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Humphrey and the High Commissioner: the Genesis of the Office of the UN High Commissioner for Human Rights.

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1. Introduction

Early in 1947 when the UN Commission on Human Rights (CHR) began to consider its mandate to prepare an International Bill of Rights, this bill was envisioned to have three parts. These were a declaration of principles, a convention and some means of implementation. The first part proved relatively simple when the Universal Declaration of Human Rights was adopted by the General Assembly in less than two years. The second part proved more problematical and it was not until the 1960s that two conventions, one on civil and political rights and the other on social and economic rights, were opened for signature. It has often been suggested that the reason for having two conventions was that the means of implementation were different.¹ However, the simple fact is that many of the civil and political rights were unacceptable to the Soviet bloc, while some of the social and economic rights were anathema in the U.S. Indeed so contentious were the debates surrounding these conventions that Secretary-General Dag Hammarskjöld told the Director² of the Division of Human Rights that he would like to take the conventions and throw them out of the window. The Director ruefully reflected that they were on the

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¹ Roger S. Clark, *A United Nations High Commissioner for Human Rights*, (The Hague: Nijhoff, 1972), p. 18

² John Peters Humphrey (1905-1995), Canadian lawyer and academic, was the first Director of the UN Division of Human Rights (1946-1966). He taught law at McGill University before and after his international service (1936-1946, 1966-1994).

thirty-eighth floor at the time.³ Means of implementation, while seemingly never sufficient, are progressive and still being developed. They have included periodic reports, technical assistance, the seminar program, global studies and the appointment of a High Commissioner for Human Rights.

On 14 February 1994 the General Assembly appointed a UN High Commissioner of Human Rights (UNHCHR), based on a mandate created on 20 December 1963 (Resolution 28/141). We are told that, “despite exasperating delaying tactics by a handful of nations, the post came into existence only six months after it was first mooted.”⁴ This assertion is a vast oversimplification since the concept of some kind of UNHCHR is almost as old as the UN itself. In December 1947 the French delegate to the CHR, René Cassin,⁵ presented a proposal for an Attorney-General for Human Rights.⁶ The Consultative Council of Jewish Organizations (CCJO), a Non-Governmental Organization (NGO) accredited to the UN Economic and Social Council (ECOSOC) with Category B status, refined and expanded the Cassin proposal under the title “A United Nations Attorney-General or High Commissioner for Human Rights”⁷, presenting this to the Human Rights Commission in 1950. The addition of the term High Commissioner almost certainly owes its origins to the General Assembly’s creation, in December 1949, of the office of the High Commissioner for Refugees, although the term High Commissioner for Refugees had also been used by the League of Nations. Later that year Uruguay proposed in the General Assembly that the CHR consider the creation of the post of Attorney-General or High Commissioner “as a possible solution to the dispute about the right of individual petition under the draft Covenant.”⁸ The Uruguayan proposal⁹ was followed, the next year, by a lengthy explanatory memorandum.¹⁰ A significant number of nations objected to the Uruguayan proposal largely because of the controversy surrounding the right of individuals to petition. As the Secretary-General later reported, nothing beyond state complaints could be contemplated given the existing political situation.¹¹ The proposal then faded away.

³ A.J. Hobbins, ed., *On the Edge of Greatness: the Diaries of John Peters Humphrey, First Director of the UN Division of Human Rights*, (Montreal: McGill University Libraries, 1996-2000). 4 vols. Vol. 3, p. 57. This edition represents a complete transcript of Humphrey’s diaries, the originals of which are in McGill University Archives, MG4127, Cont. 20, Files 401-415. While Humphrey relates this discussion in his diary, his rueful reference to the 38th floor was in conversation with the author.

⁴ Susumu Awanohara, “Asian compromise: UN gets human rights chief with trimmed powers.” *Far Eastern Economic Review*, Vol. 157, Dec. 30 1993-Ja 6 1994, p. 17.

⁵ René Cassin (1887-1976), French jurist, was the French representative (1947-1968) to the CHR, chairing it (1955-1956). He was Vice-President of the Conseil d’État (1944-1960) and President of the Superior Arbitration Court, The Hague (1950-1960). He was President of the European Court of Human Rights (1965-1968).

⁶ UN. Economic and Social Council. Commission on Human Rights. Working Party on Implementation of Human Rights. *Letter dated 5 Dec 47 to Chairman, containing suggestions on implementation programme. From Representative of France*. December 6 1947. UN Doc. E/CN.4/AC.4/1 (1947).

⁷ Clark, *supra* note 1, p. 41. The actual published title did not include the use of the term High Commissioner. UN. Economic and Social Council. Commission on Human Rights. *Proposal for a United Nations Attorney General for Human Rights*. April 5 1950. UN Doc. E/CN.4/NGO/ 6 (1950).

⁸ Clark, *supra* note 1, p. 43.

⁹ UN. General Assembly. Third Committee. Agenda item 63. *Draft First International Covenant on Human Rights and Measures of Implementation: Uruguay Addition to A/C.3/L76*. November 3, 1950. UN Doc. A/C.3/L.93.

¹⁰ UN. General Assembly. Third Committee. *Bases of the Proposal to Establish a United Nations Attorney-General for Human Rights. Memorandum submitted by Uruguay*. December 20 1951. UN Doc. A/C.3/564.

The idea for a UNHCHR arose again in the 1960s when, following a speech by Jacob Blaustein,¹² a number of NGOs published a joint statement, circulated to the various delegations, proposing the office.¹³ Costa Rica took up the idea and presented a request to include discussion of the proposal to the CHR in March 1965. The agenda item was never reached, so later in the year Costa Rica proposed to ECOSOC that it consider the matter.¹⁴ While ECOSOC debated the matter, no specific resolution resulted. Therefore Costa Rica then proposed the question be placed on the agenda of the General Assembly. However the Third Committee referred the matter back to the CHR, which established, in March 1966, a Working Group, chaired by the Philippine representative Salvador Lopez,¹⁵ to study the question. The Working Group produced a report proposing the establishment of the office of a UNHCHR¹⁶ and the proposal was accepted with minor modifications by the CHR at its 1967 session and forwarded to ECOSOC. These minor modifications included a strengthening of the powers of the office based on a paper prepared by the UN Division of Human Rights.¹⁷ ECOSOC forwarded the draft resolution¹⁸ to the General Assembly, along with a request that the Secretary-General bring it to the attention of Member States. The full story of how the proposal fared in the General Assembly is told elsewhere.¹⁹ Suffice it to say that the item was delayed for years and full debate not allowed, despite the tenacity and courage of its adherents. Eventually the proposal left the agenda with a whimper.

René Cassin has been called the “father of the idea” for a UNHCHR because his

¹¹ UN. General Assembly. Plenary Documents. *Draft International Covenants on Human Rights. Annotation Prepared by the Secretary-General*. 1 July 1955. UN Doc. A/2929. p. 84.

¹² Jacob Blaustein (1892-1970), American company executive and philanthropist, was heavily involved in a number of Jewish organizations connected with the UN and human rights, including the Consultative Council of Jewish Organizations and the American Jewish Committee. He founded, with his father, the American Oil Company in 1910, which subsequently merged with the Pan-American Petroleum and Transport Company in 1933.

¹³ Clark, *supra* note 1, p. 47. There is a copy of this document in McGill University Archives. MG4127, Cont. 23, File 479 “Proposal to elect High Commissioner for Human Rights.”

¹⁴ UN. Economic and Social Council. Commission on Human Rights. Report. *Letter Addressed to the President of the Council by the Permanent Representative of Costa Rica*. 6 July 1965. UN Doc. E/L.1080.

¹⁵ Salvador P. Lopez (b. 1911), Filipino author, journalist and diplomat, held various positions in his country’s permanent mission to the UN in 1946-1954, 1964-1968 and 1986-1988. In 1966 he was Permanent Representative to the UN. His ambassadorial appointments included France (1956-1962) and the U.S. (1968-1969). From 1963-1964 he was Philippines Secretary for Foreign Affairs. His public career was affected to some extent by his opposition to the Marcos regime.

¹⁶ UN. Economic and Social Council. Commission on Human Rights. *Report of the Working Group to Study the Proposal to Create the Institution of a United Nations High Commissioner for Human Rights*. 8 February 1967. UN Doc. E/CN.4/934.

¹⁷ UN. Secretary-General. *Analytical and Technical Study Prepared by the Secretary-General under Paragraph 3 of Resolution 4 (XXII) of the Commission on Human Rights*. 30 December 1966. UN Doc. E/CN.4/AC.21/L.1.

¹⁸ UN. Economic and Social Council. *Resolution Adopted by the Economic and Social Council. 1237 (XLII). Questions Concerning the Implementation of Human Rights Through a United Nations High Commissioner for Human Rights or Some Other Appropriate Machinery*. 20 June 1967. E/RES/1237 (XLII).

¹⁹ The formal progress of the proposal within the UN organs has been covered by two excellent articles authored by Ronald St. John Macdonald: “The United Nations High Commissioner for Human Rights,” *Canadian Yearbook of International Law* V (1967), pp. 84-117, and “A United Nations High Commissioner for Human Rights: the Decline and Fall of an Initiative,” *Canadian Yearbook of International Law* X (1972), pp. 40-64.

suggestion for an Attorney-General, adapted by the CCJO, led to the Uruguayan proposal.²⁰ Cassin's notion was that an individual or state, dissatisfied with the result of a petition to the CHR, could appeal to a Court of Human Rights.²¹ The function of the Attorney-General would be to assist the complainant at the level of the Court. Even though the CCJO added the possible title of High Commissioner to this office, it clearly had a very different function from that of the Costa Rican proposal, which suggested a UNHCHR quite similar in concept to today's office. Indeed, in the 1960s, the two ideas were in strong competition with one another. When the Costa Rican proposal came to the CHR in 1967 Cassin was quite opposed to it, voting for a motion recommending delays for further study and ultimately abstaining when the CHR supported the proposal. Ironically, when the proposal went to ECOSOC, France, not represented by Cassin, was strongly in favour of it,²² a further indication he was voting based on his own beliefs not his country's instructions. Since Cassin recommended a different officer with quite different functions and actively opposed the Costa Rican proposal, any claim to his paternity of the idea must be viewed as tenuous. The Costa Rican proposal is a direct ancestor of the current UNHCHR office, while the Uruguayan proposal was at best a very distant relation. Therefore the parents of the idea for the current UNHCHR, if such ideas can really be said to have parents, must be those people who elaborated the concept leading to the Costa Rican proposal. It should be noted, however, that the current office, which owes its direct origins to the Vienna Conference of 1993, also has significant differences from the Costa Rican proposal, reflecting the dramatic changes that had taken place in the world over three intervening decades, in particular the breakup of the Soviet Union. The purpose of this article is to examine the genesis of the Costa Rican proposal.

The Costa Rican draft stemmed directly from a joint statement by a number of NGOs. The speech by Blaustein was the direct antecedent of the NGO proposal.²³ He gave the Dag Hammarskjöld Memorial Lecture at Columbia University on December 4 1963 and he concluded this speech, having reviewed UN accomplishments in the area of implementation, by stating "the General Assembly or the Secretary-General might appoint an independent person who would be a kind of international commissioner dealing with human rights, bearing perhaps the title of United Nations High Commissioner for Human Rights."²⁴ He went on to give the bare bones of the types of things this Commissioner could do, and it was on the basis of this that the NGOs elaborated the idea. Blaustein's speech was the first published reference to a UNHCHR of the Costa Rican, as opposed to Uruguayan, type. The question of where Blaustein got his ideas does not appear to have been examined in the literature.

