate in Washington, the State Department was quick to support it at the United Nations. Genocide was by no means a new occurrence in world history, but the Holocaust and other wartime atrocities, coupled with Allied inaction in preventing such horrors, had generated an international movement to make genocide a violation of international law and to punish its perpetrators. The leader of this cause was Raphael Lemkin, a Polish lawyer residing in the United States, whose entire family had perished in the Holocaust. Lemkin defined the term "genocide" in a landmark legal analysis of Nazi rule in occupied Europe as "a coordinated plan of different actions aiming at the destruction of essential foundations of the life of national groups...and the actions involved are directed against individuals, not in their individual capacity, but as members of the national group." He wrote his path-breaking book while on the law school faculties of Duke and Yale and spent the rest of his life in New York City trying to persuade all nations, and especially his adopted home, to ratify the culmination of his life's work, the Genocide Convention.¹

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Lemkin, with some State Department encouragement, was the catalyst behind the first United Nations discussions of genocide. He drafted a General Assembly resolution introduced jointly on 2 November 1946 by the delegations of Cuba, India, and Panama that called for the U.N.'s Economic and Social Council (ECOSOC) to study genocide with an eye toward making it an international crime punishable by national courts. One month later, the General Assembly's Sixth (Legal) Committee delivered a substantive report. Written by rapporteur and American delegate Charles Fahy, the study went beyond the proposed resolution by calling for the U.N. to draft a convention to prohibit genocide. The Sixth Committee encapsulated the report in the landmark U.N. Resolution 96(I), which passed the assembly unanimously and without debate on 11 December 1946. Declaring that genocide was a crime under international law, the resolution directed the ECOSOC to initiate studies of a draft convention to prevent genocide and to punish its perpetrators. The U.N. treaty-based human rights program, in which the U.S. would play a major supportive role for the next seven years, had begun.²

Procedural disagreements pitted the United States and its European allies, which wanted to control the timing and writing of a treaty, against other nations that wanted to participate in a quick drafting process. The ECOSOC spent two weeks discussing whether to pen a convention itself or give
the task to the UNCHR or the Secretariat. The United States, over the objections of Lemkin and other nations, wanted the topic referred to the UNCHR and the U.N.'s Commission on the Development of International Law and Its Codification, which was studying how to codify international law as defined by the Allied International Military Tribunal at Nuremberg. With Roosevelt as chair of the former, and with the latter comprised of Western-oriented legal scholars, the State Department presumed it could influence the drafting process more than if independent lawyers in the Secretariat took up the task. Lemkin and a majority of the ECOSOC nations, though, worried that the UNCHR's already overloaded agenda would force a delay in completing a treaty. They successfully amended the American proposal to ask the Secretariat to draft a convention in consultation with the Commission on the Development of International Law, the UNCHR, and member governments. The amended resolution passed the ECOSOC on 28 March, and the Secretariat immediately began to sketch the first treaty to outlaw genocide.  

The Human Rights Division of the Secretariat, aided by Lemkin and other legal experts, completed a broad draft convention in early June. The document defined genocide as acts directed against "racial, national, linguistic, religious, or political groups" with the intent of destroying them "in whole or in part." Such banned deeds included mass
killings, denying a minimal standard of living by withholding food, clothing, and other basic necessities, restricting reproduction, and practicing "cultural genocide" by trying to eliminate the distinguishing characteristics of a group by banning the use of languages or destroying museums, houses of worship, and works of art. The convention also listed specific crimes punishable under international law: attempting to commit genocide, participating in "preparatory acts" such as studying how to execute genocide, engaging in "direct public incitement to genocide," and conspiring to commit genocide. Signatories promised to prohibit all propaganda designed to provoke genocide, to disband all groups convicted of the enumerated crimes, and to extradite individuals charged by other nations. Offenders, whether public officials or private individuals, could face a trial where the genocide occurred ("national jurisdiction"), in the state that arrested the suspect regardless of the suspect's nationality or the location of the crime ("universal jurisdiction"), or by an international tribunal. The document reinforced State Department fears that the Secretariat would sacrifice national sovereignty to an international tribunal and embrace an expansive definition of genocide that might conflict with the American Bill of Rights.¹

The radicalism of the Secretariat's draft accelerated State Department attempts to ensure that Western lawyers
controlled the drafting process. Dr. Philip Jessup, the U.S. representative to the Commission on the Development of International Law, came to realize that the body did not have enough time to conduct a thorough substantive review. Even if it could examine the text, Jessup felt it was useless to do so before U.N. member governments had forwarded critiques. Privately, Jessup did not think the commission had enough competent personnel skilled in human rights law, and he feared that a discussion of the convention would veer off into debate on tangential matters. The commission informed U.N. Secretary-General Trygve Lie that it could not offer an opinion. The UNCHR, which had no scheduled meetings until late 1947, also could not discuss the document over the summer.⁵

Cognizant that its strategy of delay was failing, the State Department tried to excise the most objectionable components of the Secretariat's work and substitute a conservative definition of genocide and an enforcement proposal that Foggy Bottom would consistently advance in U.N. debates. The department's Subcommittee on Human Rights and Status of Women (HRW), despite wanting the ECOSOC to postpone debate on this "new and complex subject," submitted a commentary on the Secretariat's draft in late June 1947. The subcommittee opposed listing specific crimes, including preparatory acts, because no list could include every method employable to exterminate people. Reflecting Anglo-Saxon legal
tradition, the position paper explained that proving intent to commit a crime was more important than the specific means used. The subcommittee also rejected universal jurisdiction. Its members argued that the international court could bring to justice those responsible for genocide only if national courts did not prosecute. Nations might abuse the right of universal jurisdiction, HRW asserted, by prosecuting for political reasons resident aliens, including Americans, from another state. Universal jurisdiction would also bind all non-signatory states to the convention by mandating that they either try those accused of genocide or extradite them to another country. This responsibility would conflict with a long-standing principle of American law, under which treaties could not apply to nations that did not ratify them.

The State Department, after finding the Secretariat's version unacceptable, tried to balance its desire to move slowly without inviting charges of procrastination from the treaty's domestic and foreign supporters. On 9 July, the subcommittee forwarded the commentary to its parent body, the Interdepartmental Committee on International Social Policy (ISP). After some discussion, the ISP recommended that either the International Law Commission (which only existed on paper) discuss the convention or the ECOSOC should table it until January so that member governments could submit critiques. ISP members' fear of criticism was not unfounded, as Harley Notter
in the Office of Special Political Affairs predicted that postponing debate would bring "extreme difficulty...for us in the Economic and Social Council." Delay would also likely raise objections from newspaper and magazine editorial boards that advocated quick U.N. approval of a genocide convention. The strategy of controlled delay failed at the ECOSOC's July session. Leroy Stinebower, the U.S. delegate, doubting the ECOSOC was competent to deal with the legal complexities involved, recommended sending the treaty to the International Law Commission. The ECOSOC refused, and, a month later, the General Assembly sent the Secretariat's work to the Sixth (Legal) Committee instead for immediate study.\(^7\)

After the assembly vote, State Department Legal Advisor Ernest Gross and Dean Rusk from the Office of Special Political Affairs further sought to ground the Secretariat's draft in American law. Due to their cogent, conservative arguments and tight focus, Gross' and Rusk's observations became the basis for future U.S. policy. The critique argued for a more limited definition of genocide than Lemkin and the Secretariat favored. Gross and Rusk deleted all references to cultural genocide, arguing that no counterpart existed in American law. They favored deleting the specific preparatory crimes of conducting "studies and research [to] develop techniques of genocide" and inciting people to commit genocide by releasing "all forms of public propaganda tending by their
systemic and hateful character to provoke genocide." The articles, they reasoned, might encroach upon the American right of free speech. To remedy the inconsistency, Gross and Rusk tried to reconcile incitement with the U.S. Supreme Court's "clear and present danger" doctrine by defining it to include only acts committed "under circumstances which may reasonably result" in genocide. They retained five criminal acts: murder, the denial of minimal living standards, the practice of conducting mutilations or biological experiments, the prevention of reproduction, and the forcible transfer of children to non-members of the targeted group.®

To replace the precedent-setting principle of universal jurisdiction, Gross and Rusk proposed a mixture of national and international jurisdiction. Courts of the nation where genocide occurred would have the first opportunity to try individuals. If a country refused or could not prosecute, the U.S. proposed to create an international criminal tribunal to prosecute violations. If the latter did not yet exist, signatory nations would establish an ad hoc tribunal to indict, try, and punish alleged perpetrators of genocide. A nation could only try individuals for acts committed abroad if the country where the genocide had taken place concurred.®

Ironically, in two short prophetic paragraphs, Gross and Rusk anticipated but dismissed the two most influential arguments later raised by domestic opponents of ratification. 280
To those who might argue that the punishment of genocide should be left to national and not transnational courts, Gross and Rusk asserted that wartime atrocities had shocked the world into revising international law by making genocide an international crime. They also denied that Americans who participated in a lynching must give up their constitutional civil rights to face foreign judges in an international court. They discarded the scenario by declaring that even violent racists lacked the requisite intent to destroy all African-Americans that would merit a charge of genocide. Even if such intent could be proven, American courts would have primary jurisdiction in the matter. They concluded that "no possibility can be foreseen of the United States being held in violation of the treaty" by refusing to hand over its citizens to stand trial abroad.  

Armed with these additional reasons to commit the treaty for intensive study by legal experts, the U.S. delegate to the ECOSOC, Charles Fahy, renewed American opposition to the Secretariat's work. After waiting another two months for governments to comment, Fahy was clearly exasperated with the lack of direction that the U.S. had helped to cause. Under Resolution 77(V), the ECOSOC promised to revise the convention, but the Secretariat's draft lay before the assembly while comments on it by member governments went to the Secretary-General. Fahy proposed that the Sixth (Legal)
Committee appoint a subcommittee of lawyers to draft a convention. In early November, though, the committee and the assembly instead reaffirmed resolutions 96(I) and 77(V) allowing the ECOSOC to proceed. Resolution 180(II) called for the ECOSOC to draft a genocide convention after reviewing the Secretariat's draft and comments from governments. Fahy, to avoid being isolated, voted in favor of Resolution 180(II), though he hoped the International Law Commission would review all of the ECOSOC's work.\(^\text{11}\)

Even after the General Assembly had twice affirmed the ECOSOC's role, the State Department attempted to shift the drafting to a body of legal experts. ISP members confidentially concluded that formulating a genocide treaty was too complex and technical a task for the politicized atmosphere and legal inexperience of the ECOSOC and its members. The State Department's previous position of delegating the matter to the International Law Commission, though, was no longer feasible in light of Resolution 180(II) and the continued delay in creating the agency. ISP instead proposed that the Secretariat shorten and simplify its "very long and complex" draft after receiving comments from governments and Roosevelt's UNCHR. The confidential memorandum concluded that American delegates at the U.N. should push informally for the Secretariat's Legal Department to handle the matter, rather than its Human Rights Division that had

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formulated the unacceptable first draft. The ISP approved the recommendations on 29 January 1948.¹²

Walter Kotschnig, the American delegate to the ECOSOC, introduced a slightly different version of the ISP's plan on 12 February 1948. Kotschnig proposed that the Secretariat rewrite the convention in collaboration with the United States and three other nations that had submitted comments to the Secretary-General. The revised strategy would give the U.S. leverage over the outcome while preserving the ECOSOC's role as outlined in Resolution 180(II). The ECOSOC, in early March, approved most of Kotschnig's plan: The amending would be done by a committee in which the U.S. and its allies from France, Venezuela, China, and Lebanon, comprised a majority. The new procedure ensured that Washington could substantially influence the final product, especially once John Maktos was elected chair of the Ad Hoc Committee on Genocide.¹³

Seizing the initiative, State and Justice department lawyers distributed their own version of a genocide treaty before the committee convened on 5 April. The growing desire for quick passage and the inclusion of controversial articles in the Secretariat's draft convinced Foggy Bottom lawyers Katherine Fite and James Hendrick to write a simple and short proposal. Their three-article convention declared genocide to be a violation of international law, defined genocide as attempts by the state (or individuals with the complicity of
the state) to exterminate a racial, national, religious, or political group, and said those responsible for such acts should be tried by national or undefined international courts. Their definition of genocide, encompassing only acts of extermination attempted or done with the active complicity of national governments, was narrower than the Secretariat's. Fite was clearly concerned about a petition written by American civil rights activist W.E.B. DuBois and sent to the UNCHR that detailed Southern lynchings and demanded a U.N. investigation. Under their definition, Fite claimed, those guilty of such horrible acts were nonetheless immune from prosecution for genocide because the U.S. government did not condone such acts. After obtaining Acting Secretary of State Robert Lovett's approval, Hendrick forwarded the proposal to the American U.N. delegation. 14

During the twenty-six meetings of the Ad Hoc Committee in Lake Success, New York, the United States strove to reconcile the emerging contradiction between supporting an international convention that outlawed a heinous crime and safeguarding American sovereignty and constitutional protections. Following Fite's and Hendrick's recommendations, Maktos tried to define genocide as including only physical acts committed with an intent to kill members of a group due to their racial, national, political, or religious attributes. Though the committee tabled the Secretariat and American versions, Maktos
agreed with a Soviet effort to define genocide as "the extermination of particular groups of the population on racial [and] national (religious) grounds," though he proposed to add "political groups" to the list. Answering Soviet, Polish and Venezuelan objections, Maktos asserted that political groups were not amorphous entities, as witnessed by the presence of two stable, easily identifiable political parties in his country. Moreover, he claimed, their inclusion would not prevent states from legally combating internal subversion by non-genocidal means. Privately, he believed the U.S. could then use the treaty to criticize Communist Bloc suppression of non-communist political parties. The body approved his amendment in a very close vote.15

Due to a lack of precedents in American law and to protect the First Amendment, Maktos opposed provisions that would criminalize cultural genocide, genocidal "propaganda," and committing "preparatory acts" that might lead to genocide. He used procedural and legal arguments to ask the body to exclude cultural genocide. Since protecting the cultural integrity of groups involved questions of minority group rights, Maktos urged the UNCHR's Subcommittee on Prevention of Discrimination and Protection of Minorities to discuss the problem. Going beyond acts of physical violence, he warned, risked the rejection of the convention by nations including his own that feared spurious charges, for "it would be child's
play for any clever lawyer to find a large number of new definitions of genocide [and] it was precisely that profusion which had to be avoided." Although the other six members disagreed, they placed the provision in a separate article. This would make it easier, Maktos pointed out, for governments to add reservations when ratifying the convention. Disagreement also existed over whether the convention would outlaw crimes of conspiracy, direct incitement to commit genocide, engaging in genocidal propaganda, and participation in "preparatory acts." American constitutional law partially recognized only the first two, Maktos declared; the Bill of Rights protected the latter two activities except when they presented a "clear and present danger" to public order. Sensing an impasse, the Committee voted to defer further consideration.16

The State Department's initial optimism that the Ad Hoc Committee would approve a favorable treaty vanished once the body adopted a Chinese working draft. It listed conspiracy, attempt, and incitement to commit genocide, and the Chinese delegate proposed to add preparation to commit genocide. Maktos tried a new argument against the latter provision, claiming that the addition overlapped with conspiracy and attempts to commit genocide. He also tried unsuccessfully to have the "clear and present danger" doctrine included in the body's report. The Committee nevertheless voted to include all
four crimes, with Maktos casting the lone negative vote. Also over Maktos' objections, the body replaced "preparatory acts" with the broader concept of "complicity in any of the acts enumerated" in the treaty. The United States did win one major vote, as the Committee rejected a Soviet amendment to punish those responsible for propaganda aimed at "provoking the commission of acts of genocide." Despite the victory, which prevented a collision with the Constitution's First Amendment, Maktos cast the lone abstention when the Committee approved the entire article.  

Maktos had more success in persuading the committee to set a middle course that rejected universal jurisdiction but allowed for the creation of an international tribunal. Unwilling to give up any sovereignty to an international court due to fears that Americans might be tried for crimes such as lynchings, the State Department warned that national courts must be allowed to pre-empt any prosecutions by an international court. He found a partial nemesis in the Soviet delegate, Platon Morozov, who steadfastly refused to give up any measure of national sovereignty to an international body. Maktos replied that national courts would not always want or be able to try alleged perpetrators, particularly when a government condoned genocide. Agreeing with Morozov that an international court could not enforce any of its verdicts, he nonetheless declared that the mere pronouncement of guilty
verdicts might deter future genocides. As a compromise designed to isolate Morozov, Maktos proposed that an international tribunal would only prosecute a case when a national court either refused to act or did so inadequately. The Committee followed his lead: it unanimously declared that courts of the nation where genocide occurred could first try the alleged perpetrators, agreed that an international court that would act only in cases where a "denial of justice" ensued, and defeated a proposal to allow universal jurisdiction. 18

Moscow and Washington also battled on another treaty enforcement question: whether to require national legislatures to pass implementing legislation. Morozov argued that all signatories must pass laws to specify punishments (that the Convention omitted) and to criminalize acts of genocide not covered by existing statutes. Maktos objected, arguing that legislatures did not always agree with an executive's decision to sign a treaty. If the U.S. Congress refused to pass implementing legislation, Maktos opined, the U.N. might find Washington in violation of the Convention. Moreover, Maktos (incorrectly) explained that under American federalism, only the states had the power to prescribe punishments for the crimes listed in the Genocide Convention. He worried that U.S. courts might therefore use the treaty to enlarge the federal government's powers in violation of the Constitution's Tenth

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Amendment. In order to bury the Soviet draft, Maktos reluctantly introduced, and the committee passed, a weak clause under which signatories promised only "to undertake to enact the necessary legislation in accordance with their constitutional procedures."^{19}

With qualified American support, the Ad Hoc Committee and the ECOSOC approved the Genocide Convention in late April and August respectively. The Convention declared genocide to be a violation of international law punishable by national and international courts. Its terms extended to acts of genocide directed against national, racial, religious, and political groups committed with the intent to destroy the group because of its defining characteristic. After delineating physical and cultural genocide, the convention listed five crimes applicable to both: genocide, conspiracy to commit genocide, direct incitement to genocide, attempt to commit genocide, and complicity. Finally, signatories promised to pass implementing legislation as well as to extradite those charged with any of the crimes listed.^{20} Echoing Maktos, Willard Thorp, the American delegate to the ECOSOC, outlined three American reservations regarding the proposed convention. He objected to including cultural genocide and the crime of direct incitement, as well as to proposals for universal jurisdiction. He wished, though, that none of his remarks "be interpreted as modifying his delegation's strong and
wholehearted support of the essential parts of the draft Convention." The ECOSOC rejected these suggestions, though, and sent the convention to the General Assembly unchanged.  