²⁰ Clark, *supra* note 1, p. 153.

²¹ UN Doc. E/CN.4/AC.4/1 (1947), *supra* note 6. See also Clark, *supra* note 1, p. 40.

²² UN. Economic and Social Council. *Summary Record of the Five Hundred and Seventy-Third Meeting*. 26 May 1967. UN Doc E/AC.7/SR573, pp. 7-9.

²³ Clark, *supra* note 1, pp. 45-46.

²⁴ Jacob Blaustein, "Human Rights: a Challenge to the United Nations and to Our Generation", in Andrew W. Cordier and Wilder Foote, *The Quest for Peace: the Dag Hammarskjöld Memorial Lectures*. (N.Y.: Columbia University Press, 1965). pp. 328-329.

2. Gardner's Account

The conventional wisdom concerning the genesis of the idea is to be found in Clark's monograph.²⁵ This well-researched book is the standard work in the field,²⁶ although when considering the events leading up to the Blaustein speech Clark is understandably cautious. He makes it clear that he was obliged to rely on anecdotal evidence from an incomplete number of the key figures.²⁷ On the basis of this evidence Clark states that the 1960s revival of the notion "seems to have begun in the U.S. State Department in the summer of 1963. Richard N. Gardner,²⁸ then Deputy Assistant Secretary of State for International Organization Affairs was concerned both with the general issue of U.S. participation in the human rights activities of the United Nations and with putting some vigour into the operations of that body."²⁹ Gardner describes his own role in the Foreword to Clark's monograph.³⁰ Gardner states that he began thinking of the idea when he received a suggestion in April 1963 from Marietta Tree,³¹ US representative on the CHR, that the UN should establish the office of an international Ombudsman, since that office was being considered at the national level in a number of countries. At approximately the same time Sidney Liskofsky, the UN representative of the American Jewish Committee, prepared the agenda for a seminar to be held at the end of May which contained the item "High Commissioner (Attorney-General or Ombudsman) for Human Rights". Although Gardner spoke at this seminar, he did not specifically address the question of a UNHCHR.³² At this point he began to focus on "possible variations of the Uruguayan proposal" within the State Department. Opposition from various U.S. government sources stalled the idea but Gardner claims that he and his allies did succeed in placing what can best be described as a vague reference to implementation in President Kennedy's address to the General Assembly on 20 September 1963. Gardner continues that shortly thereafter he and Marietta Tree "were authorized to discuss the High Commissioner with John Humphrey, the able Director of the UN's Human Rights Division. As a result, Humphrey began an examination of the idea within the UN Secretariat."³³ Gardner concludes by stating that thereafter the proposal began to take on a momentum of its own. NGOs began asking the State

²⁵ Clark, *supra* note 1, pp. 45-47.

²⁶ This is certainly the standard work dealing with the period leading up to the Costa Rican adoption of the proposal. More recent studies, such as Andrew Clapham, "Creating the High Commissioner for Human Rights: The Outside Story," *European Journal of International Law*, Vol. 5 (1994), pp.556-568 and James A. Joyce, *The New Politics of Human rights* (N.Y.: St. Martin's Press, 1978), pp. 215-219, tend to rely exclusively on Clark's account. References in papers presented at the Vienna Conference on the European Convention on Human Rights (1965) published in A.H. Robertson, *Human Rights in National and International Law* (Manchester: University of Manchester Press, 1968) are also useful sources of contemporary comment on the development of the proposal.

²⁷ Clark, *supra* note 1, p. 45, note 24.

²⁸ Richard Newton Gardner (1927-), American lawyer and diplomat, was Deputy Assistant Secretary for International Organization affairs in the State Department (1961-1965). He was a professor of law at Columbia University (1957-1961, 1966-1977, 1981-). He served as Ambassador to Italy (1977-1981) and Spain (1993-1997).

²⁹ Clark, *supra* note 1, p. 45.

³⁰ *Ibid.* pp. xi-xv.

³¹ Marietta Peabody Tree (1917-1991), American urban planner, was representative to the Human Rights Commission (1961-1964). She was also U.S. representative to the Trusteeship Council (1964-1965) before serving on U Thant's staff (1966-1967). She was a partner in the city planning firm Llewellyn-Davies Associates (1968-1980).

³² Clark, *supra* note 1, p. xiii.

³³ *Ibid.*

Department what Kennedy had in mind when he said new efforts were needed in the area of human rights if the Universal Declaration of Human Rights were to have full meaning. Since the U.S. Government had not formulated a policy, the NGOs began moving ahead on their own. Blaustein proposed the UNHCHR in his lecture, the NGOs prepared a draft resolution and Ambassador Volio³⁴ of Costa Rica became interested.

Clark accepts Gardner's account at face value and gives the matter little further scrutiny. Indeed it was natural that he should do so since his research was based on his doctoral dissertation for Columbia University, where his supervisor was Gardner himself.³⁵ Yet Gardner's account does present some difficulties. The precise nature of the State Department's concept prior to Blaustein's speech is not clear and there were a number of quite different ideas in this area being mooted in the 1960s.³⁶ Gardner himself did not publicly advocate a UNHCHR until a seminar sponsored by the American Jewish Committee and New York University on 14 December 1963, the gist of his remarks being subsequently published in a monograph.³⁷ At the conclusion of this book Gardner credited the UNHCHR idea to Blaustein.³⁸ Gardner's account does not state who authorized him to speak to Humphrey or why, nor does he mention any others present except for Marietta Tree. It seems quite improbable that Humphrey, as Gardner suggests, would have agreed to begin an examination of the idea within the UN Secretariat. Although the active hostility of Dag Hammarskjöld for the UN human rights program had been replaced by the benign indifference of U Thant, Humphrey would still have considered such a step futile.³⁹ He would be far more likely to have followed the course of pursuing the idea through his contacts with NGOs and sympathetic national delegations. When people suggest, as Gardner did, that ideas take on a momentum of

³⁴ Fernando Volio Jiménez (1924-), Costa Rican lawyer and politician, was Permanent Representative to the UN (1962-1968). He was a member of the Municipal Government of Cartago (1948-1953) and Director of the International Policy Department, Ministry of Foreign Affairs (1955-1957). He was a Deputy in the Legislative Assembly (1958-1962). He served as Foreign Minister (1982-1983).

³⁵ It is always difficult to evaluate the extent to which the relationship between thesis supervisor and doctoral candidate may influence the resulting scholarship. Clark states (email of 6 November 2000) that he felt free to disagree with Gardner when he was engaged in doctoral research and that he did so on some occasions. He may have accepted Gardner's account simply in the absence of any contrary information and, having read a draft of this article, suggests quite reasonably that this may be an example of parallel processes at work.

³⁶ Roger S. Clark, email of 20 September 2000. His view appears to coincide with Gardner's use of the phrase "possible variations of the Uruguayan proposal."

³⁷ Richard N. Gardner, *In Pursuit of World Order* (N.Y. Praeger, 1964). While Clark (*supra* note 1, p. 46) states the gist of his remarks were published here it is not clear from the text what precisely was said at the seminar. While mentioning the UNHCHR at the end of the book, one major theme of Gardner's monograph was an attack on Soviet policy towards the UN itself. Humphrey read this and was most unimpressed, writing in his diary on 15 November 1965:

It is easy to be mistaken. I had picked R.N. Gardner as one of the most brilliant men in the State Department. Perhaps he is but I have now read his book, *In Pursuit of World Order*, and a more partisan, more superficial piece of writing I have seldom seen. It is not surprising that people with this kind of mentality cannot reach any basis of agreement with their homologues on the other side! (Hobbins, *supra* note 3, Vol. 4, p.149).

³⁸ Gardner, *supra* note 37, pp. 260-261.

³⁹ Hammarskjöld's hostility to the UN human rights program was based on his belief that the debates over the covenants actually increased international tensions and that the best road to peace lay through diplomacy at the level of the Secretary-General. See A.J. Hobbins, "Human Rights inside the United Nations: the Humphrey Diaries, 1948-1959." *Fontanus*, IV (1991): pp. 143-173. At the time of this article Humphrey's diaries covering 1958-1966 had not been discovered. U Thant was not opposed to the program but nor was it one of his interests or priorities.

their own, it is often a euphemism for confessing that they have no real idea of what actually happened next. Gardner does not consider the very obvious possibility of a causal relationship between his meeting with Humphrey in September and the tremendous interest in a UNHCHR, for which the Blaustein speech must be considered a watershed, starting the following December. When doing his research Clark never spoke to Humphrey, who had left the UN by that time, nor did he have at his disposal Humphrey's version of events that can be found in his autobiography,⁴⁰ his diaries⁴¹ and his voluminous correspondence.⁴² In fact, Humphrey's account of the meeting in his office differs rather sharply from that of Gardner.

3. Humphrey's Account

Humphrey does not recall that the State Department delegation mentioned any of their proposals at all when they met him on September 26 1963. In his autobiography he states:

Gardner told me later that the state department had been working that summer on a proposal coming from Marietta Tree that there should be a kind of United Nations ombudsman. I'm pretty sure that they did not mention this at our meeting, although the idea of a full-time, paid chairman of the Commission may have been inspired by it.⁴³

Of course, Humphrey's autobiographical recollections written years later cannot be considered any more reliable than Gardner's version of the events. However, Humphrey's diary offers a more plausible rationale for the State Department visit. He wrote:

This development is related to an idea which I have been trying to promote for the last year, although my own suggestion is far more ambitious. In November [i.e. September] last when the late President Kennedy visited the United Nations it happened that I was invited to the luncheon given by the Secretary General for Mr. Kennedy and Mr. Pearson⁴⁴ jointly. I found myself sitting next to Harlan Cleveland⁴⁵ whom I had never met before. When Cleveland heard that I was the

⁴⁰ John Peters Humphrey, *Human Rights and the United Nations: a Great Adventure* (Dobbs Ferry, N.Y.: Transnational Publishers, 1983).

⁴¹ Published in Hobbins, *supra* note 3.

⁴² Humphrey's UN period correspondence (including all that are cited in this article) are to be found in the McGill University Archives, MG4127, Conts. 21-23, Files 415-480.

⁴³ Humphrey, *supra* note 40, p.296. Humphrey also gave his recollections in greater detail in "A United Nations High Commissioner for Human Rights: the Birth of an Initiative," *Canadian Yearbook of International Law* XI (1973), pp. 220-225.

⁴⁴ Lester B. Pearson (1897-1972), Canadian politician and diplomat, was Prime Minister of Canada (1963-1968).

⁴⁵ (James) Harlan Cleveland (1918-), American political scientist, was Assistant Secretary for International Organization Affairs in the State Department (1961-1965). He worked for various government agencies (1939-1952), edited *The Reporter* (N.Y.) (1953-1956), and taught political science at Syracuse University (1956-1961). He served as Ambassador to NATO (1965-1968). He was subsequently president of the University of Hawaii (1969-1974), director of the program in International Affairs at the Aspen Institute for Humanistic Studies (1974-1980) and professor of Public Affairs at the University of Minnesota (1980-1988). He had chaired the Central N.Y. Citizens for Kennedy Committee in 1960. Efforts to contact him in connection with this article have proved unsuccessful.