As the draft convention awaited discussion by the assembly during the spring and summer of 1948, American religious organizations that had participated in wartime human rights lobbying began to press the State Department on behalf of the treaty. Walter Van Kirk of the ecumenical Federal Council of the Churches of Christ in America sent Thorp a resolution calling for the passage of a convention at the General Assembly's next session. The Catholic Association for International Peace also sent a statement asking that the State Department be flexible on several controversial provisions, even if it meant excluding references to political groups and an international tribunal in order to obtain a consensus in the General Assembly. According to James Hendrick and James Simsarian of the U.N. Secretariat's Human Rights Division, so many telegrams supporting the Genocide Convention flowed from Jewish groups to the UNCHR that they "dare not guess their number."  

To prepare for the future ratification debate, supporters of the convention formed broad-based coalitions. On 17 June, almost fifty organizations, including the National Association for the Advancement of Colored People, American Jewish Congress, United World Federalists, and the Young Men's
Christian Association, gathered in New York City to sign a petition in favor of a genocide convention. The petition was forwarded to State Department Legal Advisor Jack Tate by Willard Johnson, the General Secretary of the new United States Committee for a Genocide Convention. The organization, led by James Rosenberg and with officers from both secular and religious organizations, became the most important grassroots lobbying organization during the American ratification debate. The Committee also sent petitions to U.N. and State Department officials demanding quick approval of the document by the General Assembly. Cognizant of previous American policy, Rosenberg labelled any attempts to send the treaty to other bodies, such as the UNCHR or the International Law Commission, as "committeecide." He gave Undersecretary of State Robert Lovett, U.N. Secretary-General Lie, and U.N. assembly delegates a list of groups around the world with over twenty million members who supported "prompt adoption of a genocide convention." Ironically, these activities might have contributed to the defeat of the treaty in the Senate by convincing State Department officials that an easy and non-controversial ratification process lay ahead.\(^2\)

Once the General Assembly had referred the convention to its Sixth (Legal) Committee for final editing, the State Department pushed to incorporate Thorp's three objections. An analysis of the convention, prepared by lawyers including
Maktos, Sandifer, and Gross, reaffirmed their opposition to adding preparatory acts, requiring signatories to pass enforcement legislation, and granting universal jurisdiction. With Latin American nations providing the balance of power, they won two and lost two key votes in the Sixth Committee. France and the Netherlands, troubled by the vague concept of cultural genocide or agreeing that other U.N. bodies should first study the topic, voted with Maktos to delete it. The committee also rejected Soviet attempts to criminalize preparatory acts and to ban all propaganda "aimed at inciting...enmities or hatreds." Maktos fought unsuccessfully to strike the crime of "direct incitement in public and private to commit genocide," claiming the clause did not adequately distinguish between "the right of freedom of the Press and an alleged violation of the convention. Protection against genocide should stop where freedom of speech began. The cure should not be worse than the disease," he added. Omitting incitement would not weaken the treaty, Maktos argued, as courts could prosecute incitement that caused genocide as attempts or conspiracy to commit genocide. He lost due to opposition from the Soviet Bloc and Latin America. In another significant, but temporary defeat, those nations united again to delete all references to an international court. 24
The Convention's definition of genocide underwent substantial revision by the Sixth Committee, though the changes would prove more controversial in American ratification debates than at the United Nations. One puzzle was how to clarify the definition of genocide as acts committed "with the intent to destroy a group." Did the acts have to be committed with the intent to destroy all or just part of a group? How large a portion did "part of a group" encompass? The Sixth Committee sidestepped the issue by delimiting genocide as "any of the following acts committed with intent to destroy, in whole or in part," a national, ethnical, racial, religious, or political group. The Committee also added to the list of prohibited acts the forced transfer of children and restored, from the Secretariat's draft, the ban on causing serious "mental harm" to members of a protected group. As passed by the Sixth Committee, the treaty outlawed five crimes: killing, causing "serious bodily or mental harm," lowering the living standards of a group "to bring about its physical destruction," preventing reproduction, and forcibly transferring children. The articles on mental harm and how much of a group had to be destroyed to constitute genocide soon provided material for tirades against the conventions by some American senators.25

As the Committee wrapped up its work in late November, the United States, Latin American, and Asian nations struck a
crucial compromise that smoothed the way for the treaty's passage. Maktos knew that many delegates from these two regions had voted against an international court due to the competence of that court extending to charges of genocide against political groups. In particular, Brazil, Uruguay, and Iran were most concerned that their political leaders could be tried by an international tribunal for carrying out legal measures against subversive political groups. These nations had almost succeeded in deleting political groups from the convention. In return for American acquiescence in dropping political groups from the convention, a dozen nations reversed their previous position and voted to include an international tribunal. The revised convention posited that if national courts did not or could not try those charged with genocide, the alleged perpetrators would be tried by "such international penal tribunal as may have jurisdiction with respect to such Contracting Parties as shall have accepted the jurisdiction of such tribunal." The Committee voted to leave the details of establishing the court to the International Law Commission. By making the deal, Maktos explained, he had retained international enforcement of the convention and obtained maximum support for its other provisions.26

On 1 December, Maktos' wish came true when the Sixth Committee unanimously recommended that the General Assembly approve the Convention on the Prevention and Punishment of the
Crime of Genocide. The Assembly, by another unanimous vote, did so without amendment on 9 December 1948. Ernest Gross, summarizing the thoughts of many delegates, declared that the vote "reflected the determination of the peoples of the United Nations...to assure that the barbarism which had so recently shocked the conscience of mankind would never take place again." Dr. Herbert V. Evatt, the Australian President of the General Assembly, termed the adoption "an epoch-making event." He urged that all members sign and ratify the document "with the least possible delay." Raphael Lemkin triumphantly surmised that "it would be an inspiration to the world if the United States Senate showed the way and ratified it first." President Truman, in reporting the treaty to the Senate, agreed, declaring ratification would show the world that the nation "is prepared to take action on its part to contribute to the establishment of principles of law and justice."  

Lemkin would not survive to see his adopted country fulfill his aspirations. Despite strong support from the Truman Administration, grassroots advocacy groups such as the United States Committee for a United Nations Genocide Convention, and the American Bar Association's Section of International and Comparative Law, the U.S. Senate would not ratify the Convention for forty years. Arrayed against this formidable coalition was a majority of the American Bar Association, several patriotic groups including the Daughters
of the American Revolution, and conservative senators Tom Connally (D-TX) and Walter George (D-GA). Such voices succeeded in burying the Convention in the Foreign Relations Committee by presenting constitutional, political, and racial arguments to sympathetic senators. First, they argued persuasively, though often with questionable legal accuracy, that the Convention would overturn parts of the U.S. Constitution, upset the delicate federal-state balance of power, and infringe on individual liberties guaranteed by the Bill of Rights. These arguments were also raised in objecting to the more controversial human rights covenant, causing confusion in the Senate that prejudiced separate, objective consideration of the Convention and led to its entanglement in the Bricker Amendment debate. Second, they re-oriented the debate from the treaty's provisions to a polemical discussion of whether the document would bring socialism and world government under the United Nations to U.S. soil. Finally, convention foes exploited issues of race in order to generate fear and concern among southern Senators that the Convention might grant civil rights to African-Americans.

Although the A.B.A. was virtually the only organization to go on record in 1950 as opposed to the Convention, its objections alone were enough for Senator Connally to keep the treaty bottled up in his committee. On 1 February, the House of Delegates, the policy-making body of the A.B.A., met in

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Chicago and unanimously asked for a delay in ratifying the Genocide Convention "until there has been accorded the time and opportunity for adequate discussion and understanding of the Convention." To initiate this discussion, the A.B.A. sponsored sixteen regional conferences to educate lawyers on the U.N.'s human rights work. Seven months later, the A.B.A.'s conservative Committee on Peace and Law Through United Nations issued a report to the House of Delegates objecting to senatorial ratification on constitutional grounds. At the same meeting, the Section of International and Comparative Law reported favorably on ratification, though it attached several reservations clarifying "mental harm," "incitement," and other vague terms in the treaty. After prolonged and heated debate, the House of Delegates approved a resolution condemning genocide but opposing ratification because "the convention raises important fundamental [constitutional] questions but does not resolve them in a manner consistent with our form of Government."30

Ironically, in light of what would occur later, supporters of the Convention dominated debates in the Senate from the beginning. Hearings on the Genocide Convention began on 23 January 1950 before a special subcommittee of the Senate Foreign Relations Committee chaired by Brian McMahon (D-CT), a firm convention supporter. During four days of testimony, only five of forty-five witnesses opposed the Convention,
including three members of the A.B.A.'s Committee on Peace and Law Through United Nations. Those testifying in favor included ex-Secretary of War Robert Patterson from the U.S. Committee for a U.N. Genocide Convention, a coalition of groups whose combined membership surpassed one hundred million people. Nuremberg prosecutor Thomas Dodd and former Secretary of State George Marshall also spoke approvingly of the treaty. Yet an examination of the Committee's executive sessions reveals that the arguments of several conservative A.B.A. leaders raised substantial doubts about the wisdom of ratifying the convention in the minds of key senators such as Connally, who chaired the Foreign Relations Committee.

According to A.B.A. President Frank Holman and three members of the A.B.A.'s Committee on Peace and Law, Chairman Alfred Schwepppe, former chair Carl Rix, and law professor George Finch, the Genocide Convention was a dangerous new type of multilateral treaty that contradicted the U.S. Constitution. They argued that it could limit the freedom of speech and freedom of the press, diminish the Tenth Amendment by giving the federal government prosecutorial power over a large list of crimes over which states had traditionally exercised jurisdiction, and deprive Americans of a trial by their nation's courts. These dangers existed, Holman, Schwepppe, and Finch told the increasingly uneasy senators, because the U.S. Supreme Court had never declared a treaty
unconstitutional. Therefore, courts might find guilty of genocide anyone who caused "mental harm" by criticizing members of a minority group. George Finch even argued that the "mental harm" provision could be used to invalidate segregation laws. Anyone who wrote about genocide could be prosecuted for incitement. The possible chilling effect on the First Amendment even led the A.B.A.'s Section on International Law, which supported the Convention, to propose a reservation that limited "mental harm" to "permanent physical injury to mental faculties." McMahon's sub-committee recommended the reservation to the Foreign Relations Committee.

Holman and other Convention opponents also feared the treaty would mandate federal jurisdiction over a new class of crimes, thereby emasculating the Tenth Amendment by upsetting the delicate balance of power between states and national governments. They frequently explained that the Supreme Court, in the 1920 case of Missouri v. Holland, had allowed a treaty to cancel powers reserved to the states. According to the Constitution, treaties were "the supreme law of the land" and therefore invalidated contradictory municipal and state laws, state constitutions, and existing federal statutes. As the power to prosecute and punish crimes defined by the Genocide Convention traditionally fell under the purview of states, some A.B.A. members worried the convention would federalize
the criminal code, erode states' rights, and violate the Tenth Amendment.\textsuperscript{35}

Even worse, according to convention opponents, the document declared genocide to be a breach of international law whose violators could be tried by international, instead of American, courts. Some A.B.A. leaders charged that Americans hauled before these foreign judges would be shorn of their constitutional rights, including the guarantees of trial by jury, a speedy and public trial, and reasonable bail. Also, as the Constitution did not mention any international court, Convention opponents saw yet another example of usurping the Constitution by treaty. "It is not an overstatement," Holman protested, "to say that the Republic is threatened to its very foundations."\textsuperscript{36}

Holman, Schweppe, and Finch asserted that these radical changes to American jurisprudence would occur almost automatically after the Senate ratified the Convention. This was because, in their opinion, Congress did not have to pass implementation legislation before federal courts could execute its provisions. In order to prevent any part of the Genocide Convention from ever revising domestic law, these lawyers began to discuss drafting a constitutional amendment. Uniting with Senator John Bricker (R-OH), they became the driving force behind the various so-called Bricker Amendments, which
would severely restrict the internal effects of not only the Genocide Convention and other U.N. human rights treaties, but any international treaty or executive agreement entered into by the United States that would change domestic law.\textsuperscript{37}

Although most of the legal arguments made by opponents of the Genocide Convention were questionable at best, they did serve to legitimize and support their more strident political objections to multilateral human rights treaties. According to Holman, Schweppe, and Finch, the Convention, along with the Universal Declaration of Human Rights and the human rights covenants, would bring socialism by world government to the United States. Employing isolationist, almost xenophobic, rhetoric cloaked in constitutional legalisms, these A.B.A. leaders portrayed themselves as "patriotic" and "objective" legal scholars who had a professional duty to inform the American public of their impending betrayal. Using legal arguments to support their conservative ideology had two consequences. They were able to mobilize a large grassroots coalition that almost passed a constitutional amendment limiting the domestic impact of treaties, and they created confusion over the merits of the Genocide Convention by connecting it with the more controversial human rights covenants. Their political arguments also carried substantial weight with key Senators on the Senate Foreign Relations Committee.\textsuperscript{38}
Although A.B.A. representatives concentrated on making technical arguments before the Senate, in public speeches and writings to non-lawyers they outlined the isolationist, xenophobic, and racist underpinnings of their Genocide Convention analysis. U.N. bodies where the Soviet Bloc had influence might make scurrilous charges of genocide against the United States, they worried. According to Finch, the convention, by allowing the International Court of Justice (ICJ) to hear compliance complaints brought between nations, opened the door to false charges of genocide that could be levied against the U.S. by the Soviet Union and Communist groups. As an example, Holman complained that other nations might forward a U.N. petition submitted by the Civil Rights Congress that charged the U.S. government with genocide against African-Americans. By using such loaded language, Holman and others quickly constructed a nationwide network of groups opposed to the Genocide Convention and other U.N. human rights agreements. 

Genocide Convention opponents also successfully merged it with the more controversial human rights covenant in the minds of key Senators and many in the public so as to discredit the former. Nations that ratified the covenant, a legally binding treaty under consideration in the UNCHR, promised to grant their citizens specific political, economic, and social rights, many of which were found in the Universal Declaration.

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Convention opponents effectively employed powerful images of the covenant as a trojan horse that would bring socialism to the United States. At a time when American troops were fighting in Korea and McCarthyism was emerging, descriptions of treaties as Cold War daggers aimed at the U.S. Constitution resonated with many citizens. Holman led the attack, writing articles and pamphlets on "the dangers of 'treaty law.'" He declared that the covenant would sanction socialized medicine, the abolition of private property, and government regulation of the nation's economy. According to him, the goal of treaty negotiators like Eleanor Roosevelt was to "impose a collectivist form of government and a collectivist economy on all nations...including ourselves." Such claims were not based on legal substance, but on a world-view hostile to government economic regulation, perceived U.N. infringements on American sovereignty, and federal enforcement of human rights.⁴⁰

The most inflammatory argument used by leaders of the American Bar Association was a racist contention that the Genocide Convention might invalidate segregation statutes and support a federal anti-lynching law. According to members of the Committee on Peace and Law, the convention, which defined genocide as any of the specified acts "committed with intent to destroy, in whole or in part, a...racial group," could be used to wipe out Jim Crow laws and drag lynch mobs into federal courts. They theorized, in Senate testimony, that "in
part" applied to a single individual, and that therefore someone who lynched a single African-American could be charged with genocide against a racial group. Schweppe, who took \textquoteleft a back seat to no one in being opposed to genocide,\textquoteright nevertheless declared that a person who drove five \textquoteleft Chinamen\textquoteright out of town could be charged under the Convention with intent to destroy a small local Chinese population. Moreover, if it could be proven that segregation statutes generated \textquoteleft mental harm\textquoteright in blacks, the Convention could force integration upon the South. It is not surprising, given the A.B.A.\textquotesingle s own history, for its leadership to advance these types of objections. The organization allowed few African-Americans to join, for all prospective applicants had to note their race on membership applications and had to obtain thirteen affirmative votes of the sixteen-member board of governors. Holman\textquotesingle s and Schweppe\textquotesingle s arguments made a big impression on several senators, including Chairman Tom Connally and Elbert Thomas (D-UT).\textsuperscript{41}

Genocide Convention supporters from the State Department and private organizations claimed that the constitutional, political, and racial challenges to the Convention submitted by Schweppe, Rix, and Finch rested on shaky legal ground. Although treaty defenders agreed that the Supreme Court had never ruled directly on the question, justices had declared consistently in dicta that treaties could not invalidate parts
of the U.S. Constitution.\textsuperscript{42} Moreover, Genocide Convention supporters pointed out, their adversaries never offered any examples of treaties they considered to be unconstitutional that the Supreme Court had nevertheless upheld. As for the vague terms "mental harm" and "incitement to commit genocide," convention supporters, including State Department Legal Advisor Adrian Fisher, Solicitor General Philip Perlman, and former Nuremberg prosecutor (and Committee on Peace and Law Through United Nations member) Thomas Dodd, pointed out that a simple examination of the drafting history would demonstrate that the concepts fit very well into existing American law. The former included only permanent mental injury and not emotional or psychological pain inflicted by insults or satire, or any other exercise of free speech. These lawyers also outlined several U.S. Supreme Court rulings that denied First Amendment immunity to those charged with solicitation or incitement to commit a crime.\textsuperscript{13}

After arguing that treaties could not, and the Genocide Convention did not, override parts of the Constitution, treaty supporters tried to ground it firmly within existing constitutional law. Solicitor General Philip Perlman asserted that Congress' constitutional prerogative to "define and punish...offenses against the law of nations" sanctioned approval of both the convention and any implementation legislation. Moreover, the Supreme Court had long ruled that
the treaty power was concurrent with, and not subordinate to, Congress' enumerated powers, so that congressional legislation coupled with a ratified treaty could define violations of international law and specify appropriate punishments.44

Lawyers supporting the Genocide Convention agreed with Holman, Schweppe, and Finch that its provisions were superior to local, state, and existing federal laws as stated quite plainly by the Constitution. To them, then, Missouri v. Holland was just a re-statement of the obvious: Treaties are not restricted, in the words of Justice Oliver Wendell Holmes in that case, "by some invisible radiation from the general terms of the Tenth Amendment." The United States had from its earliest post-Constitutional days entered into treaties that nullified inconsistent state and local laws. State's rights, according to the Supreme Court, fell away completely in the face of treaty provisions.45 The U.S. had also signed other multilateral conventions that defined as international crimes offenses that traditionally fell under state jurisdiction, such as drug trafficking and prostitution. Under these treaties, state and federal courts had concurrent criminal jurisdiction to prosecute alleged offenders.46

In responding to the charge that an international tribunal would trample the rights of alleged American offenders, Robert Patterson provided a two-part answer. The
convention referred to a future international court that "may have jurisdiction with respect to those Contracting Parties which shall have accepted its jurisdiction." Such a court could not exist until a U.N. body had drafted its statute, at which time the U.S. would provide its assistance and after which the Senate would decide whether to ratify it. Only if the Senate approved the statute, to which it could attach whatever reservations it felt necessary to safeguard the Bill of Rights and American sovereignty, could the court try an American citizen. Even by ratifying the court's statute, Patterson continued, the Senate did not relinquish the right of Americans to face trial before their own courts. The principle of territorial jurisdiction, whereby a country had primary jurisdiction to prosecute all crimes committed within its borders, was a cornerstone of international law that the convention itself reaffirmed.  

Officials from the State and Justice departments and specialists in international law firmly denied their opponents' contention that the Convention was self-executing. They claimed the treaty required national legislatures to pass implementation legislation before the document obtained any domestic legal standing. Moreover, the Convention could not be enforced on its own accord since it contained no criminal penalties, which Congress would have to attach before courts could prosecute offenders. Congress also had to pass
extradition legislation before the convention, which authorized the deportation of suspects to nations where genocide had occurred, could be used to try Americans overseas. Lastly, federal courts had previously implied that any treaty that revised internal criminal law was automatically non-self-executing.48

Genocide Convention supporters ignored the almost apocalyptic political warnings expressed by A.B.A. leaders, explaining instead that ratification of the treaty would demonstrate American leadership and Soviet hypocrisy in the Cold War. If, as Under Secretary of State Dean Rusk asserted, the U.S. "was engaged in a very fundamental struggle in our foreign relations" with the Soviet Union, passage of the Convention would be proof of American leadership in the global fight to protect human rights. Solicitor General Perlman asserted that ethnic minorities at risk of genocide behind the Iron Curtain were inspired by the convention and that the U.S. could not disappoint them by delaying its approval. Senator McMahon, attempting to reach out to his skeptical anti-communist, conservative colleagues, pointed out that the U.S. could charge the Soviet Union with genocide against Latvians, Ukrainians, and other ethnic minorities under the Convention. To support this argument, McMahon referred to pro-ratification testimony provided by the Lithuanian Information Center and the Ukrainian Congress Committee of America.49
In a rather awkward defense for a human rights treaty, Rusk, Perlman, and Lemkin explained that the convention could not be used to protect African-Americans from extralegal murderers in the South. They replied that lynchings were not genocide because the treaty defined the latter as only specific acts "committed with intent to destroy, in whole or in part," a racial group. According to Rusk's interpretation of the treaty, genocide occurred only when an intent existed to destroy an entire group, and those who committed lynchings lacked this requisite motivation. Lemkin agreed, offering that "the basic policy of the South is not to destroy the Negro but to preserve that race on a different level of existence." This narrow interpretation of intent did not rest on hard evidence, though, for the question of whether acts done with intent to eliminate part of a group comprised genocide was uncertain. In any event, these officials pointed out that even a glance at the legislative history of the convention showed that the enumerated genocidal acts had to effect a large portion of the targeted group. In order to defuse the explosive arguments offered by the Committee on Peace and Law, the administration offered, and McMahon's subcommittee accepted, an understanding that limited genocide to crimes that "affect a substantial portion of the group concerned."^50

As treaty opponents and supporters sparred, the ongoing Korean War provided a catalyst for renewed lobbying on behalf
of the convention. On 31 July, the South Korean Ambassador to the United States, John Myun Chang, sent an urgent letter to Warren Austin, the top American delegate at the United Nations, claiming that North Korea was exterminating the "national, cultural, and religious leadership" of his country. A week earlier, representatives of thirty-two religious and labor organizations sent a telegram to Secretary of State Acheson urging him to lobby for Convention ratification that would help protect "religious and national groups from destruction" in South Korea. President Truman made the same point in a letter to Foreign Relations Committee Chair Connally, in which he concluded that ratification was "essential to the effective maintenance of our leadership of the free and civilized nations of the world in the present struggle against the forces of aggression and barbarism."51

Although the Genocide Convention as written received strong support from the Truman administration and most witnesses, the testimony by members of the Committee on Peace and Law convinced the sub-committee to approve the treaty with several clarifications and modifications. In a 12 April 1950 report, McMahon and colleagues unanimously recommended that the Foreign Relations Committee approve the convention subject to four understandings and a declaration. The sub-committee, responding to concerns that the Convention could be used to invalidate segregation laws and prosecute lynch mobs, declared
that a "substantial portion" of a group must be actually affected for genocide to occur, and it defined "mental harm" as "permanent injury to mental faculties." To allay the objections of states' rightists, the sub-committee approved a legally meaningless declaration that convention ratification in no way abridged "the traditional jurisdiction of...states...with regard to crime."52

Despite these modifications, Foreign Relations Committee Chairman Connally and Senator Alexander Wiley (R-WI) maintained a hostile attitude during executive sessions on 23 May, 11 August, and 6 September 1950. They were convinced that the convention would sacrifice American sovereignty to the U.N., Constitutional rights to an international tribunal, and segregation statutes to an irresponsible use of the treaty power. Wiley, for example, railed against U.N. human rights treaties that would create an "international Fair Employment Practices Commission." He denied that there was any moral responsibility to ratify the treaty, for he "didn't think the peoples of the earth [were] in any position where they can tell this great people on morals, politics and religion how they should live." Connally agreed, deploiring State Department officials "coming up here and lecturing to Congress about the morals or morality of the United States." Connally and Wiley continually repeated the Committee on Peace and Law's assertions that an international tribunal would rob Americans
of their Constitutional rights. McMahon tried to overcome their hostility by calling the understandings submitted by his sub-committee "reservations" (thereby increasing their status in international law) and proposing a new reservation on 11 August 1950 that specified the convention as non-self-executing. Connally refused to budge. After reading aloud the 8 September 1949 A.B.A. House of Delegates resolution opposing ratification, he refused to take a committee vote on reporting the convention to the Senate floor.53

Complicating the ratification debate in the Senate was the uncertain legality of any reservations the U.S. and others might propose to the Genocide Convention. The treaty itself contained no allowance for reservations, though the Soviet Union, Poland, Bulgaria, Rumania, and the Philippines had attached several, some of which other parties to the treaty opposed. Past practice yielded conflicting guidance on what constituted a legal reservation. The League of Nations recognized that a valid reservation had to have the unanimous consent of all parties to the treaty. In contrast, the Pan American Union recognized reservations to which other nations objected. The rejecting country or countries then had the discretion to declare that the reserving nation was not a party to the treaty. If no state objected, the reserving state, with its reservation, became a party to the treaty.
A.B.A. leaders and the Senate Foreign Relations Committee worried that any nation could veto their necessary modifications. Their anxiety grew as the Genocide Convention was due to come into force on 12 January 1951, ninety days after twenty states had ratified it.

The U.N., unable to decide between the two existing practices, spent several weeks in paralyzing procedural debate. Secretary-General Trygve Lie stated that he would unilaterally follow the practice of the League of Nations after 12 January unless the General Assembly instructed him otherwise. The assembly referred the issue to its Legal Committee, which took two weeks in October to decide whether to ask the International Law Commission (ILC) or the International Court of Justice (ICJ) for advice. The United States favored the former, as the ILC had already briefly examined the issue and, the State Department believed, was a better forum than the ICJ for examining a matter so undeveloped in international law. The committee decided to do both, asking for an advisory opinion from the ICJ and directing the ILC to put the topic on its agenda for further study. The proposed resolution for the assembly to consider listed several specific questions for the ICJ to answer, notably what the legal relationship would be between reserving nations and any country that accepted or rejected the
reservation and if states that had only signed, but not ratified, a treaty could object to a reservation.\(^5\)

While the General Assembly awaited an answer, a related controversy further marred the convention's chances of ratification in the Senate. Because the assembly gave no instructions to Lie while he awaited the ICJ's decision, he was unclear whether a nation that had signed, but not yet ratified the treaty, could legally object and thereby invalidate another country's reservations. The State Department feared the Soviet Union, as a signatory, could veto any reservations attached by the Senate. In addition, Senator Hubert Humphrey, a prominent Convention supporter, told President Truman that the omission of interim instructions would prevent Lie from accepting any reservations while the matter was under ICJ consideration. Such a delay, expected to last a year, would freeze Senate consideration of the Convention at a time when Humphrey thought the momentum to ratify was building. Although the State Department denied Humphrey's claim, it immediately proposed an amendment instructing the Secretary-General to accept all reservations without prejudice until the ICJ, ILC, and General Assembly decided otherwise. The amendment passed the assembly by a wide margin, as did the Sixth Committee's resolution. Truman had bought additional time for the Senate Foreign Relations Committee.\(^6\)
The United States pushed hard for acceptance of the Pan American system that would allow American ratification of the convention with controversial reservations. In a twenty-six page brief filed with the ICJ, the State Department's lawyers asked the court to balance the need for the document's maximum acceptance among nations with "avoid[ing] either a general undermining of the standards accepted by many without reservation, or imposing any new obligations without the necessary consent on all upon whom they fall." The brief dismissed the unanimity required by the League of Nations system as almost impossible given the more diverse membership of the United Nations. The Pan American system, in contrast, allowed signatory and ratifying nations to decide for themselves which reservations were legally permissible. This power to bilaterally nullify another state's reservation, the State Department argued, would force nations to limit the number of reservations made and would act as a check on frivolous reservations.\(^{57}\)

The World Court, in an fractured opinion delivered on 28 May 1951, agreed with most of the American position. It accepted the right of a nation to make reservations, though all legal reservations had to be compatible with the "object and purpose" of the treaty. It would be up to the ICJ to enforce this standard in specific cases. The Court also upheld the right of nations that had already ratified the treaty to
object to a reservation, and ruled the objecting country could consider the reserving state not to be a party to the treaty. A reserving nation would be a party to an international convention to the extent that other nations did not reject its reservations. The objection of a signatory, though, would be invalid until that country ratified the convention. The decision opened the door for qualified U.S. ratification, as the reservations proposed by McMahon's subcommittee would be legally valid unless every other ratifying nation objected.58

Any excitement generated by the World Court's decision was tempered by the growing realization that the Senate would not ratify the Genocide Convention. On 17 September 1951, McMahon tried one more time to have the Foreign Relations Committee report the treaty to the Senate. Chairman Connally again dissented, declaring its consideration would "cause a hell of a row" and that he opposed "making treaties that bind us to do things in our own domestic jurisdiction." Senator George agreed, and, no doubt remembering the testimony of the Committee through Peace and Law, added that the convention was "filled with subtle and obscure and doublemeaning things that really aim to attack the constitutional setup we have under our dual [federal-state] system." The meeting adjourned without a vote, and the committee would not consider the treaty again for twenty years.59
By not ratifying the Genocide Convention, the Senate effectively forced the U.S. to concede its leadership role in the world-wide movement against genocide at the United Nations. President Truman argued that the inability of the Senate to pass the treaty forced his administration to keep silent at the U.N. in the face of Soviet genocidal practices. On 11 January 1952, over a hundred congressmen signed a letter to Acheson asking him to start "a campaign [at the U.N.] to expose Soviet genocide" committed against Poles, Lithuanians, Czechs, and other ethnic groups. Assistant Secretary of State Jack McFall responded by acidly noting that as the Senate had not ratified the Convention, "we cannot very well insist that other nations abide by the principles to which we have not given our own endorsement." Although McFall pointed out that American representatives at the U.N. had denounced specific Soviet human rights abuses, he thought putting that item on the General Assembly's agenda would open the U.S. to countercharges of hypocrisy. The same concern prevented the Eisenhower administration from doing likewise in 1954.60

The policy reversal also caused the U.S. actual embarrassment at the United Nations. On 3 August 1953, the ECOSOC approved a resolution entreating states to hasten their approval of the Convention. The Eisenhower administration,
placed in a difficult position due its own opposition to the
convention and the inflammatory impact such a measure could
have on Bricker Amendment supporters, abstained. When the
resolution came before the Sixth Committee, though, U.S.
delegate Archibald Carey insisted, due to his personal
beliefs, on voting affirmatively. Even a meeting with the
American Ambassador to the U.N., Henry Cabot Lodge could not
sway him. Lodge even tried to schedule a meeting between Carey
and Secretary of State John Foster Dulles, but Dulles told
Lodge to solve the problem on his own. Despite Lodge's
extraordinary efforts to delay a vote by trying to cancel the
Sixth Committee's meeting, the body unanimously approved the
resolution on 8 October with Carey voting as part of the
majority. After the General Assembly passed the resolution on
3 November, again with American support, Lodge had to issue an
awkward press release explaining that the vote was "not a
commitment as to the timing of action by the United States on
the Genocide Convention, either on behalf of the Executive or
Legislative Branch."

The refusal of the Senate to ratify the Genocide
Convention signalled the beginning of a dramatic change in
American human rights policy at the United Nations. The
transformation from main advocate and leading author of the
convention to outspoken opponent of all human rights treaties
had begun. The Truman Administration, caught off-guard by the
tenacious opposition to the convention by conservative senators and the American Bar Association, had abandoned the Genocide Convention and began to explore non-treaty methods of promoting human rights. The search for an alternative policy quickened after 1950, when a bloc of non-aligned nations began to reject the conservative assumptions that had governed American proposals for the Genocide Convention and a human rights covenant. With their self-confidence bolstered, their political skills strengthened, and their legal arguments honed, ABA leaders returned to their assault on the covenant. The intersection of dissent at the U.N., criticism at home, and the election of a more conservative president in Dwight D. Eisenhower soon caused a complete re-orientation of American human rights policy.


6. "Genocide," Subcommission on Human Rights and Status of Women, S/HRW D-108/47, 30 June 1947, RG 353, box 110, NARA. Such a provision would violate a fundamental principle of international law, pacta tertiis nec nocent nec prosunt, which states nations that are not parties to an international treaty cannot be bound by its provisions. It would also violate Anglo-Saxon law which rests on the premise that law goes with the territory; thus even a non-party that wanted to prosecute under the Genocide Convention's terms would be legally unable to do so.


10. Memo to Lovett from Rusk and Gross, 10 September 1947, decimal file 501.BD/9-1047 (1945-49), box 2186, NARA.


12. "Genocide," Committee on International Social Policy, ISP D-14/48, 23 January 1948, RG 353, box 101, NARA. See also minutes of the Committee on International Social Policy, 29 January 1948, RG 353, box 107, NARA.


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15. "Basic Principles of a Convention on Genocide," 7 April 1948, E/AC.25/7. The Soviets thought that religion was a component of a larger national identity and so wished that the two characteristics be combined. See also summary record of the Ad Hoc Committee on genocide, 6, 19, and 20 April 1948, E/AC.25/SR.1, SR.12, and SR.13; Lovett to Maktos, 13 April 1948, decimal file 501.BD/4-1348, and Sandifer to Gross, 14 April 1948, decimal file 501.BD/4-1448 (1945-49), box 2186, NARA.

For domestic opposition to the provision on state complicity see letter from Mildred Burgess of the National Federation of Business and Professional Women's Clubs to Gross, 12 April 1948, decimal file 501.BD/4-1248 (1945-49), box 2186, NARA.


19. Article VI of the Ad Hoc Committee's draft. See also summary record of the Ad Hoc Committee, 23 and 27 April 1948, E/AC.25/SR.18 and 19; Lovett to Maktos, 13 April 1948, decimal file 501.BD/4-1348, Sandifer to Gross, 14 April 1948, decimal file 501.BD/4-1448, and Sandifer to Gross, 19 April 1948, decimal file 501.BD/4-1948 (1945-49), box 2186, NARA.

Gross argued that implementation legislation was
necessary before the U.S. could comply with the extradition requirements of the convention. See Gross to Maktos, 23 April 1948, box 8, subject files of Sandifer, lot file 55-D-429, box 8, NARA; and Tate to Gross, 9 November 1948, decimal file 501.BD/11-848 (1945-49), box 2186, NARA.


22. Simsarian and Hendrick to Sandifer, Kotschnig, Mulliken, and DePalma, 27 July 1948, subject files of Sandifer, lot file 55-D-429, box 8, NARA. See also Van Kirk to Thorp, 14 June 1948, decimal file 501.BD/6-1448, and Rev. R.A. McGowan, Executive Secretary of the Catholic Association for International Peace to Secretary of State Marshall, 12 August 1948, decimal file 501.BD/8-1248 (1945-49), box 2186, NARA.

23. Rosenberg to Lovett, 26 August 1948, decimal file 501.BD/8-2648 (1945-49), box 2186, NARA. See also Johnson to Tate, 14 July 1948, decimal file 501.BD/7-1448, and Rosenberg to Lovett, 17 August 1948, decimal file 501.BD/8-1748 (1945-49), box 2186, NARA.

24. Article IV(c) of the Ad Hoc Committee's Convention; summary record of the Sixth Committee, 26 and 27 October 1948, A/C.6/SR.84 and 85; and Union of Soviet Socialist Republics, amendments to the Ad Hoc Committee's draft, 9 October 1948, A/C.6/215/Rev.1.


   For an analysis of votes in the Sixth Committee, see LeBlanc, The United States and the Genocide Convention, 76-77.

   For a succinct statement of the American position on direct incitement, see U.S. State Department, "Position on
Genocide Convention," 2 June 1948, subject files of Sandifer, lot file 55-D-429, box 8, NARA.


29. Minutes of the Committee on International Law, 2 February 1949, box 101, Papers of Adolf Berle, Franklin D. Roosevelt Library [hereafter cited as FDRL]; "Draft Report from the Committee on International Law to the Association of the Bar of the City of New York," box 90, Berle Papers, FDRL; Senate, Genocide Convention Hearings, 1950, 79; and Association of the Bar of the City of New York, Committee on International Law,
"Memorandum on the Genocide Convention," 14 February 1950, box 91, Berle Papers, FDRL.


For the report of the Committee on Peace and Law Through United Nations see Senate, Genocide Convention Hearings, 1950, 158-192.

For the report of the Section of International and Comparative Law, see ibid., 231-247.

The House of Delegates resolution is printed in ibid., 158.


42. The clearest of the Supreme Court on the subject came in the 1890 case of *Geofroy v. Riggs* (133 U.S. 258). Justice Stephen Johnson Fields, speaking for a unanimous Court, declared that "it would not be contended that it [the treaty-making power] extends so far as to authorize what the Constitution forbids, or a change in the character of the government." See also *Genocide Convention Hearings*, 1950, 29-30.


For Supreme Court cases on the law of nations and treaty power, see United States v. Arjona, 120 U.S. 479; Perkins v. Elg, 307 U.S. 325 (1939); and Ex Parte Quirin, 317 U.S. 1 (1942).

45. Missouri v. Holland, 252 U.S. 433-34. Article VI states that "...all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land, and the Judges in every State shall be bound thereby, and Thing in the Constitution or Laws of any State to the Contrary notwithstanding." For Supreme Court decisions on the supremacy of treaties, see Ware v. Hylton 3 Dallas 199 (1796), Fairfax's Devissee v. Hunter's Lese 7 Cranch 603 (1813), Hauenstein v. Lynham 100 U.S. 483 (1879), Asakura v. Seattle 265 U.S. 332 (1924), and Missouri v. Holland 252 U.S. 416 (1920).