Director of the Division of Human Rights he began to talk about the speech which the President had just made in the General Assembly. I said that I had not heard it. You must read, he said, the part dealing with human rights. "We really mean to do something constructive, to take a step forward." And then he asked me what I would think if they were to try to transform the chairmanship of the Human Rights Commission into a paid, permanent office. I said that I didn't think it was a very good idea, because the office was political and that it had no real mandate attached to it so that there was really nothing that the chairman could do between sessions of the Commission; but I said that I had some other ideas about how the human rights operation could be strengthened and that I would like to talk to him about them.⁴⁶

Harlan Cleveland was Assistant Secretary for International Organization Affairs in the State Department and Gardner's immediate superior. In this position it would have been easy for Cleveland to arrange the meeting to discover more of Humphrey's ideas. Humphrey continued:

A little more than a week later, Ambassador Bingham⁴⁷ (then the American representative on ECOSOC), Marietta Tree and Richard Gardner called on me, at Cleveland's suggestion, to discuss the matter further. I outlined my plan which was that the General Assembly should appoint a High Commissioner for Human Rights who, amongst other things, would assist the Commission on Human Rights when it deals with the period reports from governments. He would also be available, at the request of governments, to assist them in various ways, including the investigation of situations and the mediation of disputes. [It was at this meeting incidentally that I shocked Ambassador Bingham by telling him exactly what I thought of ECOSOC].⁴⁸

Given Bingham's rank, it was natural that he should be included, even lead, the delegation to Humphrey, and it is odd that Gardner did not mention his presence. However, since the positions of Bingham and Tree were clearly public and political while Gardner's role had more substantive responsibilities attached, he may have perceived himself as the chief interlocutor in the meeting. From Humphrey's perspective the meeting was only to discover his own ideas for a UNHCHR and not to discuss the alternative that Cleveland had said was being considered in the State Department. It is clear that Gardner, whatever his ideas had been prior to the meeting, then began to consider and advocate a UNHCHR of the type Humphrey proposed. In this context it should be noted that Gardner's claim to be responsible for the "revival" of the idea is

⁴⁶ Hobbins, *supra* note 3, Vol. 4, p. 62. November 18 1964. One caveat in connection with this diary entry is that Humphrey did not keep up his daily entries between 1960 and October 1964. The entry was based, therefore, on his year-old memory of events

⁴⁷ Jonathan Brewster Bingham (1914-1986), American lawyer and politician, was a member of the U.S. delegation to the UN (1961-1964) and the representative, with the rank of Ambassador, to ECOSOC (1962-1963). He was in private practice (1939-1961), interrupted by war service and a term as Secretary to the Governor of N.Y. State (1955-1958). He was a representative for New York (1965-1983).

⁴⁸ Hobbins, *supra* note 3, Vol. 4, pp. 62-63.

somewhat inaccurate since the idea, but for its name, was essentially a new one.

4. Blaustein's speech

Blaustein's speech was the first public iteration of the idea that led to the Costa Rican proposal but there has been scant examination of the question of where Blaustein got his ideas. Within the State Department there were certainly those who thought Gardner had provided Blaustein's inspiration. On 22 March 1965 Humphrey noted in his diary:

A propos of Blaustein's speech, Rachel Nason in Teheran said to me that she couldn't imagine who had written it because it was nothing more than a distillation of Dick Gardner's (State Department) ideas.⁴⁹

Rachel Nason was the State Department advisor to Gladys Avery Tillett, US representative on the UN Commission on the Status of Women (1961-1964). She and Humphrey had been in Teheran the previous month for a meeting of the Commission. Since they were discussing the speech well over a year after it took place, Nason may have been confused as to the time that Gardner was promoting this theme. She was also probably shocked at Humphrey's response to her remark: "Would you really like to know who wrote it," I said. "It was me."⁵⁰

Humphrey's claim to have written Blaustein's speech can be easily substantiated. Blaustein was invited to speak many months ahead of the actual event. He turned for help on the topic of his speech to Andrew W. Cordier, former Executive Assistant to the UN Secretary-General and, at this time, President of the US Committee of the Dag Hammarskjöld Foundation, sponsor of the lecture series. Cordier wrote back on 21 May 1963, saying:

I promised to write you regarding your lecture in the Dag Hammarskjöld series. I have talked to John Humphrey, Director of the Human Rights Division at the United Nations who promises to give you assistance on the matter. I would suggest that you get in touch with him and have a personal talk with him at your convenience.

I would think that the lecture should include *inter alia*, highlights of the role of the United Nations in the field of Human Rights, and in that connection to set forth some of the leading common denominators of world wide agreement as established through the Declaration and the Covenants, the progress that has been made in the field of Human Rights during these seventeen years, and in particular, the specific impact of the United Nations in the field of Human Rights as reflected in constitutions, court decisions, legislation and public associations. In addition, you would want to say something about your own role and that of the NGOs at San Francisco, and perhaps you would want the people at the United Nations to

⁴⁹ Ibid. p. 90.

⁵⁰ Ibid.

provide you also with highlights in the field of Human Rights outside the areas mentioned above.⁵¹

Blaustein and Humphrey had trouble getting together over the summer and it was only on 30 August 1963 that Humphrey was able to seek permission from Chef de Cabinet C.V. Narasimhan,⁵² writing:

Mr. Andrew Cordier has asked me, on behalf of the Dag Hammarskjöld Foundation, to write a lecture which Mr. Jacob Blaustein, the President of the American Oil Company, will deliver at Columbia University this Autumn. I have told Mr. Cordier that, subject to your approval, I would be happy to do this. I understand that Mr. Blaustein will pay me a fee of \$300.00 for this work.

The administrative response was grudging and reluctant, showing to some extent the esteem in which the UN human rights program was held by the senior member of the Secretariat. Narasimhan responded on 11 September 1963 as follows:

Both the Secretary-General and I have reservations about the propriety of a staff member undertaking such a task, especially when there is a question of payment of fee for this purpose. It has therefore been agreed that you will accept no fee for this work. Even so I have some reservations about the proposal; but with the approval of the Secretary-General it has been agreed that you may proceed to assist Mr. Blaustein in drafting this lecture, in view of the fact that matters have already reached an advanced stage and certain commitments have been made.

The administrative difficulties having been taken care of, Humphrey prepared a first draft for Blaustein sending it to him on September 17 with the request he comment on the substance and ignore the style. Blaustein responded on September 26 as follows:

I also greatly appreciate the first draft of the speech for Columbia. I have read it and think it is a splendid fundamental paper. As you indicate, it will require some additional work to line it up with certain of the thoughts, in addition to those I expressed when I last saw you, and to style it is as I would normally deliver it.

...

If and when you get a chance to read one or two of my earlier speeches which I sent you, I would very much welcome your reaction to them. I invite this, particularly, because they were well received when then [sic] delivered, – a fact which I believe may be attributed in good measure to the rather informal style and the inclusion of some relevant personal experiences. I find audiences often like to

⁵¹ This letter and the subsequent ones between Humphrey and Blaustein are to found in McGill University Archives, MG 4127, Cont. 23, File 417 “B continued – The Blaustein Correspondence.”

⁵² Chakravarthi V. Narasimhan (1915-), Indian international servant, was Under Secretary-General for General Assembly Affairs (1962-1967). He joined the Indian Civil Service in 1936 and held various government positions until he joined the UN Secretariat as Executive Secretary of the UN Economic Commission for Asia and the Far East, Thailand (1956-1959). He served as Under Secretary-General for Special Political Affairs (1959-1961) which included the Division of Human Rights. He later served as Deputy Administrator, UNDP (1969-1972) and Under Secretary-General for International Agency Affairs and Cooperation (1973-78). He concluded his career as Senior Fellow, UN Institute for Training and Research (1978-1993).

be taken on the in, as it were, and given these personal angles. And if you feel this treatment in these previous speeches warrants same, then perhaps we might introduce some of it into the Columbia speech.

Thus the assiduous Humphrey, despite having asked for comments on substance rather than style, received a less than subtle request to read Blaustein's earlier speeches and make the current effort more stylistically Blaustein-like. The correspondence indicates that Humphrey worked on the draft further, although no copies were found in the file. This collaboration was interrupted when Humphrey was appointed principal secretary of the UN Mission to Vietnam and left on 21 October. This mission was to investigate charges that the Buddhist majority in Vietnam was being persecuted by the Roman Catholic government of Ngo Dinh Diem. Humphrey returned in mid-November, a U.S. inspired coup and Diem's assassination having rendered further investigation of the regime pointless.

By this time Blaustein had prepared a revised draft (dated 14 November), which he sent to Humphrey with the following letter on 27 November.

I returned from abroad only several days ago. Your November 12 letter and comments regarding the lecture reached here, therefore, prior to my return and my secretary embodied these and my suggestions into a new draft, copy of which is enclosed. A copy has also been sent to Dr. Cordier for his comments.

As I read this draft, I wonder if I should not make, if possible, some more specific, positive suggestion for the future, – something like what Justice Goldberg did in his recent Address before the Jewish Theological Seminary when he advocated an International Court of Human Rights to enforce the essential civil rights of the Declaration. I do not mean that I should refer to this, but what, if any, new idea is it possible for us to come up with? How about advocating the possibility of the appointment in the UN of a High Commissioner of Human Rights to negotiate and mediate some problems before they get out of hand; and a 'watch-dog' committee.

...

If you agree with the foregoing and can draft a short piece for me along these lines (to be incorporated into the existing draft) it will be gratefully received.

...

I am sure I need hardly tell you how much I appreciate your invaluable cooperation with this lecture. It must be a lecture of some significance, one that will be well received.⁵³

Thus Blaustein raised the possibility of including mention of a UNHCHR in his speech, although he wanted suggestions as to the precise nature of the office. Humphrey had been away from the office for some time in Vietnam and had little time for redrafting the speech. Nor did he appear particularly enamoured with Cordier's suggested revisions that were also sent to him. He wrote to Blaustein on 27 November:

⁵³ Blaustein's drafts of 14 November and 30 November are preserved in the file.

As I told you over the telephone only a few minutes ago, I am afraid that it is simply materially impossible in the light of my commitments here at the United Nations during the next fortnight for me even to think of the possibility of rewriting the text in the light of Mr. Cordier's suggestions. As promised, however, I am writing down here a few of my ideas as to how you might draft a concluding paragraph.

You might mention Justice Goldberg's speech as one of the very highest importance to which further currency should be given. You might even quote from the speech. You could then refer to the speech which the late President Kennedy made before the General Assembly of the United Nations on 20 September 1963. In this speech Mr. Kennedy laid the basis for what I understood were to be certain positive suggestions which the United States Government would make for the strengthening of the human rights programme of the United Nations. I enclose a verbatim record of President Kennedy's speech herewith. Finally, you might bring in here your suggestion that the United Nations – more specifically the General Assembly – should appoint a United Nations High Commissioner for Human Rights. Such a High Commissioner could, amongst other things, lend his good offices to governments and be available at their request to investigate situations where there had been alleged violations of human rights; he could assist under developed countries in the organization of various institutions for the promotion of human rights; he could advise the Economic and Social Council on the human rights aspects of the Development Decade; and he could assist the Commission on Human Rights in its review of the periodic reports from governments on human rights. I also understand that President Johnson in his speech today, which I have not however yet read, made a very strong plea for human rights. Perhaps this also could be worked into your conclusion.