For a long list of such Court decisions, see Oliver Schroeder, Jr., International Crime and the U.S. Constitution (Ann Arbor: Western Reserve University Press, 1950), 18-20; and Genocide Convention Hearings, 1950, 25-26, 45-47, 67-69.

46. Examples of treaties include Convention to Suppress the Slave Trade and Slavery (1926), Convention and Final Protocol for the Suppression of the Abuse of Opium and Other Drugs (1912), Agreement for the Suppression of the Trade in White Women (1904), Convention for Protection of Submarine Cables (1884). See also Senate, Genocide Convention Hearings, 1950, 13-16, 33-36, 40-44, 70; State Department, "Memorandum on


Several organizations also wrote to the State Department

57. State Department, "Written Statement of the United States of America Regarding the Questions Submitted to the International Court of Justice," subject files of Sandifer, lot file 55-D-429, box 8, NARA, 9.


59. Senate, Genocide Convention Executive Sessions, III, 1951, 381, and 382.


61. Dulles to Lodge, 23 October 1953, box 5, Chronological Series, Dulles Papers, Dwight D. Eisenhower Library [hereafter referred to as DDEL. See also Lodge to Dulles, 9 October 1953, decimal file box 340.1AG/10-953, box 1357 (1950-54), NARA; Sandifer to Robert Murphy, Assistant Secretary of State for U.N. Affairs, 12 October 1953, decimal file 340.1-AJ/10-1253

The rising domestic and international backlash against the Genocide Convention and the human rights covenant soon forced presidents Truman and Eisenhower to re-orient policy at the United Nations. The victorious struggle against the convention waged by Senator John Bricker and American Bar Association (ABA) leaders had generated the publicity, legal arguments, and political connections that they now used to attack the human rights covenant. By asserting that the covenant could invalidate parts of the U.S. Constitution, abolish federalism, and transport socialism to American shores, they heightened domestic support for a constitutional amendment to limit the internal power of treaties. State Department officials, growing increasingly anxious, tried to blunt Bricker and ABA criticism by advancing proposals in the United Nations Commission on Human Rights (UNCHR) to protect states' rights and rescind the nation's obligation to enforce a list of economic rights. UNCHR members, though, not only rejected the American proposals but added an expansive article
on self-determination, attached a long list of economic rights, and omitted a federal-state article. Truman and Roosevelt left office with U.S. human rights policy in shambles, a UNCHR polarized along East-West and North-South lines, and a hostile Senate on the verge of approving a constitutional amendment to repudiate their treaty-based human rights accomplishments.

To thwart the passage of a constitutional amendment that he believed would cripple the president's powers in foreign affairs, incoming President Dwight D. Eisenhower radically altered American human rights policy. He and Secretary of State John Foster Dulles proposed to replace the treaty-based policy of their predecessors with an "Action Program," which would restrict the UNCHR's work to educating and advising governments on human rights issues. To deflect foreign criticism of this proposal and possibly draw conservative Republicans away from supporting Bricker's amendment, Eisenhower, Dulles, and U.N. ambassador Henry Cabot Lodge launched a propaganda offensive at the U.N. to highlight the woeful human rights records of Communist nations. By 1953, the Central Intelligence Agency, the Psychological Strategy Board, and the American U.N. Mission had begun to replace the State Department as the architects of Washington's human rights policy. Eisenhower's recommendations, however, met only with disdain in the UNCHR and indifference from Bricker's
supporters. Their legacy was a leadership vacuum in the once U.S.-dominated UNCHR, which would debate the covenants aimlessly for thirteen more years.

II

Even the strongest American supporters of Truman's U.N. human rights work, who by mid-1951 doubted the Senate would ratify the covenant, struggled to find an alternative policy. A. Philip Randolph, Walter White, Mary McLeod Bethune, and a dozen other African American leaders asked Truman to adopt a domestic focus by "not only talking democracy and fighting for it across the earth, but...demonstrating it in practice here at home." The American Jewish Committee and the American Civil Liberties Union continued to advocate the right to petition the United Nations. Disillusioned by the recent UNCHR session, others advocated fighting the Cold War by attacking Communist nations for violating human rights. The Jewish Labor Committee submitted a petition to the U.N. and State Department detailing practices of "cultural and spiritual genocide" against Soviet Jews and calling for an on-site investigation by the United Nations. An October meeting of State Department officials and a dozen NGO leaders identified two dilemmas: continued American human rights leadership rested on completing a treaty the Senate was unprepared to ratify and on
agreeing to amendments by other nations that made U.S. approval even less likely. Attendees, who included long-time activists Roger Baldwin, Ben Cohen, Frederick Nolde, Clark Eichelberger, James Shotwell, Walter White, and James Simsarian, split over whether to continue lobbying for the covenant; some proposed to require governments to file reports on their human rights practices while others called for the convening of regional commissions or a world conference to study human rights issues.¹

Amidst these doubts, Roosevelt, Simsarian, Tate, and other covenant supporters in the State Department felt vindicated and emboldened by the surprise vote of the U.N.'s Economic and Social Council (ECOSOC) in late August to place political and economic rights in separate covenants. After the UNCHR adjourned, Roosevelt and her advisors had deemed any future lobbying for two covenants "unproductive and unwise" due to the ill will such a campaign would generate from non-aligned, poorer nations. Tate even drafted a reservation to shield the U.S. government from any responsibility to implement the economic provisions of the treaty. Their acceptance of a single treaty influenced the State Department's position paper, which called for accepting one covenant if the majority in the ECOSOC so decided, with an understanding that economic and social "rights" were "to be treated [only] as objectives" by U.N. members. Yet, due to a
strong and unified Western presence in the ECOSOC and the UNCHR's past difficulty in drafting these guarantees, the body voted on 29 August to ask the General Assembly to reconsider its call for a single covenant. The resolution also reaffirmed the need to include a federal-state clause. Though this was a clear American victory, Sandifer was cautious. Only one-third of the ECOSOC members wanted to delete economic and social rights from the covenant, he told Roosevelt, and getting the more diverse assembly to approve the ECOSOC's decision would be difficult. Senator John Bricker, though, was unimpressed. "A few more 'victories,'" he stated soon after the vote, "and the Constitution will be lost."

Bricker's high-profile covenant-bashing during the trial of American reporter William Oatis in Czechoslovakia quickly extinguished any lingering State Department exuberance over the ECOSOC vote. On 4 July 1951, the Czech government convicted Oatis, an Associated Press correspondent, of espionage and sentenced him to a ten-year prison term. The State Department quickly condemned the detention and sponsored a successful ECOSOC resolution that called on governments generically to "do all within their power to safeguard the rights of correspondents." Bricker saw another opportunity to criticize the human rights covenants. Citing the provision that allowed governments to limit freedom of the press in order to protect "public order, safety, health, or morals."

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the Ohio senator declared that the covenant would allow similar harassment by any government against reporters. "How can the State Department complain about the imprisonment of William Oatis," Bricker inquired, when the covenant "would legitimize such action?" Three weeks later, Bricker introduced his first of several constitutional amendments to prevent passage by the Senate of treaties affecting "the rights and freedoms of citizens of the United States recognized in this Constitution." Written by Bricker and an aide without ABA advice, the amendment was poorly worded and received little attention in the Senate. But Bricker's crusade had begun.

With covenant opponents trying to seize the initiative in the Senate, Roosevelt, Green, Simsarian, and Acheson tried to recapture domestic and international support for a conservative human rights treaty by lobbying for two covenants, proposing only a weak article on self-determination, mediating the Indian-South African impasse, and exploiting Soviet Bloc human rights violations. After reassuring Senate Foreign Relations Committee Chairman Tom Connally that Bricker was unqualified to judge an incomplete covenant that even the State Department called "unsatisfactory," the department's lawyers privately outlined covenant policy for the 1951 General Assembly. With Acheson's approval, they tried to balance the flexibility needed to work with underdeveloped nations while deflecting the latter's
demands that would upset Bricker and his allies. Given that Asian, Latin American, and Middle Eastern nations saw economic and social rights as "a symbol of the[ir] needs and aspirations," rigid American support for two covenants would generate the same intense resentment as had occurred in 1950. Therefore, Acheson permitted the U.S. to vote for one or two covenants, depending on the majority's wishes in the assembly. To assuage Bricker, though, the delegation would define these "rights" as goals only, for nations to achieve progressively by private and governmental action. Foggy Bottom also demanded the inclusion of a federal-state clause to silence states' rightists and the omission or placement in protocols of machinery for receiving NGO and individual petitions to satisfy sovereignty-conscious senators.

The State Department privately, however, spent the rest of 1951 in discussions with foreign allies about how to gain U.N. approval for two covenants. A month before the assembly convened, Acheson and Austin lobbied the British, French, Canadian, and Australian delegations. Roosevelt aide James Frederick Green, decrying the "general emotionalism" of underdeveloped countries, and Roosevelt, who explained the 1950 decision to draft one covenant as based on "emotion rather than reason," described the issue's importance to their delegation. If the U.S. had to vote for one covenant to avoid bitter attacks at the U.N., she continued, the Senate would
reject the document they had now labored four years to complete. The adoption of two covenants, though, would permit the Senate to at least ratify the treaty on civil and political guarantees. The delegates spent much of November in intense meetings at the U.N. and in foreign capitals in a desperate attempt to have the assembly approve the ECOSOC's latest resolution. On 5 December, Roosevelt opened the public debate. In her first speech to the assembly's Third Committee, she disingenuously declared that having two covenants would not give a privileged position to civil and political rights. "I consider each group of rights of equal importance," she concluded, but inherent qualitative and enforcement differences between each category mandated the drafting of separate treaties. Two days later, the U.S. co-sponsored an amendment that called on the UNCHR to draft two covenants.

The State Department also had to satisfy non-Western demands to add the right of self-determination to the covenant without alienating its colonial allies and their senatorial supporters. Neither the UNCHR or ECOSOC had been able to discuss the topic as requested by the 1950 assembly. Frustrated, a dozen nations called for the Third Committee on 8 December to add the provision that "all peoples shall have the right to self-determination." Acheson and Roosevelt opposed the amendment and sought, depending on the committee's wishes, to drop the topic, address it in a separate
resolution, or approve a weaker article that only obligated nations to promote the "right." Above all, they wanted the UNCHR, where the U.S. had more influence, to forge the article instead of the assembly. Although Roosevelt condemned the resolution as promoting needless factionalization in the U.N. and posing dangerous implications for colonial powers, she knew any opposition would be futile and counter-productive. Some delegates also predicted that the Senate would find the clause unacceptable, especially if it required Washington to schedule an independence referendum in its colonies of Alaska and Hawaii. Roosevelt's advisors hoped to forge a compromise that would merely affirm the principle of self-determination as stated in the U.N. Charter.⁶

Fear that U.S. human rights policy might ignite a U.N. and domestic backlash also dominated the State Department's cautious response to continued South African discrimination against Indian nationals. South Africa had rejected the 1950 U.N. overture that proposed a three-member mediation commission and called upon Pretoria to repeal the Group Areas Act. Acting Secretary of State James Webb strongly preferred that Britain handle the problem as a Commonwealth affair, fearing any U.S. involvement would set a precedent for U.N. intervention and "open [the] way for propaganda counter-charges by unfriendly states re racial situation in U.S." After a tense delegation meeting in which Roosevelt and
Channing Tobias advocated confronting South Africa over apartheid while Sandifer and Ben Gerig favored working privately to promote reconciliation between the parties concerned, the group agreed to move slowly. Acheson reinforced their decision by repeating a year-old rumor that Pretoria might withdraw from the U.N. if the organization criticized apartheid. He privately denounced an Indian resolution that called for a suspension of the Group Areas Act and allowed the Secretary-General to appoint a South African delegate to a conciliation conference if that nation refused to do so. The State Department used the Christmas break to mobilize support for an acceptable compromise.

The State Department employed Cold War human rights propaganda to persuade non-aligned nations to vote with the West on the above issues. Hoping to discredit Soviet Bloc support for a single covenant, adding a strong self-determination article, and censuring South Africa, the U.S. delegation attacked Communist human rights violations, including the harassment of foreign reporters. Before the assembly convened, the United States circulated over one hundred exhibits that detailed human rights violations in Rumania, Bulgaria, and Hungary to the U.N. Secretary-General, embassies around the world, the Voice of America, and domestic labor unions and bar associations. The objective, according to the State Department, was to "retain the current Free World
propaganda initiative" and "to indicate what life under the Soviet-Communist system is really like." To provide a pretext for public discussion, Acheson asked the delegation to introduce the ECOSOC's resolution on news reporters in the assembly and to raise the issue of William Oatis' continued incarceration. Voice of America broadcasts condemned Soviet Bloc practices of mass arrests and torture, asserting that American segregation practices paled in comparison. With key votes on the covenant, South Africa, and the Oatis case postponed for Christmas, the State Department had three weeks to lobby the underdeveloped nations.

Bricker and ABA leaders had little interest in following these debates as they continued to warn Americans that the covenants imperiled their constitutional freedoms. Turning away from illuminating how these treaties would emasculate the First Amendment, the Ohio senator now condemned the document for permitting secret criminal trials in violation of the Sixth Amendment. The "Covenant on Human Slavery," Bricker declared, would allow governments to ban press coverage of trials to protect national security (among other reasons), thereby permitting the resurrection of the infamous British Star Chamber. "It is time for the Senate," Bricker concluded, "to say whether the rights of the American people are to be determined under international law or the Constitution." Two months later, Bricker resumed criticizing the covenant's
alleged restrictions on free speech, concluding that "the only reason for defining these rights in a U.N. treaty is to advance world government...a fantastic king-size edition of Brook Farm." The Constitution must forever ban the Senate, he declared, from approving any treaty that limited the Bill of Rights.9

Foreshadowing a bitter struggle, ABA leaders at first gently criticized Bricker's tactics and goals as too moderate. Although Eberhard Deutsch of the Committee on Peace and Law congratulated Bricker for his "brilliant and courageous defense of human rights," his committee thought the senator's amendment too weak. Disappointed also that Bricker had not consulted them before introducing his proposal, committee members Vermont Hatch, Deutsch, and chairman Alfred Schweppe spent four months drafting their own version. They parted with Bricker on whether it was possible and wise to prevent the implementation of only human rights treaties. In drafts circulated to committee members, Schweppe desired to make all treaties subordinate to any contrary provisions in the Constitution, federal laws, and state statutes. He also proposed to make all treaties non-self-executing, thereby forcing Congress to pass enforcement legislation before each became law. Bricker thought both positions unrealistic and dangerous. Some reciprocal treaties that gave aliens property rights and business privileges in return for reciprocal
guarantees for Americans were necessary and desirable, he asserted. He also knew that most treaties ratified by the Senate were not controversial, and he did not want the body bogged down in detailed discussions over implementing each. Given these differences, though, Deutsch told Bricker that a compromise must be possible.¹⁰

The State Department tried to suppress growing ABA and Bricker criticism by lobbying hard for two covenants and a vague self-determination article. Roosevelt strongly condemned the Soviet Union for supporting one covenant by questioning its credibility to speak on human rights issues. Desiring the votes of underdeveloped countries, she outlined in detail American foreign aid programs as proof that the U.S. cared deeply about their economic and social progress. A month later, she promised U.S. support for passing two covenants at the same time, thereby undercutting the charge by the Soviets and others that the U.S. wanted to postpone a treaty of economic and social rights. On 21 January, the Third Committee dealt the Soviet Bloc a stinging defeat by narrowly approving the formulation of two covenants, with Latin America providing the critical affirmative votes. The full assembly soon ratified the decision by a very close margin. The State Department's promises and its assertion that economic and political rights were fundamentally different had persuaded nations as diverse as France, China, Lebanon, and India to
reverse their 1950 votes for one covenant. Though Roosevelt and her delegation were pleased, they had no time to celebrate amidst other, unfavorable decisions by the assembly.\textsuperscript{11}

After spending much political capital on the fight for two covenants, the American delegation could not prevent a Soviet-Third World coalition from passing a strong self-determination article. The topic, which merged the struggle of Asian, African, and Middle Eastern peoples to gain political and economic independence from the West, and Moscow's drive to cultivate global influence by charging the U.S. with imperialism by "trying to enslave the world," provoked bitter debate. All of Green's attempts to introduce milder alternatives to a covenant article failed by large margins; the U.S. now had to side with either the Third World or its Western colonial allies who wanted to drop the topic. France and Britain vociferously warned against betrayal in the full assembly, stating that any decision would legalize the expropriation of Western businesses and military bases. "They tried to frighten us in every possible way," Roosevelt informed Acheson. On 5 February, the assembly, with only the U.S. and Western Europe dissenting, voted that both covenants would state that "all peoples shall have the right to self-determination" and it asked the UNCHR to prepare enforcement recommendations. Roosevelt and others were disappointed that the U.S. had to side with an unpopular minority, and they
worried that the developing anti-American backlash would encourage Third World nations to attach other unacceptable articles. She predicted that future opposition to such measures would be numerically "useless" while John Allison, the Assistant Secretary of State for Far Eastern Affairs, asserted that "the propaganda consequences of this vote are obvious and unfortunate."^12

Using creative diplomacy to craft a resolution on the discriminatory treatment of Indians in South Africa restored some lost American prestige and credibility. U.S. delegates Roosevelt and Anna Lord Strauss supported Acheson's somewhat contradictory desires to stay out of a conflict between two allies, demonstrate American opposition to racism to the Third World, and prevent passage of a condemnatory resolution that might precipitate a South African withdrawal from the world body. Employing shuttle diplomacy and proactive lobbying, the delegation persuaded Israel to propose appointing an impartial mediator to start negotiations if South Africa refused to talk directly with India and Pakistan. The gambit worked, and although the U.S. had to abstain and vote against parts of the final resolution, the General Assembly approved the plan unanimously on 12 January. Roosevelt, typically modest and cautious, concluded that American arbitration "was not unhelpful" in restoring some goodwill with Middle and Far Eastern nations. The U.S. role as an honest broker, however,
soon became untenable after Pretoria again refused to negotiate and the assembly voted to discuss the matter again in 1953. By then, the majority of non-aligned nations had grown tired of compromise, and the U.S. soon found itself alone with its colonial allies on this issue too.¹³

The increasing isolation of the West explains why the United States delegation did not even ask the assembly to pass the ECOSOC resolution on protecting news correspondents. When the ECOSOC's report came before the Third Committee, Roosevelt told Acheson that her fellow delegates favored only a "strong statement" that condemned Czechoslovakia for keeping William Oatis behind bars. Aside from the lack of time available to discuss the report, she worried that the Soviets and Arabs would "exploit such an opportunity...[to make] many speeches on other human rights matters, such as Negroes in U.S." Acheson concurred, and on 30 January, delegate Channing Tobias denounced in a lengthy speech the arrest and of trial of Oatis as "constitut[ing] a direct attack on freedom of information." Czechoslovakia responded that the U.N. had no jurisdiction in its internal affairs, a point Washington had cited often in earlier human rights debates. The 1951-52 General Assembly adjourned with decidedly mixed results for the U.S., even when it sought to occupy a middle ground. The North-South and East-West divisions added a complicated strategic element to human rights issues, but the U.S. had limited flexibility as
domestic pressure against ratifying the human rights covenants grew.14

Bricker and the American Bar Association, seeing the State Department preoccupied at the U.N., went on the offensive by marshalling arguments and supporters for their divergent constitutional amendments. Bricker employed provocative language to describe the dire social and political consequences that the covenant would wreak on an unsuspecting nation. He warned that allowing individuals to "seek, receive, and impart information" could force Notre Dame University to invite atheists and communists like Paul Robeson to speak and mandate that conservative magazines run pro-socialist columns. In a form letter to an expanding list of backers, Bricker called for a "thorough educational campaign at the grass-roots level" to protect the integrity of the Constitution and U.S. sovereignty from "heavily financed one-world" advocates. He repeated the Star Chamber charge in a nationally-broadcast radio interview. The climax of his efforts was the introduction of another amendment with fifty-nine co-sponsors on 7 February. Senate Joint Resolution 130 was similar to his 1951 offering, except for an attempt to meet one of the ABA's objections by defining all treaties as non-self-executing. It also prohibited treaties from transferring any judicial, legislative, or executive power to an international organization. Finally, the amendment banned presidents from
signing executive agreements in lieu of treaties and placed additional requirements on the former. "I do not want any of the international groups, and especially the group headed by Mrs. Eleanor Roosevelt, to betray the fundamental, inalienable, and God-given rights of American citizens," he told his colleagues.  

The American Bar Association, unable to agree with Bricker's text, passed its own amendment in late February. Despite objections from the ABA's Section on International and Comparative Law, the Peace and Law Committee approved an amendment more radical than Bricker's latest draft. Congress could not implement any treaty that required it to go beyond its domestic powers or infringe on state's rights under the Tenth Amendment, the committee's version stated. The body wanted to make all treaties, including the human rights covenant, non-self-executing and subservient to state laws. When the House of Delegates discussed the draft a month later, international lawyers claimed the amendment would prevent Congress from ratifying treaties that gave aliens in the U.S. and Americans abroad crucial property guarantees and would severely restrict the President's foreign policy powers. Former section chair Charles Tillett, predicting defeat, castigated the "almost complete and total ignorance of the average run-of-mine members of the House of Delegates" who required "words of one syllable...and illustration easily
within their mental grasp" to understand the issues at stake. On 24 February, the House of Delegates voted to send their draft to Congress. The nation's lawyers are not prepared to make the nation "a subordinate unit of the United Nations," a triumphant Schweppe wrote to Bricker despite their divergent proposals. Holman, though, soon regretted the existence of two versions that would create confusion and division among supporters.16

Roosevelt and her advisors, dismissing Bricker and ABA criticism as uninformed and unrepresentative of public opinion, responded slowly to the anti-covenant tirades. In a late December 1951 editorial, John Cates, Jr. of the State Department's United Nations Human Rights and Cultural Affairs office, quoted from an article that forbade governments from using the covenant to limit existing rights. Thus, he asserted, nations could not enact new curbs on the press or create a Star Chamber without violating their treaty responsibilities. Moreover, he observed that the federal-state clause would protect state's rights. "Our good faith as a member of the United Nations, as a champion of individual liberty is being judged by our readiness to cooperate" in finishing the covenant, he concluded. Five days after Bricker introduced Joint Resolution 130, Assistant Secretary of State John Hickerson, observing that anti-covenant arguments "could no longer be dismissed as isolated misrepresentation," told
legal advisor Adrian Fisher that some kind of sharp public reply was necessary. Roosevelt agreed, noting that the Soviets would gain a huge propaganda victory if the U.S. had to turn its back on the covenants. She advocated a public relations campaign, in cooperation with non-governmental organizations, to demonstrate their similarities with the U.S. Constitution. Eichelberger responded to the call, promising that the American Association for the United Nations (AAUN) and other groups would forge a swift reply to the anti-covenant campaign launched by "some very definite reactionary self-interest groups."  

As the State Department and private groups tried to sell the covenant at home, Roosevelt and Simsarian hoped to revise its most controversial components during the UNCHR's spring 1952 session. They identified several priorities: reaffirming the principle but not granting the right of peoples to self-determination, placing details on individual and NGO petitions in separate protocols, revising the economic and social covenant, adding federal-state and non-self-executing articles, and clarifying that governments could not use the covenant to limit the human rights of their citizens. The list demonstrated that State Department policymakers thought they could co-opt anti-covenant criticism by merely renewing their support for previous American positions. The assembly, over American objections, had placed a study of self-determination
at the top of the UNCHR's agenda. With an election looming in the fall, the current UNCHR session would be Roosevelt's last opportunity to complete the covenants before a new president took office in 1953.¹⁸

These hopes for at least one covenant acceptable to the Senate fell quickly when the UNCHR, in its first clear rejection of American policy, approved an expansive definition of self-determination. Roosevelt introduced an article that merely recognized that all peoples had the "right freely to determine their political status" but in subordination to "constitutional processes and with the proper regard for the rights of other States and peoples." By defending the Wilsonian tradition that allowed only peaceful and legal means of seeking political independence, she rejected more radical Soviet and Chilean proposals that gave all dependent peoples the right to national self-determination and to "permanent sovereignty over their natural wealth and resources." Pushed again into defending colonialism, Roosevelt opposed a definition that applied only to dependent areas and included an economic component. Worried that governments might expropriate American overseas investments, she forcefully opposed the concept of economic self-determination. Her attempt to chart a middle course again failed. An alliance of Communist and underdeveloped nations passed an article for both covenants that granted all peoples the right of political
and economic self-determination and required colonial powers to "promote the realization of that right." The body also forwarded to the ECOSOC two resolutions that mandated self-government for peoples who voted for it in U.N.-sponsored plebiscites and that asked colonial nations to report on their efforts to promote self-determination.19

After disposing of the most controversial agenda item, the UNCHR ironically devoted the next six weeks to revising both covenants along lines substantially recommended by the United States. Most of the debate consisted of prolonged, repetitive, and stale arguments over whether national governments should only promote or guarantee the rights to work, to receive adequate food and health care, and to own property. Behind a cohesive Western Bloc that ignored caustic Soviet speeches on unemployment and poverty in the U.S., the UNCHR defeated all communist attempts to mandate the immediate enforcement of economic rights by governments. Instead, Roosevelt succeeded in keeping the general implementation article vague and flexible; nations promised, "using legislative and other means," to enforce progressively such rights. The result, after a majority tabled American efforts to add property rights, was only a slightly revised economic covenant. The body made even fewer changes to the older treaty on political and civil rights. Roosevelt had mixed reactions when the session ended. Despite the UNCHR's inability to
review completely both covenants and its approval of a problematic self-determination article, she expressed relief that the covenants met most of the criticisms coming from Bricker and the ABA. Both contained non-self-executing articles and clauses that banned governments from using either treaty to limit existing freedoms. Although the UNCHR postponed discussion of a federal-state article, Roosevelt would "insist" that the UNCHR approve one in 1953. "Neither of the Covenants as now drafted contains any provisions which depart from the American way of life in the direction of communism, socialism, syndicalism, or statism," Roosevelt insisted after the UNCHR had adjourned.20

Roosevelt aimed her words squarely at Bricker, who had criticized the covenant for supporting "some form of socialism, communism, fascism, or feudalism" during the first formal Senate hearings on his amendment in late May. The opportunity to testify provided both a forum to showcase the growing support for his cause and generate the first cohesive summary of arguments that Bricker, Holman, and the ABA's Peace and Law Committee would champion for the next two years. While lawyers presented constitutional arguments in favor of limiting the treaty power, free-enterprise and patriot groups developed economic and political critiques of the covenants. This emerging coalition of isolationist-oriented, staunch anti-Communists, which included the U.S. Chamber of Commerce,
the American Flag Committee, and the Daughters of the American Revolution, viewed the U.N. as an increasingly powerful world government. The revolutionary development of international human rights diplomacy confirmed their worst fears: The United Nations, through the economic covenant, was trying to bring socialism to the United States and the rest of the free world. They also warned that a nascent U.N.-led world government would use the covenants to strip away national sovereignty and destroy American constitutional freedoms. Although they would organize a massive and impressive grassroots campaign around such apocalyptic arguments, the legal and constitutional points presented by Bricker and his ABA partners exerted a more profound influence throughout the two-year Senate debate.21

Bricker and Holman presented two general objections to senatorial ratification of the human rights covenants: they might limit the constitutional freedoms of Americans and erode states' rights. They darkly warned that due to restrictive and qualifying articles in the covenants and unclear past Supreme Court decisions, U.N. treaties could nullify parts of the American Constitution, especially the Bill of Rights. They interpreted the clause that "all treaties made...under the authority of the United States shall be supreme law of the land" to mean that treaties could override the Constitution itself. Although the U.S. Supreme Court had repeatedly
declared that the Constitution nullified any conflicting treaty article, it had never technically ruled a treaty unconstitutional. ABA leaders soon asserted that the judiciary would never find a treaty unconstitutional because it had ruled that debates over treaty provisions were political matters for Congress to legislate, and were thus beyond the bounds of its jurisdiction.  

If treaties could override the Constitution, Bricker and his allies argued, then the human rights covenants could divest Americans of their freedoms enumerated in the Bill of Rights. Holman testified that the treaties would change the governmental structure from a constitutionally-mandated republic to a "socialistic and completely centralized state." Bricker repeatedly pointed out that the U.N. covenants allowed governments to impose restrictions on many of the rights contained therein by simply declaring a state of "public emergency." Therefore, they warned, the federal government could limit the Bill of Rights by declaring martial law. Moreover, the economic rights contained in the covenants would bring socialism to the U.S., they argued, since the federal government would be obliged to grant all Americans the rights to employment, housing, and education. To Bricker and Holman, these consequences of treaty law were not accidental: American "internationalist" delegates at the U.N. wanted to use treaties as "Trojan Horses" to undermine the Constitution and
bring the U.S. under a socialistic world government. President Dwight D. Eisenhower, in fact, soon characterized Holman's crusade as founded upon "saving the United States from Eleanor Roosevelt."

Bricker supporters, while claiming to protect the Bill of Rights and civil liberties, also worried that human rights treaties would upset the delicate balance of power between federal and state governments and overturn segregation statutes. Bricker and Holman disagreed, though, on how to prevent this. The Supreme Court had consistently ruled that treaty provisions nullified any conflicting laws passed by state legislatures. Since the U.S. had never before signed multilateral treaties enumerating international human rights, Bricker and Holman worried that their passage would immediately invalidate Jim Crow laws. Judicial decisions in civil rights cases such as Sei Fujii, which cited the U.N. Charter and the Universal Declaration of Human Rights, fuelled their anxiety. To preclude treaties from nullifying such laws, Bricker demanded the Constitution specify that all treaties must be non-self-executing, unable to be enforced without congressional enabling legislation. Such supplemental laws, Bricker believed, would have to respect all powers reserved to the states under the Constitution's Tenth Amendment. Bricker was clearly wrong, for such legislation was not constrained at
all by the Tenth Amendment: federal courts had ruled that Congress possessed wide latitude to pass all laws "necessary and proper" to implement treaty provisions, even laws that were beyond Congress' powers in the absence of a treaty.\textsuperscript{25}

For this reason, Frank Holman and most ABA members worried that Bricker's amendment did not go far enough to protect states' rights. Holman, who summed up his commitment by announcing that "it would have been better for this country, better for the world, [and] better for civilization if the South had won the Civil War," feared that Truman and the judiciary would use the covenants to enforce a civil rights program that Congress had refused to approve. His anxiety was rooted in the crucial 1920 Supreme Court case of Missouri v. Holland. Holman worried that the court would cite Missouri to allow Congress to pass legislation implementing the human rights covenant, even though Congress lacked the authority under its delegated powers to do so. To reverse Missouri, the ABA demanded that any constitutional amendment include the "which clause:"

\begin{quote}
"A treaty shall become effective as internal law in the United States only through legislation which would be valid in the absence of a treaty."
\end{quote}

Only a constitutional amendment that would ban treaties from invalidating any domestic law would prevent these awful consequences, Holman and his ABA allies concluded.\textsuperscript{26}
Representatives of the Truman administration, internationalist organizations, and a dissenting group of lawyers dismissed Bricker's and the ABA's dire predictions. Undersecretary of State David Bruce explained that the federal-state article would protect the integrity of the Tenth Amendment, and the non-self-executing clause would allow Congress to mold implementation legislation to meet constitutional requirements. In response to concerns that courts might use the covenant to restrict the First Amendment, he declared that the treaty banned governments from using its limitation clauses to circumscribe existing freedoms. Not only was the amendment unneeded, Bruce asserted, but its passage would "so seriously interfere with the historic and fundamental functions of the Executive in the field of foreign affairs that it would jeopardize the influence of the United States in the world today." Banning treaties "respecting the rights of citizens," forcing Congress to act before any treaty could take effect, and placing severe restrictions on executive agreements amounted to an unconstitutional transfer of power from the Executive to the Legislative branch, Bruce claimed. The limitations would also "furnish a propaganda weapon to the Kremlin which would question our sincere interest in the rights of the individual," he concluded. The American Association for the United Nations and the American
Jewish Congress added their condemnation of the isolationist impulses behind the amendment.27

International lawyers provided invaluable support by proving that the entire profession did not share Holman's and the Peace and Law Committee's views. Members of the ABA's Section on International Law had unsuccessfully fought to postpone a House of Delegates vote on the bar association's amendment three months earlier, and former chair Charles Tillett testified at the May hearings. Also appearing were two members of the Association of the Bar of the City of New York, a group whose clients had many foreign interests. Two of its committees had just prepared a report criticizing Bricker's amendment for placing "unnecessary and ill-advised limitations on our chief executive in handling the delicate and urgent problems of diplomacy." The amendment was unneeded, it explained, because the Supreme Court had often stated that treaties could not abridge constitutional rights; it was ill-advised because the broad ban on treaties "respecting the rights" of Americans would have prevented Senate ratification of many covenants including the U.N. Charter. The report concluded by warning that it was "unwise to tinker with the existing safeguards lest the cure should prove worse than the disease." Though the subcommittee and Judiciary Committee dismissed these arguments and approved an altered Bricker
amendment, the Senate took no action before adjourning for the summer.\textsuperscript{23}

The hearings clearly put the State Department on the defensive as even Roosevelt turned from defending the covenants to outlining other negative foreign policy consequences of the amendment. In a plea to Acheson, Roosevelt explained that the department should mobilize non-governmental opposition to Bricker by appealing to a common desire for human rights, international cooperation under the U.N., and a peaceful world order. "We do not, naturally, have to say that we are going to approve the Covenant," she added, in order to deprive the opposition of a justification for their amendment. Roosevelt took the initiative by meeting with labor leaders "to discuss the present and future course of our international endeavors for human rights" in light of the Senate hearings. Acheson, too, gave the covenants only backhanded support, criticizing unnamed countries for "putting insincere provisions into these documents... which are so fanciful in many cases that people who really wanted to carry them out couldn't do it." The central premises of the Bricker Amendments were in place: amendment supporters cited the human rights covenants often to demonstrate the need for their proposals while their opponents denied the need for an amendment and outlined how passing one would jeopardize the effectiveness of Cold War foreign policy. The covenants,
abandoned by the Truman Administration in the face of strident attacks by Bricker and ABA leaders, were left to twist in the wind.²⁹

The second half of 1952 saw little action either at the U.N. or in Washington on the Bricker amendment or the human rights covenants. The Senate's adjournment, an upcoming presidential election, and the disbandment of the UNCHR until 1953 temporarily calmed the tempest. Acheson and the U.S. delegation to the U.N. tried half-heartedly to have the ECOSOC and the General Assembly weaken or omit the UNCHR's self-determination recommendations. As Acheson told the opening session of the General Assembly, "calm and dispassionate" discussion should replace polemical debate and ill-advised U.N. intervention in disputes on colonial powers and their territorial possessions. Attempts by Roosevelt to restrict the article on self-determination in both covenants and to exclude plebiscites and the principle of economic self-determination from the UNCHR's resolutions again failed. The irony of the leader of the free world dismissing the use of democratic elections to ascertain the political desires of individuals brought equally opportunistic and hostile criticism from America's Cold War enemies. The debate, Roosevelt's last as a U.N. delegate after a six-year career, showed how bitterly partisan human rights issues had become.³⁰
While the diplomats argued, Republican and Democratic party leaders reacted cautiously to the growing criticism of the U.N.'s human rights program. John Foster Dulles, former U.N. delegate and the G.O.P.'s spokesperson on foreign policy, drafted a platform plank that declared Republican opposition to any "treaty of agreement with other countries [that] deprives our citizens of the rights guaranteed them by the Federal Constitution." By omitting how they would accomplish that goal, whether by supporting a constitutional amendment or by simply refusing to sign such documents, Dulles hoped to unite Bricker, Holman, and other isolationists with internationalists like himself, Eichelberger, and Eisenhower. Roosevelt temporarily mounted a vigorous defense of the covenants at the Democratic National Convention in Chicago. Asserting that the Senate would never ratify a treaty that abridged the Constitution, she denounced as "shameful" the idea that her country should not work with other nations "to bring about the recognition and acceptance throughout the world of [human rights] standards and values. For us to serve notice that we would not today accept our own Bill of Rights if it were presented to us is a statement which should make everyone of us blush." The influence of the pro-amendment forces was evident in both conventions, though. Eichelberger, the long-time human rights advocate, did not even mention the covenants in his speech to the Republican Party Platform
Committee and the Democratic Party platform did not refer to them. The latter only generically called upon the nation to continue supporting the UNCHR's work. Due to the caution exhibited by both parties, the amendment played no role in the 1952 elections.\textsuperscript{31}

Eisenhower's victory brought an end to the Roosevelt era at the United Nations at a time when her efforts in the UNCHR had come under unprecedented domestic and foreign attack. Bricker and ABA leaders continued to publish articles and pamphlets, make speeches, and mobilize new advocates of their respective constitutional amendments. At the U.N., the debate over self-determination exposed a growing credibility gap between American ideals and Washington's willingness to apply them at home or in dependent territories. Despite Sandifer's urging that she press for a position in Eisenhower's State Department, Roosevelt did not want to serve the administration for political and personal reasons. In a form letter to those who shared Sandifer's views, she wrote that partisan differences and her lack of prior contact with the incoming president mitigated against her remaining as a U.N. delegate. Privately, she also did not respect Dulles, with whom she had frequent personality clashes when both were U.N. delegates, or Eisenhower for his refusal to defend former Secretary of Defense George Marshall from Joseph McCarthy's charges of disloyalty. The hard feelings resurfaced when Eisenhower
requested her resignation two months before his inauguration. Whether due to her stature as a prominent Democrat or as a staunch human rights advocate, hers was one of the first resignations he sought.\textsuperscript{32}

The existence of a new administration injected additional uncertainty into the debate over U.S. human rights policy and the Bricker Amendment. Sherman Adams, Ezra Taft Benson, Charles E. Wilson, and other close Eisenhower aides endorsed Bricker's proposal. The Senator even saw Dulles as a potential ally due to a speech he had given eight months earlier. Before a group of ABA members in Louisville, Dulles had theorized that the "extraordinary" treaty-making power, if abused by a President, could "override the Constitution...and cut across the rights given the people by their Constitutional Bill of Rights." Holman was unconvinced by Bricker's optimism. "Mr. Dulles for the past three years has been associated with the Acheson personnel and policies" at the U.N., he wrote Bricker in late December. Convinced that a renewed offensive was necessary given the absence of White House support, Holman mailed to every member of Congress copies of his articles, Peace and Law Committee reports, and a list of supporters from the particular state. Bricker himself waffled, initially postponing, at Eisenhower's request, his introduction of a slightly revised constitutional amendment before going ahead on 7 January. Within days, every Senate Republican except 367
three (and eighteen Democrats, totalling the two-thirds majority needed to pass it) had co-sponsored Senate Joint Resolution 1. Eisenhower's first foreign policy crisis occurred just down Pennsylvania Avenue.\textsuperscript{33}

Dulles, whom Eisenhower asked to coordinate his administration's response, planned a two-track response that would remove the immediate justification for an amendment and allow for a vigorous defense of the constitutional status quo. Both men regarded the covenants with skepticism due to their conviction that only education, and not legislation, could improve human rights at home or abroad. To the perceptive listener, the president portended a change in human rights policy in his inaugural address. "We shall never again use our strength to try to impress upon another people our own cherished political and economic institutions," he promised. His domestic and foreign civil rights actions would have more in common than his predecessor's: cautiously condemning some human rights violations but refusing to intervene (except as a last resort), while hoping that more indirect means of furthering justice and equality, such as education and economic development, would gradually erase injustice. Dulles thought in similar terms, praising the contents of the Universal Declaration of Human Rights but opposing their metamorphosis into binding laws. Their decision to re-examine the U.S. role in drafting the covenants not only dovetailed
with their personal beliefs but might, they thought, also stop the growing momentum for a Bricker Amendment.  