May I repeat that I am very sorry indeed that it is not possible for me at this stage to try to revise the text. A combination of circumstances including your absence and my recent mission to Viet-Nam plus my responsibilities in connection in the General Assembly make it literally impossible for me to find the time to sit down and think out a proper new text.

Blaustein did not let Humphrey off that easily however, writing to him on 1 December, a Sunday night three days before the speech.

Thanks so much for your continued advice on the lecture.

There is being handed you herewith

(1) a copy of your original draft, with notations thereon and inserts of the changes I first suggested, and

(2) a copy of the latest draft which I have just finished, too late to re-read.

I hope you will be able somehow or other to find time tomorrow, Monday, to go over both of these and phone me your comments.

...

If you cannot find time to read the whole of the latest draft, I would appreciate your reading the part on page 23 about the International Court of Human Rights and the piece on page 31 about the United Nations High Commissioner for Human Rights.

Awaiting your call, and with warm regard,

When Blaustein gave the lecture he included all the material Humphrey suggested. He referred to the speeches of Goldberg, Kennedy and Johnson, and he quoted almost verbatim from Humphrey's last letter describing the role of a UNHCHR.⁵⁴ Humphrey had also included a section giving his reservations about the Attorney-General concept, still being promoted by the CCJO and its allies. Blaustein said:

It is mainly for this reason that many people think that the Covenant on Civil and Political Rights should recognize a right of petition by individuals or, at the very least, by selected nongovernmental organizations. It has been suggested that these petitions might be sifted by a kind of International Attorney-General, who would be responsible for instituting proceedings before the Human Rights Committee. There is little reason for believing that any appreciable number of governments would be ready to vote for such a solution in the General Assembly, let alone ratify a treaty which would subject them to the possibility of being haled before an international tribunal by an individual or nongovernmental organization. And yet the time has come when the United Nations should face the immediate problem of transition from mere promotion of human rights to implementation of human rights.⁵⁵

The problem with the Blaustein correspondence is that it cannot cover the discussions that evidently took place between Humphrey and Blaustein in meetings and telephone calls. It is clear that Blaustein wanted to include the notion of a UNHCHR, although he did not seem to be able to distil a precise definition from amongst the several concepts that were being mooted at the time. It is less clear whether Blaustein came up with the idea independently or whether someone, possibly Humphrey, nudged him towards it. Regardless of the foregoing, it is obvious that Humphrey seized the opportunity to define a UNHCHR of the kind he believed in, while pouring cold water on the rival Attorney-General concept in the speech. Since Blaustein was an important figure amongst the Jewish NGOs, his advocacy of the Humphrey concept and disavowal of the rival one was of great importance. The inclusion of references to Arthur Goldberg may have proved farsighted since, in September 1965, Goldberg became U.S. Ambassador to the UN. In his first speech to the General Assembly Goldberg said:

We are therefore very pleased that the government of Costa Rica has proposed the creation of the post of high commissioner for human rights [A/5963]. We think

⁵⁴ Cordier, *supra* note 24, p. 329. Since Blaustein's text mirrors almost exactly Humphrey's language in his letter of November 27, it is not reproduced here.

⁵⁵ *Ibid.* pp. 323-324.

this is an important first step in implementing the Universal Declaration of Human Rights, and we shall give this proposal our enthusiastic support.⁵⁶

Blaustein's speech received a great deal of publicity and people began to discuss and advocate the UNHCHR proposal. Gardner expressed personal, as opposed to State Department, support for the concept at a seminar sponsored by the American Jewish Committee and New York University on 14 December 1963.⁵⁷ Humphrey also quoted from the speech causing Blaustein to write to him on 26 December: "It was gratifying to learn that at the meeting of the World Jewish Congress you quoted from the lecture regarding the establishment of an office of High Commissioner for Human Rights in the United Nations." A month later Blaustein informed Humphrey "... you will be interested to know that the State Department has asked me to meet with them on the subject."⁵⁸ On 28 February 1964 Humphrey sent Blaustein an aide-mémoire elaborating the UNHCHR proposal for the meeting with the State Department officials. His covering note stated: "Although this will certainly be hard to achieve I am more and more impressed by the possibilities underlying the idea." He went on to suggest that a UNHCHR could have proved useful in a number of areas, using the examples of the Cyprus crisis and his own recent mission to South Vietnam. He concluded by expressing the belief that the most important function would be helping the CHR with periodic reports. There is no information in the correspondence regarding the outcome of Blaustein's meeting with the State Department officials, although it is likely he informed Humphrey in person. The aide-mémoire, as will be seen, would prove useful to Humphrey himself a few months later when he broached his ideas for a UNHCHR with the NGOs.

5. NGO Involvement

At this point Blaustein's speech had put the idea in the public domain, but NGO interest "became a determining factor in its survival."⁵⁹ There were three meetings of NGOs held in 1964 to discuss the proposal – in January in Paris under the sponsorship of the World Veterans Federation (WVF), in June in London under Amnesty International, and in July in Geneva under the International Commission of Jurists (ICJ). Clark briefly describes this chronology which resulted in a joint NGO statement in favour of a UNHCHR and a draft General Assembly resolution. These were circulated widely and the lobbying of governments began.⁶⁰ Humphrey was intimately involved in the NGO activity and his correspondence shows how and by whom the NGO interest was nurtured and developed.

Humphrey had developed an extensive network of contacts with NGO executives and frequently used these to push ideas he had concerning implementation that he could not, in view of his status, advocate himself. One such contact was Peter Benenson,⁶¹ founder

⁵⁶ UN. General Assembly. Official Records of the General Assembly. Twentieth Session. Plenary Meeting. *Verbatim Records of Meetings*. 1334th Meeting, p. 10, para. 103. UN Doc A/PV.1334.

⁵⁷ Clark, *supra* note 1, p. 46.

⁵⁸ 24 January 1964.

⁵⁹ Clark, *supra* note 1, p. 47.

⁶⁰ *Ibid.*, p. 47

⁶¹ Peter Benenson (1921-), British lawyer, was the founder of Amnesty International and its President (1961-1967). He lost his position in an internal power struggle with Seán MacBride and retired to be a farmer.

and Secretary-General of Amnesty International. Before Blaustein's speech, before even the concept of a UNHCHR was put in the draft of that speech, Benenson wrote to Humphrey on the subject of implementation.

Sean MacBride⁶² was in London today and we have been talking over plans for the future. As you know he is Chairman of the International Executive of AMNESTY INTERNATIONAL (and indeed is one of its founder members) and has recently been made Secretary General of the International Commission of Jurists. We would like to ask your views about a possible private meeting between those of us who have been actively engaged in the human rights campaign during the last few years.

What we had in mind was a private meeting of seven or eight people in a country house in the United States or in Europe. Our suggested list of participants would be, apart from yourself and Sean MacBride and myself:

Norman Marsh⁶³

Roger Baldwin⁶⁴

Henri Rollin [sic]⁶⁵

Rene Cassin

P. Modinos (Council of Europe)⁶⁶

Please do write confidentially what you feel about this idea and whether you think these names make a suitable gathering. Also do you see any suitable changes in the list, either by substitution or addition?

If you think that this is a good scheme, perhaps you could say when you are coming to Europe in case it might be possible to arrange this over here.

Alternatively, we would perhaps try to arrange a meeting in New York, although

⁶² Seán MacBride (1904-1988), Irish lawyer, was President (1963-1970) and a member (1971-1988) of the International Commission of Jurists. He was imprisoned three times in the Irish Free State for Republican activities and worked as a journalist until he was called to the bar in 1937. He founded the Republican Party and was a member of the Dail Eireann (1947-1958), serving as Minister of Foreign Affairs (1948-1951). He served as founding Chairman of the International Board of Amnesty International (1961-1975). He was awarded the 1974 Nobel Prize for Peace for his attempts to establish international mechanisms for guaranteeing human rights

⁶³ Norman Staynor Marsh (1913-), British lawyer and academic, was Director of the British Institute of International and Comparative Law (1960-1965). After war service in the Intelligence Corps (1939-1946), he became Stowell Civil Law Fellow at Oxford University (1946-1960). He was Editor (1961-1965) and Member of the Editorial Board (1965-1993) of the *International and Comparative Law Quarterly*.

⁶⁴ Roger Nash Baldwin (1884-1981), American public law consultant and naturalist, was Honorary President of the International League for Human Rights (1946-1964). In 1917 he joined the American Union against Militarism, which he converted to the American Civil Liberties Union (ACLU) in 1920. He served as Director of the ACLU from 1920-1950. Soon after his ninety-seventh birthday and six months before his death, President Carter awarded him the Medal of Freedom, America's highest civilian honour. He had also been awarded the Order of the Rising Sun for his efforts to obtain redress for the Americans of Japanese extraction, who were forcibly relocated during the Second World War.

⁶⁵ Henri Rolin (1891-1973), Belgian jurist, was a Judge (1959-1973) and President (1968-1971) of the European Court of Human Rights, a Senator (1932-1968) and professor of international law, University of Brussels (1932-1973).

⁶⁶ Polys Modinos (b. 1899), Egyptian-born Cypriot lawyer and diplomat, was Assistant Secretary-General of the Council of Europe (1962-1968). After working as a lawyer (1922-1927) and Judge (1927-1949) in Egypt, he was Director of the Division of Human Rights for the Council of Europe (1951-1962). He later served as Cypriot Ambassador to France (from 1969), Spain (from 1970) and Portugal (from 1975).

this may be difficult since both Henri Rollin [sic] and Rene Cassin have duties which tie them to Europe.⁶⁷

Humphrey was interested although not able to attend a private gathering at least until the following spring. He responded:

Referring to your suggestion that some of the people who have been actively engaged in the promotion of human rights during the last years should come together in a private meeting somewhere in Europe or America, I would welcome an opportunity to attend such a meeting; however, there seems little likelihood that I will be in Europe again until April when we are having a seminar on freedom of information in Rome; it would be easier for me if the meeting were to be in New York but I understand the difficulties this would present for people like yourself, Henri Rollin [sic] and René Cassin. Please keep me posted regarding any further developments.⁶⁸

The informal group gathered at the meeting sponsored by the WVF in Paris. Little came of this meeting beyond the resolve to act further. Seán MacBride brought Humphrey up to date on progress on May 7 1964:

I think that both Norman Acton⁶⁹ of the World Veterans Federation and Peter Benenson of Amnesty International have already been in touch with you in regard to the possibility of having an informal discussion with a few key people in the human rights field in Europe, when you are in Europe early in June.

...

We rather opted in favour of London in the hope Lord Gardiner⁷⁰ (who is likely to become the next British Lord Chancellor) could join us – informally of course.⁷¹

Although the NGOs considered Humphrey's presence to be important, as an international servant he had to be careful about attending this type of meeting. It could only be done with the blessing of his superiors, who did not always approve of such endeavours. Indeed, Humphrey preferred that requests for his presence come from others rather than initiating them himself. Norman Acton appears to have secured the necessary permission writing to Humphrey: "I also enclose a copy of a letter from Mr. C.V. Narasimhan

⁶⁷ McGill University Archives. MG4127, Cont. 21, File 416, "Correspondence B". November 8 1963.