Due to these domestic pressures in the wake of an upcoming UNCHR session in early April, the review of Truman Administration policy and the forging of an alternative took surprisingly little time. On 9 February 1953, Assistant Secretary of State for U.N. Affairs John Hickerson, drafted a memo for Dulles that suggested relatively minor changes to meet two competing demands: to maintain U.S. leadership "in rallying and strengthening the free peoples of the world," and to contain domestic criticism of the covenants. He recommended continued engagement in the treaty-drafting process but without the U.S. "being 'out in front,'" supporting Truman's demand for non-self-executing and federal-state clauses, ratification of the Genocide Convention, and studying non-legal means, such as self-reporting by nations, for the U.N. to promote human rights. On 18 February, Hickerson and State Department Legal Advisor Herman Phlegar presented Dulles with a more detailed set of choices. The U.S. could, they posited, propose that the UNCHR abandon the covenants and appoint a human rights rapporteur to file country reports, suggest that nations file their own periodic reports, and create an advisory panel to offer technical assistance in promoting human rights to willing governments. If Dulles thought the plan too sweeping, they proposed either only supporting the
covenant on political and civil rights or trying to delay the completion of both covenants in the UNCHR.\textsuperscript{35}

Dulles and Eisenhower quickly seized this early opportunity to re-orient U.S. human rights policy, though how and when to implement the details remained. Within two days of receiving Phlegar's and Hickerson's memo, the Secretary of State and the President had approved their first alternative. Though the U.S would still offer technical assistance should the UNCHR continue work on the covenants, American delegates would no longer demand alterations to bring them into harmony with constitutional principles. Instead, the administration would press the UNCHR to examine other means of promoting the standards set by the Universal Declaration of Human Rights. Acting just two days after a subcommittee of the Senate Judiciary Committee had begun another round of hearings on amendments proposed by Bricker and the ABA, Eisenhower and Dulles viewed the new policy as a way to dampen the brewing firestorm. Though Dulles worried about the human rights rapporteur "prying around in human rights conditions in the United States," he told the Cabinet that the end of American advocacy for human rights treaties could be a powerful weapon against passage of any constitutional limitations on the treaty power. Dulles, Phlegar, and Hickerson decided to inform Americans of the shift by publishing Lord's position papers just before the UNCHR convened.\textsuperscript{36}
Bricker and Holman, uninformed about these deliberations and concerned that their fellow Republicans would betray them, kept up their angry attacks on the human rights covenant. In a press release issued the day after introducing his amendment, Bricker generically warned that treaties could "nullify the right of free speech, freedom of assembly, freedom of the press, and even religious freedom." Holman severely criticized the appointment of Mary Pillsbury Lord, granddaughter of the flour magnate and co-chair of the Citizens for Eisenhower-Nixon movement, as Roosevelt's replacement to the UNCHR. Worried that other delegates would capitalize upon her total inexperience in international law to make the covenants even more unacceptable, he again argued the need for the A.B.A's amendment. "One does not send novices into important conferences," he told Phlegar, "We have had enough of this casual attitude toward important posts during the recent democratic administrations." Despite sharing a common desire to limit the internal effects of treaties, the ABA and Bricker could not agree on a common text. Holman and the Peace and Law Committee, believing that Bricker's proposal did not go far enough to protect treaties from overriding state laws and constitutional rights, convinced Senator Arthur Watkins (R-Utah) to introduce their slightly revised text as Senate Joint Resolution 43. The hearings by a Senate Judiciary Committee subcommittee on the Bricker and ABA proposals, which

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lasted from 18 February to 11 April, presented additional opportunities for Bricker, Holman, and Schweppe to cite the human rights covenants as prime examples of why their amendments were needed.37

The Eisenhower Administration, after asserting that either amendment would render the Executive Branch powerless in foreign affairs, publicly unveiled its new human rights treaty policy. Joined by specialists in constitutional and international law from the ABA and the New York City bar, Phlegar and Dulles argued before a Senate subcommittee that both amendments would upset the separation of powers between the President and Congress and between the states and the federal government. Bricker's desire to make all treaties non-self-executing was unreasonable and constitutionally suspect, they argued, since it would give the House of Representatives veto power in the treaty ratification process by requiring its approval to pass all implementation legislation. It was also unnecessary since Congress could already alter treaties simply by passing legislation. Bricker's sweeping prohibition on treaties that transferred constitutional powers to any international organization might outlaw arms control, narcotics, and arbitration agreements. He and Attorney General Herbert Brownell also outlined the dangers of proscribing limitations on executive agreements, which the Defense Department in particular relied upon to gain
access to overseas bases and implement multilateral defense policies. Going beyond examining the dangerous consequences of an amendment, Dulles tried to undercut his opponents' testimony by revealing that Eisenhower would not sign any U.N. human rights treaty. "We do not ourselves look upon a treaty as the means which we would now select as the proper and most effective way to spread throughout the world the goals of human liberty," he told the Senate subcommittee on 6 April.38

Most of the venom of the Bricker opponents focused on the ABA's "which clause," which, Dulles argued, would allow states to nullify treaty provisions that dealt with matters traditionally within their authority. Such a scheme would amount to states acquiring a veto power over foreign policy matters as under the ineffective Articles of Confederation. Even Bricker opposed the "which clause," asserting it would invalidate some reciprocal commercial and friendship treaties that were very advantageous to Americans overseas. All of the limitations on the treaty power that Bricker and the ABA proposed, opponents warned, would reduce the president to a mere figurehead in formulating foreign-policy and would make other nations reluctant to enter into treaties with the United States. Constitutional lawyers argued that the U.S. would be unable to enter into U.N. disarmament treaties, the Baruch Plan for nuclear arms control, and the NATO Status of Forces Agreement. Amendment opponents concluded that the present
system, though not perfect, safeguarded the ability of the Executive to act responsibly and flexibly in foreign affairs while protecting states against unwarranted federal interference. Eisenhower summed up his frustration with Bricker and Holman by telling his Cabinet, "I am so sick of the Bricker Amendment I could scream. We talk about the French not being able to govern themselves—and we sit here wrestling with a Bricker Amendment." 39

As Dulles, Phlegar, and Brownell tried to persuade senators that no limits on the treaty power were necessary, Lord promoted the three-part "Action Plan" when the UNCHR met in Geneva. The timing could not have been better for Eisenhower. In order to secure the maximum publicity possible, he, Lord, and the American U.N. delegation issued separate statements immediately after Dulles had announced the policy change. Eisenhower announced on 7 April that the continued denial of human freedom demanded a "new approach to the development of a human rights conscience in all areas of the world." The next day, Lord informed UNCHR members of the details. Although, she assured the delegates, her government "continues to support wholeheartedly the promotion of respect for and observance of human rights," the time had come for a "new and urgent approach to take account of changed conditions in the world." The lack of governmental respect for human
rights, she declared, was proof that treaties such as the covenants would have little force or effect. Any movement toward fulfilling the standards set by the Universal Declaration of Human Rights, she opined, required constructing a universally accepted human rights ideology. Appointing a rapporteur, asking nations to file reports with the UNCHR, and training consultants to advise governments were three steps that would improve the global human rights climate immediately. If the UNCHR continued to work on the covenants, she concluded, her nation would passively assist but could not ratify them "in the present stage of international relations."

The reaction by UNCHR members, even U.S. allies, was harsher than the State Department had predicted. The governments of France, Sweden, Belgium, Australia, and England, which Dulles had briefed only two days prior to Lord's announcement, opposed the "Action Program." British delegate Samuel Hoare was "violently adverse," in Lord's words, to allowing the Soviet Bloc and non-aligned nations to discuss human rights conditions in Britain and its empire. The group opposed the appointment of a rapporteur, fearing that political pressures by U.N. members would block any effective studies and recommendations. The three nations also criticized Washington for not waiting until the end of the UNCHR's session to announce the package, especially since the
commission was bound by General Assembly instructions to work on the covenant. Much of the venom, though, came from the non-aligned and Communist nations. India severely criticized Lord for not understanding the utility of the covenants in raising human rights standards throughout the world, especially in nations that lacked a human rights tradition. Uruguay and Chile likewise strongly condemned the new American position. The Soviet delegate's reaction was surprisingly muted, though he wondered how the U.S. could refuse to sign an unfinished document. Only China and Egypt consistently supported the United States. After a forty-minute debate, UNCHR members voted to transmit the American proposals to U.N. members for comment over the summer. After only six nations bothered to critique the proposals, the General Assembly referred them back to the UNCHR for debate in its 1954 session.¹°

Eisenhower also failed to fulfill his main objectives, to contain expected domestic criticism by human rights activists and to stop the momentum of pro-constitutional amendment forces. Roosevelt, Roger Baldwin of the International League for the Rights of Man, and other human rights activists were very disappointed and angry. Although she doubted the Senate would ever pass the economic covenant, Roosevelt told Sandifer that the political covenant, even with the controversial non-discrimination and self-determination clauses, would be of immense legal value in gradually leading all governments to
respect human rights. She angrily denounced the "Action Plan" as "comic," remarking that "anything emptier than to go to Geneva [where the UNCHR would meet] with these positions, I cannot imagine." She even uncharacteristically rebuked Lord directly for serving as the messenger, predicting that "it will be hard for you to get along with the other representatives and to do any worthwhile work, I am sure." More significantly, the announcement did nothing to slow Holman's and Bricker's crusade. By June, after Bricker agreed to include the "which" clause, he and ABA finally endorsed a common amendment that nullified treaties that conflicted with the Constitution, defined all treaties with domestic implications as non-self-executing, and gave Congress the power to invalidate executive agreements. On 4 June, the Senate Judiciary Committee approved the joint effort.\textsuperscript{12}

After the new State Department policy foundered at the U.N., the Central Intelligence Agency (CIA), Psychological Strategy Board (PSB), and Henry Cabot Lodge, the U.S. Ambassador to the U.N., began to replace it with a bold new psychological warfare initiative. The "Lodge Project," under which intelligence agencies would collect and publicize Soviet Bloc human rights violations at the U.N., had domestic and foreign goals: to win the allegiance of neutralist countries and to co-opt the anti-communist rhetoric of Bricker and his allies. Lodge, formerly a staunch anti-communist Republican
senator, initiated the project. He had conversed with C.D. Jackson, Eisenhower's special assistant for psychological warfare, as early as April about leading an anti-Soviet propaganda offensive when the General Assembly met in late 1953. Jackson gave the assignment to the Psychological Strategy Board, an agency created by Truman to coordinate psywar programs between the State and Defense departments and the CIA. The PSB had done similar work for the 1951 and 1952 assemblies on topics ranging from disarmament to atomic energy, but not human rights. Lodge instructed Jackson and the PSB that he wanted to illuminate Soviet Bloc hypocrisy and respond to Soviet attacks on American human rights shortcomings. By the end of April, PSB had developed a list of twenty topics for exploitation ranging from the "destruction of religion," "political murders," and "mass deportations," by Stalin against his own citizens to Soviet aggression against neighboring countries and the "Free World." Lodge approved the list, and he asked PSB to develop items under each into "five-minute punch speeches to make headlines." 43

Lodge's attempts to bypass State Department participation in the Lodge Project and his expansive vision for it doomed its success from the start. Fearing that Truman holdovers in the State Department might sabotage the initiative, Lodge communicated directly with the PSB. The resulting bad feelings between the U.N. mission and the State Department's Office of
U.N. Affairs caused the latter to delay its participation in, and to eliminate, the entire project. Even PSB pleas to Lodge to work through the State Department failed. Lodge also alienated many within PSB by insisting that his project be stridently anti-Soviet that "would make headlines [with] no limitations on subject matter." PSB head Edward Lilly responded cautiously at first, suggesting to Lodge that "the U.N. could be used more effectively for presenting positive American views of human rights while also getting across an anti-Communist expose in this same field." By July, after Lodge had called for PSB to uncover sensationalistic items of which, according to Lodge aide Charles Allen, "factual certainty is desired but should not be a fetish," Lilly and PSB dug in their heels. Such a project might estrange neutral nations and non-communist intellectuals, turn the U.N. into a "debating society," and destroy a positive U.S. leadership role that would have more appeal to other peoples and nations. His insistence on using only lurid and scandalous "ammunition" also meant postponement of the program, as PSB could initially uncover none."

These delays and obstacles notwithstanding, PSB staffers tried to piece together a psywar campaign acceptable to Lodge, the State Department, and themselves. The death of Stalin in March and the subsequent peace offensive by the USSR made an American expose of life in the Soviet Bloc even more crucial.
By the end of May, PSB had generated a rough outline of the Lodge Project whose objective was to "promote the solidarity and firmness of the free world against the Soviet bloc, and to promote discord and indecision within the Soviet bloc," by developing a U.N. psywar initiative for the fall. PSB noted a lessened desire by allies to criticize Moscow for human rights violations, the Soviet's most vulnerable issue. On 3 June, PSB created a Human Rights Working Group with representatives from the PSB, State and Defense departments, and the CIA, which immediately began passing some information to Lodge. By serving as a screen through which to pass information, the body could censor untruthful, extraneous, or uselessly shocking items. The group could never satisfy Lodge's ravenous appetite for the unusual, though, especially pictures and charts that he could circulate to other U.N. delegations.45

The Lodge Project's short life ended by late 1953 due to bureaucratic infighting, differences of opinion between Lodge and PSB, and the lack of PSB intelligence acceptable to Lodge. By July, Wallace Irwin of PSB's program evaluation office had had enough of the stonewalling and refusal to participate in the Lodge Project by the Bureau of U.N. Affairs (UNA). He suggested telling UNA that the "PSB is not about to dry up and blow away, and in fact is still a dangerous animal to kick around." "The Lodge Project is in jeopardy," he revealed to Jackson, because UNA, "unreconciled to the 'invasion' of its
backyard" by PSB, was dismissing as unusable all PSB intelligence passed to it. He suggested asking Lodge to give a "pep talk" to PSB staffers and having the organization pass all information to Lodge directly, bypassing UNA. No improvement occurred by late August as the General Assembly convened. PSB staffers also continued to reject Lodge's sensationalistic approach over the summer. Issuing only "hot, journalistic" items that Lodge favored, Irwin and his colleagues warned, would unsettle U.S. allies who saw the death of Stalin as a possible diplomatic opening and alienate free world intellectuals. These disagreements, which fueled UNA's dissatisfaction with material forwarded by PSB, caused the Lodge Project to fail at the assembly. According to a former PSB staffer, the entire situation "resulted in a paralysis in the highest echelons. The USUN was only able to present weak and fragmentary attacks on the highly efficient, well organized Communist propaganda machine. The results were defeats in the cold war and loss of support from our allies."  

III

The failure of the Lodge Project continued the string of defeats on human rights issues at the U.N. that dated back to the momentous 1950 General Assembly. The American-led effort to codify the ideals of the Universal Declaration of Human
Rights had clearly failed by 1953. A six-year struggle by the Truman Administration to draft two covenants on human rights had spawned both domestic and foreign dissention, though for radically different reasons. To the growing bloc of non-aligned Latin American, Asian, and the Middle Eastern nations, the U.S. definition of human rights, emphasizing political and civil guarantees, smacked of cultural imperialism and paternalism. Their own desire to attach economic, social, and cultural rights, and a strongly-worded right of peoples to self-determination, made the State Department uneasy and fed a growing domestic movement to limit the treaty-making power of the Executive Branch. The confluence of these domestic and foreign forces caused a re-orientation of American human rights policy by the new, conservative administration of Dwight Eisenhower. The "Action Program," though, received harsh criticism even from U.S. allies, while the "Lodge Project" foundered before it could begin. Worse, neither policy slowed the growing momentum by Bricker and his ABA allies for a constitutional amendment that Eisenhower thought would "be notice to our friends as well as our enemies abroad that our country intends to withdraw from its leadership in world affairs." The price of declaring all-out war on Bricker, Eisenhower and Dulles decided, was the repudiation of American wartime and postwar human rights policy. They had no viable replacement, though, and the result would be paralysis at the
U.N., increasing Cold War politicization of human rights issues, and continuing refusal by successive administrations to sign and ratify human rights treaties."
1. Randolph to Truman, 28 February 1951, official files 93, White House Central Files, box 544, HSTL. See also Jacob Blaustein to Acheson, 7 March 1951, decimal file 340.1AG/3-751 (1950-54), Irving Salvert, Director of Public Relations for the Jewish Labor Committee, to Cleon Swazey, Labor Advisor to the State Department, 27 March 1951, decimal file 340.1AG/3-2751, Baldwin to Sandifer, 7 June 1951, decimal file 340.1AG/6-751, and Baldwin, Dorothy Kenyon, and Robert MacIver of the A.C.L.U. to Acheson, 23 July 1951, decimal file 340.1AG/8-1751, box 1327, NARA; Roosevelt to Sandifer, Roosevelt papers, box 3362, FDRL; and Marian Neal of the Carnegie Endowment for International Peace, to Tate, 18 October 1951, decimal file 340.1AG/10-1851 (1950-5), box 1328, NARA.