⁶⁸ Ibid. November 18 1963.

⁶⁹ Norman Acton (1918-), American organization executive, was Deputy Secretary-General (1959-1961) and Secretary-General (1961-1967) of the World Veterans' Federation. He was Assistant Secretary-General of the International Society for the Rehabilitation of the Disabled (1950-1954) and Executive Director of the U.S. Committee for UNICEF (1954-1959). He later served as Secretary-General of Rehabilitation International (1967-1984) before becoming president of Acton International, Miles, Va. (1984-1988).

⁷⁰ Gerald Austin Gardiner, Baron Gardiner (1900-1990), British jurist, was an advocate for the abolition of capital punishment and served as Lord High Chancellor of Great Britain (1964-1970).

⁷¹ McGill University Archives, *supra* note 13. In the event Gardiner only joined the group for a lunch. Humphrey attributed the subsequent warm support of Great Britain to the UNHCHR proposal to Gardiner's attendance at this luncheon. Humphrey (1973), *supra* note 43, p. 223.

regarding approval for your attending the meeting”.⁷² Therefore Humphrey was able to attend the London meeting (16 and 17 June 1964) and it was here that the concept of a UNHCHR was put on the table.⁷³

The minutes⁷⁴ record:

2. Dr. John Humphrey explained his concept of a United Nations High Commissioner for Human Rights. He would be able to comment on the triennial human rights reports submitted by member states, drawing attention to those matters which called for discussion by the Human Rights Commission. At the present time, Dr. Humphrey explained, the national reports were not debated by the Commission, nor were the full reports published to allow other organisations to comment – only a condensed summary was put out. Dr. Humphrey said he had reason to believe that the project of a United Nations Commissioner would have been supported by Mr. John Kennedy, and it might be opportune to present it as a form of memorial for the late President. The project would have to be started in the third Committee of the General Assembly; he thought the United States Government might introduce the idea were it not that it was an election year. An approach might be made through Dick Gardiner [sic] or Harland [sic] Cleveland of the United States State Department, or perhaps best of all direct to Adlai Stevenson, but the project should not be allowed to depend on the state of preparedness of the United States delegation. Mr. MacBride suggested that as the British General Election would be over by the time the General Assembly met in November, it might be possible for a Labour Government to initiate the project in this year’s Assembly.

In the light of Dr. Humphrey’s advice not to make the powers of the High Commissioner so wide as to frighten delegations (in particular over direct access by minorities to the Commissioner) the framework of the project was put together, and this was presented on 17 June in a separate document prepared by Miss Cartwright. It was decided after discussing this document that Mr. MacBride would prepare a draft resolution for the establishment of a United Nations High Commissioner, which would be studied in detail by the same group together with Dr. Perlzweig⁷⁵ in Geneva on 19 July. In the meantime, Mr. Acton would try to discover whether any draft project had been prepared by any organisation in the United States.

⁷² Ibid. 1 June 1964.

⁷³ In addition to Acton, Benenson, Humphrey, MacBride (Chairman) and Marsh, the attendees were Georges Aronstein (Ligue belge des Droits de l’Homme), Hilary Cartwright (ICJ), James Knott (WVF) and Andrew Martin (Chairman, Human Rights Working group of the Standing Conference in the Economic and Social Work of the United Nations).

⁷⁴ Human Rights Policy Planning: an informal discussion in London on 16 and 17 June, 1964. (Geneva: International Commission of Jurists, [1964]). *Informal Note of Proceedings*. Document S-692. There is a copy of these minutes in McGill University Archives, *supra* note 13.

⁷⁵ Maurice L. Perlzweig (1895-1985), Polish-born American Rabbi, was Head of the International Affairs Section of the World Jewish Congress (WJC) (1942-1970). He was brought to the United Kingdom as a young child and served as a Rabbi in London (1921-1936) and editor of the *Zionist Review*. He was a founding member of the WJC (1936) and Chairman of the British Section (1936-1942). He moved to the U.S. in 1941 when the WJC transferred its headquarters to New York.

At the end of the meeting the minutes also recorded:

12. It was finally agreed for the time being to concentrate all efforts upon the establishment of a United Nations High Commissioner for Human Rights. The same group decided to carry the project a stage further at its next meeting to be held in Geneva on Sunday, 19 July at the invitation of the International Commission of Jurists. It was agreed to invite Dr. Robertson⁷⁶ of the Council of Europe Human Rights Directorate to attend the next meeting as well as Dr. Perlzweig.

Whatever the theories concerning the genesis of the UNHCHR proposal, Humphrey considered the London meeting critical to the concept, writing: “Whenever and however the idea was first conceived, it was, I think, born at this meeting, for we decided then and there to take steps to bring it to fruition.”⁷⁷ The Geneva meeting⁷⁸ produced the necessary text and the search for a sponsor began.

6. Identifying a Sponsor Nation

It is one thing to develop a resolution in informal meetings with like-minded individuals, but quite another to gather support at the level of states. The political realities of the UN required the support of a non-aligned sponsor who would not automatically draw adverse reactions. For example, the Soviet Bloc would never be in favour of a proposal they felt stemmed from the State Department, while the Arab states would be suspicious of proposals from Jewish NGOs. Additionally once a non-aligned state had been identified and won to sponsorship, diplomatic niceties required the NGOs step back to allow the sponsoring state take ownership of the idea and any credit that went with it. Veterans in the NGOs, such as Peter Benenson, understood this role but others, such as Seán MacBride, seemed less than familiar with the concept. Humphrey’s correspondence and diaries show some of the difficulties the UNHCHR project encountered and how these were, to some extent but never completely, overcome.

Seán MacBride became a passionate advocate for the UNHCHR after the Geneva NGO meeting. He wrote to Humphrey on 12 January 1965 saying:

I enclose herewith [a] copy of a speech I made here recently which has received wide coverage in Europe.

⁷⁶ Arthur Henry “Bill” Robertson (1913-1985), British lawyer and international servant, was head of the Division of Human Rights, Council of Europe (1962-1973). He worked in the British civil service, then joined UNRRA (1944-1946). He was a publisher in Brazil (1946-1949) before working briefly for the UN Secretariat (1949-1950). He was with the Council of Europe (1950-1973) and a professor at the University of Paris (1973-1979).

⁷⁷ Humphrey (1973), *supra* note 43, p. 223.

⁷⁸ The group expanded to include Per Monsen (Director, International Press Institute), Claude Pilloud (Associate Director, International Committee of the Red Cross), Karel Vasak (Human Rights Division, Council of Europe) and General J. Voncken (Secretary-General, International Committee for Military Medicine). Hilary Cartwright and James Knott from the London meeting did not attend. McGill University Archives, *supra* note 13, contains several drafts, annotated by Humphrey, and the final version of the text.

In it I have dealt with the U.N. High Commissioner for Human Rights and also with another proposal in connection with the application of the Geneva Convention to internal conflicts. If you have time to glance through it, I would like to have your views.

...

Peter Benenson who is at present in New York was to see you. He is coming back via Geneva when I will get all his news.⁷⁹

Benenson's visit was to identify a sponsoring state, Humphrey noting in his diary⁸⁰ that Benenson proposed "Nigeria (Adebo),⁸¹ Afghanistan (Pazhwak),⁸² Costa Rica (Volio) and the Philippines (Lopez)." Humphrey suggested Volio Jiminez be approached, since Volio had served with him on the Vietnam mission and would have seen how a UNHCHR could have helped in that situation.⁸³ This approach proved successful and Costa Rica agreed to sponsor the proposal.

7. MacBride's Role

MacBride's advocacy of the concept over the next few years was so strong that Humphrey became progressively uneasy about the former's role. He was also concerned about Blaustein's name being too closely associated with the project, despite the recognition he undoubtedly deserved, for political reasons. He elaborated on these fears in his diary on 15 January 1965.

Dinner party at Mabel Ingalls⁸⁴ last night. Mr. Corson,⁸⁵ who is raising funds for the United Nations Institute for Training and Research, told me that Jacob Blaustein was ready to contribute one million dollars provided the Secretary General would appoint a committee to study the "Blaustein plan" for the establishment of an office of High Commissioner for Human Rights! It was I who wrote the first draft of Blaustein's Columbia University speech and I who put in the reference to the High Commissionership. On more mature reflection this may

⁷⁹ Ibid.

⁸⁰ Hobbins, *supra* note 3, Vol. 4, p. 78. 15 January 1965.

⁸¹ Chief Simeon Olaosebikan Adebo (1913-), Nigerian lawyer and diplomat, was Permanent Representative to the UN (1962-1967), having joined the civil service in 1957. He was Executive Director of the UN Institute for Training and Research (UNITAR) with the rank of Under Secretary-General (1968-1972).

⁸² Abdul Rahman Pazhwak (b. 1919), Afghani journalist and diplomat, was Director of the UN Section, Ministry of Foreign Affairs (1952-1958). He was Permanent Representative to the UN (1958-1973), chairing the Human Rights Commission in 1966. He was Ambassador to the Federal Republic of Germany (1973), India (1973-1977) and the United Kingdom (1977-1978). He chaired the UN Mission to Vietnam in 1963.

⁸³ Humphrey, *supra* note 40, p. 298.

⁸⁴ Mabel Morgan Satterlee Ingalls (1901-1993), American bacteriologist, acted as liaison between the UN and the World Health Organization, and was the WHO Representative to the Commission on the Status of Women. She taught bacteriology in the Albany Medical School (1936-1943) and the Columbia School of Public Health (1958-1964). She was the daughter of American lawyer, Herbert Livingston Satterlee (1863-1947) and Louisa Pierpont Morgan, daughter of financier J. Pierpont Morgan.

⁸⁵ John Jay Corson (1905-1990), American consultant and educator, was a management consultant with McKinsey and Co. (1951-1966) and taught public international affairs at Princeton University (1962-1966). He was Deputy Director-General of UNRRA (1944-1945). He was a trustee for numerous educational institutions and was an active fundraiser for a variety of causes.

have been an error of tactics on my part. It was also an error to have brought Sean MacBride of the International Commission of Jurists into the discussion since this may alienate the Russians; but once having begun with Peter Benenson of Amnesty International the I.C.J. could not be kept out and I did not know that MacBride would play such an important and energetic role.⁸⁶

And again on 22 March 1965:

Volio got his item on the agenda of C.H.R. dealing with the high commissionership. So much so good but his management of the affair leaves much to be desired. He even mentioned Jacob Blaustein's speech in his memorandum, a mistake because it may alienate the Arabs.⁸⁷

Two days later Humphrey brought Benenson up to date in a letter, writing:

Thank you very much for your letter of 19 March which arrived, however, after Ambassador Volio had already made his move to put the new item on the agenda. His motion carried with, however, the three Eastern European countries abstaining. He is now on the point of tabling the draft resolution, to which, incidentally, he has made certain changes, changes which in my opinion do not improve the original draft. There are very definite limits beyond which I cannot go as an international servant, but I have urged him to consider the advisability of submitting the original draft, having regard particularly to the wide support which it has already received. Whether he will accept this advice or not, I do not know. I have also suggested that he should talk to Sean McBride [sic] before submitting the draft.⁸⁸

Humphrey evidently found himself in a cleft stick, mistrusting MacBride's discretion yet obliged to refer Volio to him. Earlier, on 3 February 1965, he had written almost in despair:

I think that the idea of the High Commissionership for Human Rights has just been effectively killed. I have a letter from Sean MacBride in which he says that he made a statement supporting the idea before the Sub-Commission. As if that weren't bad enough he subsequently wrote a letter to Ketrzynski,⁸⁹ the acting chairman, in which he said that he, MacBride, had been the chairman of the group which drafted the resolution. Nothing could be better calculated to frighten off the Eastern Europeans than to create the impression that this is in anyway the child of the International Commission of Jurists. I was most disturbed when I discovered

⁸⁶ Hobbins, *supra* note 3, Vol. 4, p. 77

⁸⁷ Ibid, p. 90.

⁸⁸ McGill University Archives, *supra* note 67. March 24 1965.

⁸⁹ Wojciech Ketrzynski (1918-1983), Polish publicist and diplomat, was in diplomatic service (1957-1975) and Acting Chairman of the Subcommittee on the Prevention of Discrimination and Protection of Minorities. During the Second World War he was Chief of Staff for Uderzeniowe Bataliony Kadrowe Konfederacji Narodow, a right-wing underground resistance organization. He was active in Pax, a pro-regime Catholic group (1945-1957). He served as a member of parliament for the Christian Social Party Union (1980-1983).

at the London meeting in Benenson's office last May [i.e. June] that MacBride was one of the group. It was even worse to have him chair the Geneva meeting. But what could I do to prevent it?⁹⁰

On 2 April 1965 on returning from the meeting of the Commission on the Status of Women in Teheran he reported:

Some very good support is coming up for the High Commissionership. And yet no campaign could have been more poorly managed. I am partly responsible for this. For it was I who put the idea into Blaustein's speech and I also handed it on to the European N.G.O.'s, one of which, the International Commission of Jurists in the person of Sean MacBride, is becoming a liability. But if I hadn't done these things the idea would have been still-born and how was I to know that MacBride would be so indiscreet?⁹¹

MacBride's activities eventually created problems with the sponsoring state and Volio Jiminez visited Humphrey to complain.

The other day Volio came to my office to protest about Sean MacBride's activities a propos the High Commissionership. The final stupidity had been a great display of draft resolutions on the subject (with of course no reference to Volio or to Costa Rica) at a party which the I.C.J. gave for the Commission. Volio said that he would abandon the whole business, or at the very least put in a new resolution which would be a Costa Rican text and no other, if MacBride continued to create the impression that this was his invention and that Costa Rica was a mere mouth piece. He was very angry. I had to pass this on to MacBride.⁹²

Humphrey's concern about MacBride may have stemmed from causes that went beyond the simple role of advocating too strongly the UNHCHR. Humphrey was committed to the creation of a just world society through democratic means and the rule of law. He utterly rejected terrorism as a tool to achieve political ends and had, for example, been deeply shocked by the assassination, planned by Yitzhak Shamir, of UN Palestine mediator, Count Folke Bernadotte, in 1948.⁹³ MacBride, whose father had been executed for his part in the 1916 Easter Rising, had been Chief of Staff of the Irish Republican Army during the civil war and had engaged in terrorist activities. Humphrey may also have been piqued on a personal level at MacBride's assumption of "ownership" of the UNHCHR idea. He may have been especially sensitive for, at about this time, René Cassin inexplicably began to publish articles claiming to have written the first draft of the Universal Declaration of Human Rights, something Humphrey himself had actually

⁹⁰ Hobbins, *supra* note 3, Vol. 4, pp. 80-81. MacBride's intervention before the Sub-Commission on the Prevention of Discrimination and Protection of Minorities can be found in UN Doc. E/CN.4/Sub 2/SR.456/Add. 1, pp. 7-9.

⁹¹ Ibid. p. 93.

⁹² Ibid. p. 94. 10 April 1965. Since the meeting of the Commission was in Geneva, Humphrey passed this message on verbally.

⁹³ Hobbins, *supra* note 3, Vol. 1, p. 44.

done.⁹⁴ However, as he came to know MacBride better, he revised his opinion somewhat and, when the original group of NGO representatives met again in February-March 1966, he wrote:

I have been attending meetings at the Headquarters of the World Veterans Federation of 13 people (mainly from N.G.O.'s but not representing them) interested in the human rights programme. This is the same group which met two years ago in London and Geneva and in the latter city drafted the resolution on the High Commissioner for Human Rights now being sponsored by Costa Rica. We discussed this again at the present meeting as well as the proposed Human Rights Institute and other matters. The meetings which ended at noon today were competently chaired by Norman Acton. Among those contributing most to the discussion were Sean MacBride (for whom I have greater and greater respect) and Maurice Perlzweig.⁹⁵

MacBride continued to lobby for a UNHCHR long after Humphrey's retirement, suggesting for example that 1968 – the twentieth anniversary of the UDHR – would be a perfect time to create the post as a tribute.⁹⁶ It has been suggested that those, such as MacBride, who strongly advocated the establishment of the position, had ambitions to be named to the post.⁹⁷ If this was true of MacBride he was doomed to disappointment, and had to content himself with being named UN Commissioner for Namibia in 1973 and, the following year, being awarded the Nobel Peace Prize for his “efforts to create international mechanisms for guaranteeing political rights to all persons” – presumably sufficient consolation.⁹⁸

8. The Right Person for the Office

As the possibility of the General Assembly creating the office of a UNHCHR became more likely, thought was turned to candidates for the job.

Late Friday afternoon Elmendorf⁹⁹ and Montero¹⁰⁰ came in to talk about the High

⁹⁴ Mary Ann Glendon, *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights*, (New York: Random House, 2001), p. 65. In this definitive work on the drafting of the Universal Declaration of Human Rights, Glendon draws the interesting comparison of Alexander Hamilton, towards the end of his life, claiming to have written some of the *Federalist Papers* actually authored by James Madison.

⁹⁵ Hobbins, *supra* note 3, Vol. 1, p. 157. 1 March 1966.

⁹⁶ Seán MacBride, “The Promise of Human Rights Year” *Journal of the International Commission of Jurists* 9 (1968) pp. i-ii.

⁹⁷ No proof that would satisfy an historian has been uncovered to suggest this was true of MacBride or any of the other advocates of the UNHCHR.

⁹⁸ *Nobel Prize Winners* (N.Y.: H.W. Wilson, 1987), p. 657. MacBride was not the first person to be awarded the Nobel Peace Prize for drawing, in part, on Humphrey's work. René Cassin received the Prize in 1968 in part for his work on the Universal Declaration of Human Rights which started with Humphrey's initial draft. See A.J. Hobbins, “René Cassin and the Daughter of Time: the First draft of the Universal Declaration of Human Rights”, *Fontanus*, II (1989), pp. 7-26.

⁹⁹ A. Edward Elmendorf (1938-), American economist and international servant, was an advisor on economic and social affairs for the U.S. Mission to the UN and assistant to Ambassadors Stevenson and Goldberg (1963-1967), after teaching school in Ghana (1961-1963). He then joined the UN Secretariat as Special Assistant to the Assistant Secretary-General for Inter-Agency Affairs (1967-1969). Since 1970 he worked for the World Bank holding a number of positions, the most recent of which was Lead Health Specialist and Health Advisor, Africa Region (1996-2000). He

Commissioner for Human Rights. As I see it now the chief worry is how we get the right man appointed to the post; for in the light of his wide powers he could exert great influence either for good or for bad. One only has to think of what a demagogue would do in the job. I admitted the difficulty but said it could be solved. What we need of course is a new Nansen — but this time he will probably be an African or an Asian.

Fridtjof Nansen (1861-1930), Norwegian explorer and humanitarian, had been the League of Nations High Commissioner for Refugees (1921-1930). He was awarded the Nobel Peace Prize in 1922 for his work with refugees in the aftermath of the First World War and the Russian Civil War.

Specific names began to crop up in conversations, as Humphrey noted in his diary:

Hernan Santa Cruz called this morning on his way back from the session of the Sub-Commission in Geneva. He seemed pleased with the results. Santa's name was mentioned to me later today as a possible High Commissioner for Human Rights. There could be worse choices. On the other hand I wouldn't be too keen about Sir Zafrullah Khan who is another person whose name has been suggested.¹⁰¹

Hernan Santa Cruz, a left-leaning Chilean diplomat, had been a friend and associate of Humphrey since he served on the original CHR. Khan was Foreign Minister of Pakistan in 1948 and was partially responsible for persuading a number of Muslim states to vote for the adoption of the UDHR despite its articles on the right to change religion and equality of women. It is unclear what Humphrey's reservation concerning his candidacy were. Humphrey wrote of another rumoured candidate:

The other day at the Canadian party John Taylor (U.K.) told me that Lord Caradon had been mentioned as a possible High Commissioner for Human Rights. I can think of no better. The question is now being discussed in the Social Committee where it has considerable support; but the Russians and their allies are dead against it.¹⁰²

Sir Hugh Foot, Baron Caradon (1907-1990) was British Minister of State for Foreign and Commonwealth Affairs and Permanent Representative to the UN (1964-1970). Humphrey had met him and his wife in 1955 when Foot was Governor-in-Chief of Jamaica (1951-1957). Russian opposition to the UNHCHR proposal was to affect Humphrey at the end of his public career. Ireland also had worries about whom would

holds post-retirement appointments as a consultant with the World Bank and as Adjunct Associate Professor at the Johns Hopkins University School of Public Health.

¹⁰⁰ Frank C. Montero (b. 1912), American diplomat, was an Economic and Social Affairs Officer with the Permanent Mission to the UN. Prior to joining the State Department he had been active in the National Urban League (1948-1962).

¹⁰¹ Hobbins, *supra* note 3, Vol. 4, p. 80. 2 February 1965.

¹⁰² *Ibid.* p. 118. 12 July 1965. Humphrey is referring to the Social Committee of ECOSOC.

be appointed:

Yesterday the Irish representative in the Third Committee¹⁰³ asked me for some explanations regarding the proposal to create an office of High Commissioner for Human Rights which, he said, his minister does not like. He said that they were afraid that they might have another Sir Leslie Munro¹⁰⁴ (at one time Commissioner for Hungary) making trouble; but I suspect that Sean MacBride's (who is a controversial figure in Ireland to say the least) role in the business may have something to do with Irish hesitations.¹⁰⁵

While Munro's role vis-à-vis the Hungarian Resolutions and as MacBride's predecessor in the International Commission of Jurists may have been controversial, he is perhaps best known for causing the first defeat in forty years for the governing New Zealand National Party by sleeping through roll call.

It has been suggested that strong advocates of the UNHCHR, such as MacBride, may themselves have wanted the position. The question must inevitably arise as to whether this was true of Humphrey. This question Humphrey answered in his diary, where it may be assumed he was fairly honest with himself, writing: "I now understand that my own name is coming up in conversations about who should have the job. This is a great honour but a) they need a bigger man and b) I doubt whether I have the physical strength to take it on."¹⁰⁶ Nonetheless Blaustein, who knew how much the idea owed to Humphrey, attempted to get him to reconsider:

I had lunch¹⁰⁷ today with Jacob Blaustein. He wanted to know whether I would accept the post of United Nations High Commissioner for Human Rights if the General Assembly establishes the office. I said that I did not think that I had the proper qualifications and that in any event I was looking forward to returning to McGill next April. I was not just being coy because I know that the job will be a very difficult one and now that I have passed sixty I look forward to a more placid existence. I know however that my name is being discussed in various quarters. When I told Blaustein about what we were hoping to do at McGill he said that he would like to help. I immediately wrote to the Principal suggesting that he follow up with the matter.¹⁰⁸

¹⁰³ James Kirwan, Irish diplomat, was First Secretary of the Embassy at The Hague and representative on the Third Committee.