6. Third Committee, resolution on self-determination submitted by Afghanistan, Burma, Egypt, Indonesia, Iran, Iraq, Lebanon, Pakistan, Philippines, Saudi Arabia, Syria, and Yemen, 8 December 1951, A/C.3/L.186. See also State Department, "Department of State Instruction to the United States Delegation to the Seventh Session of the Commission on Human Rights," April 1951, in FRUS, 1951, 2:772-74. See also Roosevelt, My Day, 2:248-49; Green, The United Nations and Human Rights, 48-50; Evans, U.S. Hegemony and the Project of Universal Human Rights, 132-37; minutes of the meeting of the U.S. delegation, 10 December 1951, in FRUS, 1951, 2:776-80; and Austin to Acheson, 8 December 1951, in ibid., 775-76.

7. Webb to Austin, 5 December 1951, in FRUS, 1951, 2:846. See also Department of State Instruction to the U.S. Delegation to the Sixth Regular Session of the General Assembly: Treatment of Indians in the Union of South Africa," 20 September 1951, in FRUS, 1951, 2: 842-45; minutes of the meeting of the U.S. Delegation, 12 December 1951, in ibid., 2:847-52; Acheson to Austin, 13 December 1951, in ibid., 852-53; Roosevelt to Acheson, 20 December 1951, in

9. Bricker, "Revival of the Star Chamber," speech to the U.S. Senate, 18 September 1951, Bricker papers, box 40, OHS; and Bricker, "The Meaning of Freedom," speech to the Silurians, 12 November 1951, Bricker papers, box 90, OHS.

10. Eberhard Deutsch, member of the A.B.A.'s Peace and Law Committee, to Bricker, 13 October 1951, Bricker papers, box 160, OHS. See also Deutsch to Bricker, 9 November 1951, Alfred Schewpepe, chairman of the Peace and Law Committee, to committee members, 24 and 26 October 1951, Schweppe to Judge Orie Phillips, 6 November 1951, Bricker papers, box 160, OHS; and Tananbaum, The Bricker Amendment Controversy, 41-42, 47-48; and William Fleming, Professor of Political Science at Ripon College, "Danger to America: The Draft Covenant on Human Rights," in American Bar Association Journal 37 (October and November 1951), 739-42, 794-99, 816-20, 855-60.


15. Article Fourteen of the Covenant on Human Rights; Bricker form letter, February 1952, Bricker papers, box 90, OHS; Bricker speech, 7 February 1952, in Congressional Record 98,


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21. Statement of Senator Bricker before a subcommittee of the Senate Judiciary Committee, 21 May 1952, Bricker papers, box 90, OHS. See Tananbaum, The Bricker Amendment Controversy, 53-55; U.S. Congress, Senate, Committee on the Judiciary, Subcommittee of the Committee on the Judiciary, Treaties and Executive Agreements, Hearings, 82nd Cong., 2nd sess., 1952; and Holman, Dangers of "Treaty Law" (Seattle: Lawrence Timbers, 1952), 40-71. For an example, see Californians for the Bricker Amendment, "Attention Americans!" Box 3, General Files, GF 3-A-5, White House Central Files, Dwight D. Eisenhower Library (hereafter referred to as DDEL). For lists of pro-Bricker groups see John M. McElroy to Miss Mary McGrory, 20 January 1954, box 110, John Bricker Papers, Ohio Historical Society (hereafter referred to as OHS).


For cases in which the Supreme Court declared the Constitution above all treaties see New Orleans v. United States, 10 Pet. 662, 736; The Cherokee Tobacco, 11 Wall. 616, 620-1; Holden v. Joy, 17 Wall. 211, 243, Geoffroy v. Riggs 133 U.S. 258, 267. For example, the U.S. Supreme Court declared that "it would not be contended that it [the treaty-making power] extends so far as to authorize what the Constitution forbids, or a change in the character of the government." Geoffroy v. Riggs, 133 U.S. 258.


27. Subcommittee of the Committee on the Judiciary, *Treaties and Executive Agreements, Hearings*, 1952, 174; and Assistant Secretary of State Jack McFall to Senator Blair Moody (R-MI), 29 April 1952, papers of Jack B. Tate, box 2, HSTL. See also Tananbaum, *The Bricker Amendment Controversy*, 56-58.
28. Association of the Bar of the City of New York, Committee on Federal Legislation and Committee on International Law, "Report on the 'Joint Resolution Proposing an Amendment to the Constitution of the United States Relative to the Making of Treaties and Executive Agreements,'" 13 May 1952, Tate papers, box 1, HSTL. See also Tananbaum, The Bricker Amendment Controversy, 58-60; and Subcommittee of the Committee on the Judiciary, Treaties and Executive Agreements, Hearings, 1952.

29. Roosevelt to Acheson, 16 May 1952, decimal file 340.1AG/5-1652 (1950-54), box 1328, NARA; Roosevelt to David Dubinsky, President of the International Ladies' Garment Workers Union, 19 May 1952, Roosevelt papers, box 4572, FDRL; and Acheson speech to the National Citizens' Committee for United Nations Day, 26 September 1952, Acheson papers, box 58, HSTL. See also Acheson to Roosevelt, 18 June 1952, decimal file 340.1AG/5-1652 (1950-54), box 1328, NARA; and speech by former U.S. delegate to the U.N. Porter McKeever to the U.N. Correspondent's Association, 11 June 1952, Roosevelt papers, box 4585, FDRL.


31. Quoted in Tananbaum, The Bricker Amendment Controversy, 63; and Roosevelt speech to the Democratic National Convention, 23 July 1952, Roosevelt papers, box 3056, FDRL. See also statement by Clark Eichelberger to the Republican Party's Committee on Resolutions, 30 June 1952, Roosevelt papers, box 4584, FDRL; Lash, Eleanor: The Years Alone, 209-11; Kendrick, "The United States and the International Protection of Human Rights," 115-17; and Tananbaum, The Bricker Amendment Controversy, 60-64.


33. Dulles address to a regional meeting of the American Bar Association in Louisville, Kentucky, 11 April 1952, Tate papers, box 1, HSTL; and Holman to Bricker, 17 December 1952, Bricker papers, box 91, OHS. See also Davies, Defender of the Old Guard, 155-56; Tananbaum, The Bricker Amendment Controversy, 66-69; Bricker to Dulles, 7 January 1953, and Dulles to Bricker, 12 January 1953, Bricker papers, box 91, OHS; Dulles to Sherman Adams, 2 January 1953, and Adams to Republican Party leader Gerald Parsons, 5 January 1953, official files 116-H-2-A. box 582, White House Central Files, DDEL; John Stevenson, aide to Dulles, to Holman, 5 January 1953, Bricker papers, box 161, DDEL; and Holman, Life and Career of a Western Lawyer, 548, 550.

34. Eisenhower inaugural address, 20 January 1953, speech series, Whitman file, box 3, DDEL. See also Dulles to Consulate General at Geneva, 6 April 1953, FRUS, 1952-54, 1568; and L. Arthur Minnich, Assistant White House Staff Secretary, notes, 20 February 1953, files of the Office of the White House Staff Secretary, Minnich series, box 1, DDEL.

35. Hickerson to Dulles, 9 February 1953, FRUS, 1952-54, 1542-47. See also Sandifer to Hickerson, 9 February 1953, subject files of Sandifer, lot file 55D 429, box 8, NARA; Hickerson to Dulles, 12 February 1953, files of the Assistant Secretary of
State for U.N. Affairs, lot file 58D 33, box 3, NARA; Hickerson to State Department Legal Advisor Adrian Fisher, 12 February 1953, FRUS. 1952-54, 1548; and Legal Advisor Herman Phleger and Hickerson to Dulles, 18 February 1953, in ibid., 1549-54.

36. Sandifer to Kotschnig, 19 February 1953, subject files of Sandifer, lot file 55D 429, box 8, NARA. See also Dulles memo, 20 February 1953, FRUS. 1952-54, 1555.


38. Dulles to Eisenhower, 31 March 1953, Dulles papers, subject series, box 2, DDEL.

The right of Congress to revise treaties was affirmed by the Supreme Court in The Cherokee Tobacco, 11 Wallace 616 (1870) and The Head Money Cases, 112 U.S. 584 (1884). See Dulles to Eisenhower, 2 March 1953, and "Outline of Presentation of Views by the Attorney general on S.J. Res. 1 and S.J. Res. 43," 12 march 1953, official files 116-H-2-A, White House Central Files, box 582, DDEL; Tananbaum, The Bricker Amendment Controversy, 87-90; and Dulles press release, 6 April 1953, Eisenhower Diary Series, Whitman File, box 6, DDEL.

39. John Emmett Hughes, The Ordeal of Power; A Political Memoir of the Eisenhower Years (New York: Atheneum, 1963), 144. See Statement by Dulles before the Senate Judiciary Committee, 6 April 1953, box 6, DDE Diary Series, Whitman File, DDEL; Eisenhower to Edgar Eisenhower, 2 January 1954, box 5, DDE Diary Series, Ann whitman File, DDEL; and Dulles to President Eisenhower, 2 March 1953, box 582, Official Files OF-H-4, White House Central Files, DDEL.

40. Eisenhower press release, 7 April 1953, Dulles papers, subject series, box 2, DDEL; and Lord statement to UNCHR, 8
April 1953, FRUS, 1952-54, 1571, 1572. See also Phlegar and Hickerson to Dulles, 26 March 1953, decimal file 340.1AG/3-2653 (1950-54), and Dulles to Lord, 3 April 1953, decimal file 340.1AG/4-353 (1950-54), box 1329, NARA; Lord to Dulles, 30 March 1953, FRUS 1952-54, 1562-63; Phlegar and Hickerson to Dulles, 2 April 1953, ibid., 1563-64; Dulles to Lord, 3 April 1953, ibid., 1564-67; Dulles to Lord, 6 April 1953, ibid., 1568; Dulles to Eisenhower, 7 April 1953, ibid., 1569-71; and UNCHR summary record, 8 April 1953, E/CN.4/SR.340.

41. Lord to Dulles, 28 April 1953, decimal file 340.1AG/4-2853 (1950-54), box 1329, NARA. See also Dulles to American embassies in Britain, Belgium, Sweden, and France, 6 April 1953, FRUS, 1952-54, 1567; Lord to Dulles, 30 May 1953, ibid., 1577-80; UNCHR summary record, 8 and 9 April 1953, E/CN.4/SR.340 and 41; Lord to State Department, 8 and 30 April and 9 May 1953, decimal file 340.1AG/4-1153, 340.1AG/4-3053, and 340.1AG/5-953 (1950-54), box 1329, NARA; UNCHR, "Report of the Ninth Session of the Commission on Human Rights," 2 June 1953, E/2256; and Dulles to Lord, 21 April 1953, decimal file 340.1AG/4-2053 (1950-54), box 1329, NARA.

42. Roosevelt to Sandifer, 20 March and 16 May 1953, Roosevelt papers, box 3479, FDRL; and Roosevelt to Lord, 4 April 1953, Lord papers, box 1, DDEL. See also Lord to Dulles, 11 April 1953, decimal file 340.1AG/4-1153, and Roosevelt to Dulles, 20 March 1953, decimal file 340.1AG/3-2053 (1950-54), box 1329, NARA; Sandifer to Roosevelt, 18 March 1953, Roosevelt papers, box 3479, FDRL; Lash, Eleanor: The Years Alone, 221-22; oral history of Mary Pillsbury Lord by John T. Mason, Jr., 6 June 1967, DDEL; Tananbaum, The Bricker Amendment Controversy, 91-92; and Green in Asher, The U.N. and Promotion of the General Welfare, 713-16.

43. Horace Craig, the PSB Assistant Director for Evaluation and Review to George Morgan of the PSB staff, 30 April 1953, White House Office, NSC staff papers, PSB central files, box 23, DDEL. See also minutes of PSB staff meeting, 1, 8, and 9 April 1953, Charles Norberg, Acting Deputy Assistant Director of the PSB Office of Coordination to McNair of the PSB Office of Evaluation and Review, 8 April 1953, Norberg, "Program for Psychological Support for Ambassador Lodge during the 8th Session of the UN General Assembly," 10 April 1953, Morgan to Frank Wisner of the CIA, 3 June 1953, and Craig memo of conversation with Lodge, Jackson, and others, 4 May 1953, White House Office, National Security Council (NSC) Staff: Papers 1948-61, PSB Central files, box 23, DDEL; Truman directive to establish the PSB, 4 April 1951, Confidential.
Files, White House Central Files, box 31, HSTL; and Porter McKeever, Director of Information for the U.S. Mission to the UN, to PSB Director Gordon Gray, 3 August 1951, PSB files, box 26, HSTL.


44. Wallace Irwin, PSB Office of Evaluation and Review, memo of conversation with Lodge and Craig, 18 May 1953, Lilly to Craig and Irwin, 21 May 1953, and minutes of the PSB Committee on 8th General Assembly, 19 June 1953, White House Office, NSC staff papers, 1948-61, PSB central files, box 23, DDEL. See also Norberg to Mallory Browne, Acting Assistant Director for PSB's Office of Coordination, 9 March 1953, Browne to Craig, 30 April 1953, Craig memo of conversation with Lodge, Jackson, and others, 4 May 1953, Albert Toner (PSB staff) summary of 31 July PSB meeting, 4 August 1953, Lilly to Morgan, 31 July 1953, Arthur Cox of PSB staff to Browne, 2 and 3 June 1953, Jackson to Lodge, 21 April 1953, and Irwin, "Human Rights: Consultation with Ambassador Lodge and USUN Staff," 22 May 1953, White House Office, NSC staff papers, 1948-61, PSB central files, box 23, DDEL; and memo of conversation between Hickerson, Craig, and Irwin, 12 May 1953, records of C.D. Jackson, box 4, DDEL.

45. PSB memo, "Exploitation of Soviet, Satellite, and Chinese Communist Psychological Vulnerabilities Before and During the Eighth U.N. General Assembly," 28 May 1953, White House office, NSC staff papers, 1948-61, Operations Coordination Board (OCB) Secretariat series, box 4, DDEL; Irwin to Morgan, 29 May 1953, minutes of the PSB, 3 June 1953, and Toner to John Ross of the American Mission to the UN, 5 and 8 June 1953, minutes of the PSB Committee on the 8th General

46. Irwin to Craig and Jackson, 22 July 1953, White House office, NSC staff papers, 1948-61, PSB central files, box 23, DDEL. See also Irwin to Craig, 19 August 1953, and Corso to Craig, 21 October 1953, Jackson papers, box 4, DDEL; Charles Taquey, PSB Office of Evaluation and Review, to Irwin, 14 July 1953, Irwin to Morgan and Jackson, 30 July 1953, and minutes of the PSB Committee on the 8th General Assembly, 11 August 1953, White House office, NSC staff papers, 1948-61, PSC central files, box 23, DDEL.

47. Eisenhower to Senator William Knowland, 25 January 1954, box 6, DDE Diary Series, Whitman File, DDEL.
CHAPTER 8


What has been accomplished? This: we have kept a vision alive; we have held to a great ideal, we have established a continuity, and some day when unity and cooperation come, the importance of all these early steps will be recognized.

-----W.E.B. DuBois-----

Between 1941 and 1953, the United States government, often prodded by non-governmental organizations, led a worldwide crusade for the international protection of human rights. The campaign, launched by President Franklin Roosevelt in the dark days of World War II, as the British and the Russians faced the forces of fascism alone, derived as much from current events as from an American ideology as old as the Puritans. Beginning with their mission to found a "city on a hill," the religious dissenters bestowed upon what would become the United States a God-given duty to spread the blessings of liberty and freedom across the seas. Historians have given several contextual names to this evangelical impulse, from "Manifest Destiny" in the mid-1800s,
"imperialism" and the "white man's burden" in the late nineteenth-century, and "Wilsonianism" during the World War I era. Under Wilson, the United States pressed for an international organization, the League of Nations, to protect and enforce human rights standards.

As Michael Hunt and John Dower have shown, ideologies are malleable, organic, and contain internal contradictions. Thus policymakers from Thomas Jefferson to Woodrow Wilson believed in spreading freedom and liberty as they defended slavery, white supremacy, and colonialism. Franklin Roosevelt, Harry S. Truman, Durward Sandifer, James Simsarian, and others likewise inconsistently advocated a global respect for human rights while they sought to protect, or at least condone, domestic racial segregation, disenfranchisement, and legal inequality. Not only did they seek to incorporate legal sanction to commit human rights abuses within human rights treaties, but they expected nations around the world to accept the contradiction as expressed in the language of American jurisprudence. When underdeveloped nations in Asia, Africa, and the Middle East rebelled against these assumptions, Truman, Eleanor Roosevelt, and their legal advisors found themselves unwilling and unable to alter the essential underpinnings of U.S. policy as stated by Franklin Roosevelt in his "Four Freedoms" speech.²

The Roosevelt administration used the soaring rhetoric of human rights to unify and prepare a nation for war and its
aftermath. In the "Four Freedoms" speech, the Atlantic Charter, and the Declaration of the United Nations, Roosevelt and the Allies outlined an expansive postwar vision in which all governments would acquire some responsibility to grant political, civil, and economic rights. Roosevelt firmly believed that heads of state who treated their citizens peacefully and humanely would behave similarly toward other nations. The previous thirty years had provided too much evidence of the contrary; Roosevelt wanted WWII to be the war to end all wars. He, like his predecessor Wilson, initially envisioned the need for a strong international peacekeeping organization that would oversee a postwar order founded upon international respect for human rights. He asked the State Department to translate this abstract commitment into pragmatic proposals.