¹⁰⁴ Sir Leslie Knox Munro (1901-1974), New Zealand lawyer and diplomat, was UN Representative on the Implementation of Hungarian Resolutions (1958-1962). He was Permanent Representative to the UN and Ambassador to the U.S. (1952-1958). He served as Secretary-General of the International Commission of Jurists (1961-1963). He was a Member of Parliament for the National Party (1963-1972).

¹⁰⁵ Hobbins, *supra* note 3, Vol. 4, p. 146. 15 October 1965.

¹⁰⁶ Ibid. Vol. 4, p. 93. April 2 1965.

¹⁰⁷ Although Humphrey was denied permission to accept \$300 for his work on the speech, his papers showed that Blaustein stood him to a number of good lunches.

¹⁰⁸ Hobbins, *supra* note 3, Vol. 4, p. 140-141. August 31 1965. The concept of a Human Rights Institute at McGill University and the Université de Montréal was then being considered.

Clearly advocates of the UNHCHR not only had to sell the proposal on its merits but also overcome fear that the wrong sort of person might be appointed to the position. Humphrey's last thoughts on a suitable candidate were found in his diary entry for July 5 1965:

Today I attended the Secretary-General's luncheon in honour of ECOSOC and later listened to his speech to plenary. The latter contained not one reference even indirect to human rights, which I am afraid is one of his blind spots. Of course he didn't draft the speech. I wrote to Narasimhan later and drew his attention to the omission which was a serious one. This of course represents the thinking of Philippe de Seynes¹⁰⁹ and the people around him for whom human rights are in some way tainted.

...

At the reception before the S.G.'s luncheon I overheard Schnyder,¹¹⁰ the High Commissioner for Refugees, ranting about the proposal to have a High Commissioner for Human Rights. Is he afraid of a rival or what? One thing is sure, if there ever is a High Commissioner for Human Rights, he should be a man of greater stature than Schnyder.¹¹¹

9. Persuading the Delegations

Some nations – the Soviet bloc for example – were quite opposed to the UNHCHR proposal from first to last, some were in favour, many were undecided, and a few preferred an alternative based on the Uruguayan proposal of 1950. This proposal had not simply disappeared, but had been kept alive by the CCJO largely through its Secretary-General Moses Moskowitz.¹¹² Moskowitz had devoted a chapter of his book¹¹³ to the concept and continued to promote the idea whenever possible. It has been suggested that France's abstention on CHR resolution 14 (XXIII) which forwarded the Costa Rican proposal to ECOSOC was because Cassin still favoured the Attorney-General approach. On 24 March 1965 Humphrey noted in his diary:

This morning over a breakfast table Moses Moskowitz pleaded with me to advise Volio to make radical changes. He was so upset emotionally that he was hardly coherent. I put his attitude down to the fact that he considers the High Commissioner plan a rival to his proposal for an International Attorney General

¹⁰⁹ Philippe de Seynes (b. 1910), French economist, became Humphrey's immediate superior when the former was appointed Under Secretary-General for the new Department of Social and Economic Affairs in 1955. Humphrey felt de Seynes was always out of sympathy with the human rights program and his administration represented the low point of Humphrey's international career. He was delighted when the Human Rights Division was transferred to the Department of Special Political Affairs in 1957

¹¹⁰ Felix Schnyder (1910-1992), Swiss lawyer and diplomat, was UN High Commissioner for Refugees (1961-1965). He was with the foreign service (1940-1957) and Permanent Observer to the UN (1958-1961). He later served as Ambassador to the U.S. (1966-1975). He was President of the Swiss National Commission to UNESCO (1975-1980).

¹¹¹ Hobbins, *supra* note 3, Vol. 4, p. 116-117.

¹¹² Moses Moskowitz (1911-1990), Ukrainian-born naturalized American, was Secretary-General of the CCJO (1947-1990).

¹¹³ Moses Moskowitz, *Human Rights and World Order; the Struggle for Human Rights in the United Nations* (N.Y.: Oceana, 1958), pp. 137-151.

which was sponsored by Uruguay in the General Assembly many years ago — also to personal enmity towards Jacob Blaustein. I told him that his plan was as dead as the dodo and that he was acting like a dog in a manger.

Humphrey's caution had little effect as Moskowitz continued to attack the Costa Rican proposal in print.¹¹⁴ However, by the time the CHR considered the matter in March 1966, his words were generally favourable to the proposal and the advocacy of the Attorney-General concept finally disappeared.¹¹⁵

These divergent views meant efforts had to be made to sway the delegations that were at least neutral on the issue. The NGOs certainly used their contacts to help persuade delegations to support the Costa Rican proposal, while Humphrey himself was not above stepping out of his role as an international servant and becoming a little partisan. His diaries give a sense of how the process went, with its ups and downs.

John Taylor¹¹⁶ of the U.K. delegation told me yesterday that the corridors are buzzing with talk about the idea I launched last year that the G.A. should appoint a High Commissioner for Human Rights. He said that the Foreign Office hadn't quite made up its mind because of complications connected with efforts to have an ombudsman in Great Britain.¹¹⁷

And one week later:

First fruits of the campaign for a United Nations High Commissioner for Human Rights! In his speech before the plenary session of the General Assembly yesterday, Lord Caradon, said, speaking for the United Kingdom that "we hope that governments will seriously consider the new proposal for the establishment of a United Nations Commissioner for Human Rights."¹¹⁸

Since Taylor was usually frank, open and reasonable, the apparent quick turn-around in British thinking presumably stemmed from the capacity of political figures such as Caradon to overcome Foreign Office objections. Britain's Commonwealth partners did not appear to share Caradon's enthusiasm. Humphrey wrote:

I have just had the visit of Mssrs. Lawrey¹¹⁹ and Hoyle¹²⁰ of the Australian delegation. They wanted advice about the work of the Third Committee. Interesting insights into the reasons for the relatively conservative policy of

¹¹⁴ Clark, *supra* note 1, p. 51.

¹¹⁵ Ibid

¹¹⁶ John G. Taylor was First Secretary of the Permanent Mission to the UN.

¹¹⁷ Hobbins, *supra* note 3, Vol. 4, p. 76. January 14 1965

¹¹⁸ Ibid. Vol. 4, p. 78. 20 January 1965.

¹¹⁹ Lawrence John Lawrey (b. 1921), Australian diplomat, was Assistant Secretary, Department of External Affairs (1965-1966). He joined the Civil Service in 1939 and the Department of External Affairs in 1943. He later served as Ambassador to the United Arab Republic (1966- 1968), Spain (1968-1972) and to the U.S.S.R. (1972-1974).

¹²⁰ John Henry Allen Hoyle (b. 1927), Australian diplomat, joined External Affairs in 1948. He was later High Commissioner to the West Indies (1975-1978) and Bangladesh (1978-1980), and Ambassador to Yugoslavia (1984-1987).

Australia on human rights matters which stems, it seems, mainly from the personal convictions of the Prime Minister, Sir Robert Menzies.¹²¹ In any event, Australia will apparently not support the creation of an office of High Commissioner for Human Rights and it is also unlikely that they will ratify the covenants if the latter are completed at this session.¹²²

And:

Yesterday, in the Third Committee, the representative of India¹²³ described the item on the High Commissioner as “a hive of wasps.” It is already obvious that this will be the most controversial question on the agenda and there is practically no possibility of the Assembly reaching any consensus on the matter. However I am surprised to see how much support there is for the idea in the more advanced western countries. I think that it could be carried by a simple majority vote but whether a two thirds majority could be mustered into favour I doubt very much.¹²⁴

Opposition to any form of implementation also came from the third world countries:

The covenants are in great danger as it seems that the Afro-Asian group will not agree to any system for implementation except, possibly, reporting. In these circumstances it would be better had they never been thought of because covenants without implementation will simply undermine the authority of the Declaration and this without the compensation which implementation would provide. All the more reason why we should have a high commissioner!¹²⁵

Even countries well disposed to the UN human rights program tended to view the UNHCHR proposal with some trepidation:

The excessive caution of certain delegations including the French, the Italians, the New Zealanders and the Israelis will prevent the Commission from coming out with a forthright endorsement of the idea.¹²⁶

Humphrey himself appears to have tried to find adherents for the proposal through dangling carrots. While in Teheran, he wrote:

Mr. Abdoh,¹²⁷ one-time U.N. administrator in West Irian, took me for lunch on Monday. The other guest was the Canadian ambassador.¹²⁸ I suggested to

¹²¹ Sir Robert Gordon Menzies (1894-1978), Australian politician, was Prime Minister (1939-1941, 1949-1966).

¹²² Hobbins, *supra* note 3, Vol. 4, pp. 142-143. September 28 1965.

¹²³ Krishan Prasad Saksena (1929-), Indian diplomat and academic, was Advisor to the Indian UN Mission (1964-1967, 1968-1971). He acted as consultant to the UN Secretariat (1967-1968). He taught at the School of International Studies, Jawaharlal Nehru University, New Delhi (1972-1993). He is Secretary-General of the Institute for World Congress on Human Rights and Director of its Centre for Human Rights Education and Research (1993-).

¹²⁴ Hobbins, *supra* note 3, Vol. 4, pp. 143-144. 1 October 1965.

¹²⁵ Ibid. Vol. 4, p. 148. 2 November 1965.

¹²⁶ Ibid. Vol. 4, p. 161. 30 March 1966.

¹²⁷ Djalal Abdoh (1909-1992), Iranian lawyer and diplomat, was Ambassador to India (1965-1968) and had been Administrator, UN Temporary Executive Authority (UNTEA), West New Guinea (1962-1963). He worked for the

Abdoh that he would make a good U.N. High Commissioner for Human Rights. He was very pleased.¹²⁹

10. The Soviet Union and the United States

The attitudes of the superpowers were interesting in that the Soviet Union took a strong position against the UNHCHR, while the U.S. did not take any leadership role on the question despite a generally favourable disposition. Within the State Department there was a desire, based on Kennedy's speech, to do something further in the field of human rights, linked with a fear of taking any specific action. This fear stemmed from a variety of causes, including the absence of any U.S. government policy to permit any action, fear that the U.S. inaction on the various human rights covenants would be criticized externally if a positive stand were taken, and fear of internal criticism from the rightwing elements that were still strong in the country. There may also have been concern that strong U.S. support might damage the chances of the proposal's success.¹³⁰ As a result no clear policy emerged.

I have just had a talk with Elmendorf of the United States delegation. I gathered from him that no special leadership is being provided for the High Commissioner item in the General Committee tomorrow and that in all likelihood the item will be referred to the Third Committee. This, in my opinion, is the wrong way to deal with the matter. If the idea has merit the thing to do, obviously, is to find the man for the office and elect him. At the most the Third Committee cannot be expected to do more than to refer the item to the Human Rights Commission.¹³¹

Humphrey's prediction was accurate here because referral to the Third Committee and referral back to the CHR was exactly what transpired. However, he also found the process somewhat mystifying as he indicated when bringing Benenson up to date.