Roosevelt's bold words inspired American religious and secular organizations to undertake parallel studies, though their efforts soon met with unexpected indifference by the State Department and Roosevelt. The Commission to Study the Organization of Peace, the Federal Council of Churches, and the American Civil Liberties Union, among others, drafted bills of rights and lobbied for the creation of transnational bodies to enforce them. By 1943, though, Roosevelt and the State Department had responded disinterestedly to their proposals. Both Soviet leader Joseph Stalin and British Prime Minister Churchill were critical of the American approach, especially their failure to adopt a common, international response to Japan. The Anglo-American-Pacific consensus remained elusive, but Roosevelt had set the postwar agenda for the world.
Minister Winston Churchill opposed sacrificing national sovereignty to an oversight body because they defined human rights issues as strictly internal matters. Moreover, they and Roosevelt believed that a community of nations controlled by the world's military powers was the best means of preventing another war. These three leaders approved the blueprint for such a body at the 1944 Dumbarton Oaks conference. In recognition of his early wartime promises and the work done by NGOs, Roosevelt pressed for a weak human rights clause that Stalin and Churchill reluctantly agreed to add.

Domestic human rights activists responded quickly and harshly to the marginalization of human rights in the Dumbarton Oaks plan. With an enthusiasm and determination born from a desire to escape a war-torn past to a world based on peace and transnational cooperation, the Commission to Study the Organization of Peace, the American Jewish Committee, and other groups called for the State Department to amend the proposal. They were joined by Latin American and Asian nations whose desire for justice, human dignity, and freedom derived from a shared colonial past. Their joint lobbying at the 1945 San Francisco Conference led to substantial changes in what became the United Nations Charter. The final document obligated U.N. members to "promote universal respect for, and observance of, human rights and fundamental freedoms for all." To formulate specific standards that governments were expected
to follow, the charter created an Economic and Social Council (ECOSOC) and a human rights commission (UNCHR). Roosevelt and Truman, believing that a domestic jurisdiction clause in the charter prevented both bodies from compelling compliance by national governments, supported these amendments.

It fell to Roosevelt's successor, Harry S. Truman, to balance demands by NGOs and foreign nations for a binding U.N. bill of rights with contrary domestic political interests. Concerned that human rights treaties might invalidate Jim Crow laws and thereby split the Democratic Party, Truman suggested a conservative structure and agenda for the UNCHR. Eleanor Roosevelt, the American delegate, proposed to staff the commission with governmental delegates instead of independent experts. To protect national sovereignty and prevent embarrassing attacks on her nation's own human rights violations, she moved passage of a "self-denying rule" that prohibited the UNCHR from accepting human rights petitions from individuals and NGOs. Roosevelt then asked the commission to draft a non-binding list of political, civil, and economic rights. As the UNCHR worked on this task, the State and Justice Departments turned back attempts by some nations and domestic NGOs to invest the UNCHR with enforcement authority. On 10 December 1948, U.N. members unanimously approved the symbolic Universal Declaration of Human Rights.

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As the UNCHR and other U.N. bodies turned to drafting binding treaties, Truman and State Department lawyers adopted new strategies to safeguard Jim Crow and other forms of legal discrimination. Roosevelt and the State Department tirelessly pushed for language that encapsulated two hundred years of American jurisprudence. They also demanded the inclusion of federal-state and non-self-executing articles that mitigated the domestic application of the covenant. The Genocide Convention, passed by the U.N. on 9 December 1948, and early UNCHR drafts of a human rights covenant demonstrated the skillful lobbying of U.S. delegates John Maktos and Eleanor Roosevelt. The convention defined genocide and mandated the punishment of its perpetrators in terminology that, the State Department claimed, incorporated concepts from American constitutional law. The covenant, limited to civil and political rights, included language that U.S. courts had found consistent with segregation and other forms of racial discrimination. Confident that the Senate would ratify the Genocide Convention and with the covenant in almost final form, Truman and Roosevelt could claim victory in leading a conservative human rights revolution at the United Nations.

The concurrent emergence of a new balance-of-power within the United Nations and domestic opposition to assuming binding human rights responsibilities caught Truman and the State Department by surprise. In late 1950, a coalition of
underdeveloped nations, allied with the Communist bloc, attached to the covenant a list of economic and social guarantees and the right of all peoples to self-determination. Roosevelt tried unsuccessfully to defeat both proposals, which U.S. law did not recognize and which provoked hostility from America's colonial allies. At the same time, conservative isolationists in the Senate and the American Bar Association criticized the Genocide Convention and covenant for compromising American sovereignty. Senator John Bricker and ABA leaders also charged that the covenant could place limitations on the Bill of Rights, promote the creation of a world government, and bring socialism to the United States. Only a constitutional amendment that circumscribed both the president's foreign affairs powers and the internal impact of treaties could prevent these consequences, they claimed. Although the Truman administration redoubled its efforts to persuade the Senate to ratify the Genocide Convention and to have the UNCHR omit the covenant's most controversial articles, they left office having failed to accomplish both.

Incoming President Dwight D. Eisenhower and Secretary of State John Foster Dulles tried to silence foreign and domestic criticism by re-orienting human rights policy. By announcing that he would not sign the covenants, ask the Senate to ratify the Genocide Convention, or participate actively in covenant discussions, Eisenhower hoped to defuse the Bricker Amendment
controversy. He called for the UNCHR to replace its work on the controversial covenant with an "Action Program," under which the commission would educate and advise willing governments on how to implement human rights. To deflect subsequent foreign and domestic charges that he wanted to sabotage the UNCHR's work, Eisenhower launched a psychological warfare campaign that criticized the human rights records of Communist countries. The campaign failed to capture the support of America's allies and non-aligned nations, though, before it fell apart due to bureaucratic rivalries and hasty planning. Eisenhower thus returned U.S. policy to its wartime focus on abstract human rights rhetoric that eschewed any commitment to specific goals.

Unsatisfied with Eisenhower's concessions, Bricker and the leaders of the ABA continued their drive for a constitutional amendment to restrict the Executive's foreign policy powers and to limit the internal impact of human rights treaties. Efforts by Bricker to enlist Eisenhower's support initially fell apart over the former's insistence on including the "which" clause. Putting his cause above party unity, Bricker publicly criticized the president and asked conservative, traditionally Republican organizations for their endorsement. His opponents, led by the President, dissenting international lawyers, and progressive political activists, mobilized as well. After Holman vetoed a compromise that
Bricker and Eisenhower had hammered out in January 1954, the Senate responded to Eisenhower's renewed opposition by narrowly defeating a modified Bricker Amendment. For the Ohio senator, a political unknown in the Senate until, like colleague Joseph McCarthy (R-WI), he found an identity issue, the defeat was personally shattering.³

Thirty years later, though, he could claim victory, for his legacy of opposition to human rights treaties remained intact. Although the Senate finally ratified the Genocide Convention a month before his death in 1986, it did so only after attaching sweeping reservations and declarations. The body also appended qualifications to its approval of the International Covenant on Civil and Political Rights (ICCPR) in 1992. Due partially to Bricker's ideological successor, Senate Foreign Relations Committee Chairman Jesse Helms, the U.S. is one of only two nations yet to ratify the Convention on the Rights of the Child (CRC), and it is the only Western nation that has not approved the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). The International Covenant on Economic, Social, and Cultural Rights (ICESCR), signed by President Jimmy Carter, remains unratified. And in June 1998, the U.S. was one of only seven nations (out of one hundred thirty present) to vote against the statute for an International Criminal Court, which will try persons accused of war crimes, crimes against humanity,
and genocide. The ghosts of John Bricker and Frank Holman are today very much alive.¹

The unmistakable irony that intrudes into this refusal to assume binding human rights responsibilities is that the main reason for justifying such a policy has completely changed. In the 1950s, Bricker and Holman worried primarily that the covenants and the Genocide Convention would lower existing constitutional standards. By the 1990s, though, international law had progressed to the point where, in some cases, it provided more guarantees than American practices. For example, both the ICCPR and the CRC forbid the execution of children, those who commit a crime while under the age of eighteen. The Senate, in one of the most sweeping reservations ever made to a human rights treaty, according to one expert, ratified the ICCPR but stated that it did not recognize the prohibition. A similar ban in the CRC is one reason why the Senate has taken no action on that treaty. In an unprecedented move by an international human rights group, Amnesty International launched a year-long campaign in late 1998 to identify and publicize American violations of international law. Amnesty has identified five examples: the maintenance of appalling prison conditions, the widespread occurrence of police brutality, the use of capital punishment, the denial of due process to asylum seekers, and the transfer of military and security equipment to repressive regimes overseas.⁵

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Despite the opposition or indifference by Eisenhower and his successors toward incorporating international human rights law, American allies in Europe and Latin America have forged ahead to create revolutionary international and regional instruments. Ironically, the ICCPR and the ICESC, completed in 1966, contain enforcement machinery similar to proposals made by the Truman Administration. The former created a Human Rights Committee to hear state-to-state complaints, and an optional protocol allows it to consider petitions from individuals and NGOs. Nations that ratify the ICESCR must report periodically on how they have implemented the treaty's principles. Even the specific rights contained in the two covenants changed little after Eleanor Roosevelt left the UNCHR in 1952. Latin American and European nations have also adopted regional treaties that allow for transnational courts to hear cases and issue binding rulings on complaints filed by individuals.⁶

American leaders have refused to take on binding commitments despite the increasingly important, though still equivocal, role that human rights issues have in influencing U.S. foreign policy. Since President Carter, Congress and the Executive have struggled to balance traditional support for promoting human rights abroad with other, conflicting interests. Contemporary debates over renewing most-favored-nation trade status with China, selling arms and military
equipment to brutal dictators in Asia, Latin America, Africa, or the Middle East, and taking military action against terrorists all require balancing human rights diplomacy with issues of national security and economic growth. Even conservatives in Congress, who have been historically more willing to place other interests ahead of human rights concerns, now advocate economic sanctions against nations who persecute Christians. Continuing the political activism of NGOs in the 1940s and 1950s, Amnesty International, Human Rights Watch, and the National Council of Churches lobby for Senate ratification of human rights treaties and their worldwide enforcement by the United Nations.

The historical implications of this dissertation for present and future U.S. human rights policy are several. First, the United States has never regained its position under Eleanor Roosevelt as the leading defender of human rights at the United Nations. Although Washington still has enormous influence on the body's human rights agenda, it flows from the nation's military and economic power more than its moral authority. The recent vote on creating an International Criminal Court demonstrates how isolated the U.S. has become in its zeal to protect national sovereignty. To regain credibility on human rights issues, the nation must accept greater international treaty responsibilities and aggressively attack domestic human rights abuses.
Second, any change in U.S. policy will not occur without strong lobbying by domestic and international NGOs. Wanting maximum freedom of action and dedicated historically to opposing the transnational oversight of human rights issues (unless Washington itself could find a way to escape such scrutiny), the U.S. has and will arrogantly seek to postpone or defeat human rights reforms proposed at the United Nations. Moreover, presidents from Eisenhower to Bill Clinton have rarely discussed human rights concerns with other governments unless NGOs and the media have publicized them and public opinion has reacted strongly. To be successful lobbyists, NGOs must show how massive human rights violations promote political instability, economic underdevelopment, and civil wars and military intervention by other nations. In other words, activists must go beyond giving idealistic and moralistic reasons as to why the promotion of human rights should be a top priority for the State Department.

Finally, as the world's only remaining superpower, the U.S. must use multilateral diplomacy and its unilateral military and economic leverage more forcefully to stop genocide and other massive human rights abuses. The recent killing fields of Rwanda and the Balkans show how dictators who assume impunity and nonintervention by the world community can lead their peoples to war by advocating genocide. At a minimum, the United States should ratify the statute of the
International Criminal Court and support efforts to punish those responsible for the most serious of human rights abuses. The awkward and ad hoc manner in which the governments of Spain, Chile, and Great Britain negotiate the fate of Augusto Pinochet demonstrates the need for such an institution.

Though these changes to American human rights policy will be hard to achieve given the history recounted in this dissertation, they are conservative when compared to the steps already undertaken by other countries at the United Nations. They also pale in scope when seen against the revolutionary development of international human rights law over the past fifty years. From the vague promises of the Atlantic Charter to the statute for an International Criminal Court, from the collapse of the League of Nations to a United Nations with broad (and evolving) human rights responsibilities, from a handful of NGOs concerned with human rights issues to a global, internet-linked network of lawyers, activists, and academics, the internationalized institutionalization of human rights is a modern phenomenon. But the revolution is not done; one hopes that Louis Henkin's appellation, the "Age of Rights," will also apply to future decades. If so, we will understand the truth spoken above by W.E.B. DuBois: though the Roosevelt and Truman administrations launched a most uncertain crusade to protect human rights, their first steps helped to make contemporary and future human rights history possible.

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BIBLIOGRAPHY

Primary Sources

Private Manuscript Collections

Dwight D. Eisenhower Library, Abilene, Kansas
  Sherman Adams Papers
  Herbert Brownell, Jr. Papers
  John Foster Dulles Papers
    Chronological Series
    Subject Series
    Telephone Call Series
  Dwight D. Eisenhower Papers
    Collection of Miscellaneous Manuscripts
    Personal Diary
    Presidential Papers (Ann Whitman File)
    Records of Daily Appointments
    White House Central Files
  James C. Hagerty Papers
  John W. Hanes, Jr. Papers
  C.D. Jackson Papers
  Henry C. Lodge Papers
  Mary Pillsbury Lord Papers
  Jack I. Martin Papers
  Records of the White House Cabinet Secretariat
  Records of the White House Office of the Staff Secretary
  Samuel C. Waugh Papers

Franklin D. Roosevelt Library, Hyde Park, New York
  Adolf Berle Papers
  Harry Hopkins Papers
  Eleanor Roosevelt Papers
  Franklin Roosevelt Papers
    Official Files
      President's Secretary's Files
  Henry Wallace Papers

Harry S. Truman Library, Independence, Missouri
  Dean Acheson Papers
  Tom C. Clark Papers
  Clark Clifford Papers
James P. Hendrick Papers
Robert A. Lovett Papers
Philieo Nash Papers
David K. Niles Papers
President's Committee on Civil Rights Papers
Psychological Strategy Board Files
Henry Reiff Papers
Samuel Rosenman Papers
Edward R. Stettinius, Jr. Papers
Jack B. Tate Papers
Harry S. Truman Papers
  Confidential File
  Official File
President's Secretary's Files
White House Central Files
James E. Webb Papers

Oral Histories

Donald C. Blaisdell, Truman Library
John W. Bricker, Eisenhower Library
Herbert Brownell, Eisenhower Library
Tom C. Clark, Truman Library
Dwight D. Eisenhower, Eisenhower Library
John D. Hickerson, Truman Library
Mary Pillsbury Lord, Eisenhower Library
Robert A. Lovett, Truman Library
John Maktos, Truman Library
Clarence Manion, Eisenhower Library
Porter McKeever, Roosevelt Library
Robert D. Murphy, Eisenhower Library
William Sanders, Truman Library
Durward V. Sandifer, Truman Library
Durward Sandifer, Roosevelt Library
James J. Wadsworth, Eisenhower Library
David W. Wainhouse, Eisenhower Library

Government Archives

National Archives of the United States, College Park, Maryland
Record Group 43, Records of International Conferences, Commissions, and Expositions
Record Group 59, General Records of the Department of State
  Decimal Files
  Harley A. Notter Files
  Records of the Office of United Nations Affairs

414
Subject Files of the Office of Special Political Affairs  
Subject Files of Durward Sandifer (lot file 55D 429)  
Record Group 353, Records of Interdepartmental and Intradepartmental Committees  
Intradepartmental Committee on International Social Policy

Published United Nations and U.S. Government Documents


-----Executive Sessions of the Senate Foreign Relations Committee (Historical Series) III. 82nd Cong., 1st sess., 1951. Made public August 1976.

-----Executive Sessions of the Senate Foreign Relations Committee (Historical Series) IV. 82nd Cong., 2nd sess., 1952. Made public October 1976.


-----U.S. Congress. Senate. Subcommittee of the Committee of the Judiciary. Treaties and Executive Agreements: Hearings on S.J. Res. 130-Proposing an Amendment to the Constitution of the United States Relative to the Making of Treaties and Executive Agreements. 82nd Cong., 2nd sess., 21, 22, 27, 28 May and 9 June 1952.

-----Treaties and Executive Agreements: Hearings on S.J. Res. 1 and S.J. Res. 43-Proposing an Amendment to the Constitution of the United States Relative to the Making of Treaties and Executive Agreements. 83rd Cong., 1st sess., 18, 19, 25 February, 4, 10, 16, 27, 31 March, and 6, 7, 8, 9, 10, 11 April 1953.


-----Foreign Affairs Outlines 4 (Spring 1945), 3-4.


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U.S. Supreme Court Documents


American Civil Liberties Union. Brief of American Civil Liberties Union as Amicus Curiae on Petition for a Writ of Certiorari to the Supreme Court of the State of California, Fred Y. Oyama and Kajiro Oyama, Petitioners, in the Supreme Court of the United States, 1946.

Brief of American Civil Liberties Union as Amicus Curiae on Writ of Certiorari to the Supreme Court of the State of California, Fred Y. Oyama and Kajiro Oyama, Petitioners, in the Supreme Court of the United States, 1947.


U.S. Supreme Court and Lesser Court Cases


Joseph Burstyn, Inc. v. Wilson, 343 U.S. 495.
Cameron Septic Tank Co. v. Knoxville, 227 U.S. 39.
The Cherokee Tobacco, 11 Wall. 616.
Dred Scott v. Sanford, 19 Howard 393.
Ex Parte Quirin, 317 U.S. 1.
Fairfax's Devisee v. Hunter's Lessee, 7 Cranch 603.
Fox v. Washington, 236 U.S. 273
Frohwerk v. United States, 249 U.S. 204
Hauenstein v. Lynham, 100 U.S. 483.
Holden v. Joy, 17 Wall. 211.
Namba v. McCourt, 204 P.2nd 569 (Oregon)
Over the Top, 5 F.2nd 838 (Connecticut)
Schenk v. United States, 249 U.S. 52.
Takahashi v. Fish and Game Commission, 334 U.S. 410.
Terminiello v. Chicago, 337 U.S. 1.
United States v. Arjona, 120 U.S. 479.
United States v. Ferreira, 54 U.S. 40.
Ware v. Hylton, 3 Dallas 199.
Zorach v. Clauson, 343 U.S. 306.

Primary Sources: Articles


421


"We Take Our Stand." Daughters of the American Revolution Magazine 86 (June 1952): 733-37.


Other Primary Sources: Books


---- *Winning the War on the Spiritual Front*. New York: Commission to Study the Organization of Peace, 1943.


-----Where are We Heading? New York: Harper and Brothers, 1946.

Publications

American Bar Association Journal
Chicago Tribune
Christian Century
Christian Science Monitor
Commission on Human Rights Reports
Congressional Quarterly Almanac
Congressional Record
New York Times
Reports of the American Bar Association
United Nations News
United Nations Weekly Bulletin
U.S. Department of State Bulletin
Washington Post
Secondary Sources: Articles


Secondary Sources: Books and Unpublished Dissertations