Thank you for your letter of 23 November. I have delayed answering you because I had hoped to be able to give you some better information on the status of the High Commissioner's item in the General Assembly. I must confess now that I haven't the slightest idea of what will happen except that I am pretty sure no appointment will be made this year. The General Assembly may decide to refer

Ministry of Justice (1937-1944) and was a Member of Parliament (1944-1949). He was a member of the Iranian Delegation (1946-1954) and Ambassador (1955-1959) to the UN. He was Minister of Foreign Affairs (1959) and Ambassador to Italy (1968-1972). He became a member of the Permanent Court of Arbitration in 1946.

¹²⁸ Thomas Paul Malone (1915-), Canadian diplomat, was Ambassador to Iran (1962-1967). After a career as a journalist he joined the Department of External Affairs in 1946. He later served as High Commissioner to Nigeria (1967-1970) and Ambassador to Israel (1972-1975) and Finland (1975-1978).

¹²⁹ Hobbins, *supra* note 3, Vol. 4, p. 87. 10 March 1965.

¹³⁰ Edward Elmendorf (email of 18 October 2000) suggested most of these probable reasons for U.S. unwillingness to take a leadership role regarding the proposal.

¹³¹ *Ibid.* Vol. 4, p. 141. 21 September 1965. Edward Elmendorf (email of 27 November 2000) remarked that Humphrey's suggestion that the man be found and elected was unrealistic. He felt that for the post to have credibility there would have to be wide-spread consensus about the desirability of the office and no small amount of behind-the-scenes lobbying to find an acceptable candidate.

the matter to the Commission on Human Rights for further study or it may simply carry the item over on its agenda to next year.

...

I very much hope that I will be able to attend the talks in Paris on my way back from the Dakar seminar and, in that event, I will see you then or possibly earlier if you come to New York.¹³²

The Soviet position on the UNHCHR was to change a relationship that Humphrey had built up over two decades. He had, throughout his tenure at the UN, attempted to steer a neutral course between the two sides in the cold war. His success in this can be measured by the fact that, at the request of both the U.S. and the U.S.S.R. he was kept on a year past his normal retirement date. He was apprised of this by Morozov¹³³ at a party:

Last night at a dinner dance given at the Plaza by the Foreign Minister of Dahomey¹³⁴ – a very elaborate, colourful and expensive affair for such a small country – Ambassador

Morozov told me about a conversation he had with the Secretary-General on my behalf. He mentioned my fairness and objectivity and asked that I be kept on in the Secretariat after the normal retirement age. I also know that the Americans and possibly others have made similar representations; but I detected no evidence of this in my conversation with Sir Alexander MacFarquhar¹³⁵ several weeks ago as a result of which I was offered an extension of a year. However it is some satisfaction to know that both sides in the Cold War are sufficiently pleased with my record to make such representations. I told Morozov that it was a great compliment.¹³⁶

There is a tradition in international service that the international servant's loyalty should be to the organization, not the homeland. Indeed at the UN this is more than a tradition, being explicitly stated in conditions of employment and other codes of conduct. However, loyalty to the organization over the homeland can be honoured as much in the breach as the observance by nationals of some states, including the Soviet Union. Humphrey had never faced a problem of staff loyalty, in part because he had never had a Russian in a senior position. This had changed by 1965 when Valentin A. Romanov became Chief of the Reports and Publications Section. Indeed the Soviet delegation

¹³² McGill University Archives, *supra* note 67. 1 December 1965. Humphrey did attend the Paris talks where he revised his opinion of Seán MacBride somewhat.

¹³³ Platon Dmitrievich Morozov (b. 1906), Russian lawyer and diplomat, was Deputy Head of the Treaty and Legal Department, Ministry of Foreign Affairs (1949-1960) as well as Representative on the Human Rights Commission. He was Deputy Permanent Representative to the UN (1960-1966) and Permanent Representative (1966-1970). He served as a judge on the International Court of Justice (1970-1985) until ill health forced him to resign.

¹³⁴ Gabriel Lozes was Dahomey's Minister of Foreign Affairs and Chair of the UN delegation.

¹³⁵ Sir Alexander MacFarquhar (1903-1987), British civil servant, was UN Under Secretary and Director of Personnel (1962-1967). He held various positions in the Indian Civil Service (1926-1947) and was Commerce and Education Secretary, Government of Pakistan (1947-1951). He was the UN Technical Assistance Board representative in Pakistan (1952-1954) and the Far East (1955-1959). He was the Secretary-General's Special Advisor for Civilian Affairs in the Congo (1960).

¹³⁶ Hobbins, *supra* note 3, Vol. 4, p. 69. 9 December 1964.

hoped that Romanov would be promoted even further, a possibility about which Humphrey had profound reservations.

The Soviet delegation has written to the Secretariat asking that Valentin Romanov (now a chief of section) be appointed deputy director of the Division. Is this the writing on the wall? Will they put him up as my successor? And will Narasimhan and MacFarquhar give into the pressure? V.R., although intelligent enough, is probably one of the worst officers in the division. Indeed, he hasn't the faintest idea of what it means to be an international official, as he is completely subjective. One thing is certain — if he ever becomes deputy the director will never be able to leave headquarters.¹³⁷

Humphrey had attempted to be quite circumspect and low key in his support for the UNHCHR. However, his quiet advocacy became known to the Soviet delegation and he felt sure this was through Romanov. He summarized the Russian position and its changing view of himself in a few diary entries during his last month at the UN.

Yesterday in the Human Rights Commission, Morozov made a violent speech against the whole idea of a High Commissioner for Human Rights. Delivered himself of a categorical “niet” and said that it was an obscure machination invented by the United States for the purposes of undermining international conventions to which they would not become parties.¹³⁸

Maurice Perlzweig told me yesterday that at a recent party he (or someone else I forget) asked Nasinovsky¹³⁹ why Morozov thought the United States was using the High Commissioner idea to divert the Human Rights Commission from its proper functions. Said Nasinovsky, it was Kennedy's idea and he got it from Humphrey. Which is just about true.¹⁴⁰

Yesterday was a better day. The Commission adopted a fairly good resolution on the High Commissioner; and this was my idea as the Russians know (I can apparently thank Romanov, for that).¹⁴¹

At Humphrey's final meeting of the CHR, a body he had served for so long, Israel tried to enter a motion of thanks to him for his services. In Humphrey's words:

The Commission adjourned last evening after a number of difficult meetings devoted to the adoption of the report. The atmosphere at this session has been reminiscent of some of the worst sessions during the height of the cold war – but some important things have been done including the adoption of the resolution on the High Commissionership and developments in the reporting system. The Israeli

¹³⁷ Ibid. Vol. 4, pp. 145-146. 13 October 1965.

¹³⁸ Ibid. Vol. 4, p. 161. 29 March 1966.

¹³⁹ E.N. Nasinovsky, Russian diplomat, was an alternate to the Human Rights Commission.

¹⁴⁰ Hobbins, *supra* note 3, Vol. 4, p. 161. 30 March 1966.

¹⁴¹ Ibid. Vol. 4, p. 162. 31 March 1966.

resolution concerning me was never put to a vote apparently because of the hidden veto of the Soviets who were also notably silent during the little round of complimentary speeches. My relations with the Soviet delegation have noticeably deteriorated. I attribute this in part to Romanov.¹⁴²

The Soviet delegation also voted, unsuccessfully, against Humphrey's election, following his retirement, to the Sub-Commission on the Prevention of Discrimination and Protection of Minorities. Thus Humphrey retired from the UN without the formal thanks of the CHR but with the resolution on the UNHCHR forwarded to Lopez's Working Group. The Russians later protested that they had not been represented on the Working Group, but Volio Jiminez was emphatic on the point that they had been invited.¹⁴³ Humphrey's ability to influence or aid the further passage of the UNHCHR project effectively ended with his retirement. It is unlikely that, even had Humphrey remained, the proposal could have been adopted at this juncture. The climate in the UN necessary to create the position would only be right after the collapse of the Soviet Union and the end of the Cold War.¹⁴⁴

Shortly after Humphrey's retirement the UN Human Rights Division, now led by the "bland Belgian" Marc Schreiber,¹⁴⁵ prepared a paper which strengthened the powers of the UNHCHR.¹⁴⁶ It is likely that the Working Group, especially Volio Jiminez, welcomed these changes since they made the Costa Rican proposal more unique and less a child of the NGOs, in particular the ICJ. Humphrey stated, however, that he would never have allowed the paper to be circulated had he still been the Director of the Division. While he felt there was nothing philosophically wrong with these modifications, the political consequences were that states, especially the undecided, would become even more nervous about the proposal. He believed that the more far reaching the proposed Commissioner's powers the less likely would be the possibility of acceptance at the level of the General Assembly. In this sense, the strongest supporters of the concept contributed to its demise. In Humphrey's words: "The malady of which the patient died may have been brought about by the excessive zeal of some of its wellwishers."¹⁴⁷ Humphrey does not appear to have considered the possibility that some of the attempts to strengthen the proposal may have been advocated not by well-wishers

¹⁴² Ibid. 6 April 1966. Humphrey had tried to dissuade Israeli CHR representative Haim Cohn from broaching this issue at all.

¹⁴³ Macdonald (1967), *supra* note 19, pp. 84-85, notes 3 and 5.

¹⁴⁴ This is the view expressed by Edward Elmendorf (email of 27 November 2000).

¹⁴⁵ Marc Schreiber (b. 1915), Belgian lawyer and international servant, was Deputy Director General of the Legal Division (1955-1966) and then succeeded Humphrey as the Director of the Human Rights Division (1966-1975). After private practice (1939-1940), he spent the war years in London attached to the Belgian Embassy. He became Senior Legal Officer in the UN Legal Department (1946-1955). In a useful article about UN human rights activity in the 1960s, Clark termed him the "bland Belgian". See Roger S. Clark, "Human Rights Strategies of the 1960s within the United Nations: A Tribute to the Late Kamleshwar Das," *Human Rights Quarterly*, 21 (1999), pp. 308-341, at 310.

¹⁴⁶ UN Doc. E/CN.4/AC.21/L.1 30 December 1966, *supra* note 17.

¹⁴⁷ Humphrey, *supra* note 40, pp. 299-300. It is, perhaps, interesting to note how countries voted when the proposal was adopted by the CHR. Those in favour were Argentina, Austria, Chile, Democratic Republic of Congo, Costa Rica, Dahomey, Greece, Guatemala, Iran, Pakistan, Peru, Philippines, Senegal, Sweden, U.K. and U.S.A. Those opposed were India, Iraq, Poland, Ukrainian S.S.R., U.S.S.R., U.A.R. and Yugoslavia. Those abstaining were France and Nigeria. UN Doc. E/CN.4/940, p. 171.

but rather by those who wished to make it even more unacceptable to nations, thus sabotaging it.

11. Conclusions

It would seem on the above evidence that if anyone deserved to be called the father of the concept of the current UNHCHR it would be John Peters Humphrey. He not only conceived the idea, but also nurtured it through its early growth to the point where it took its place on the international agenda. Yet Humphrey would be the first person to pour scorn on the notion of this type of parenthood. In response to Clark's suggestion that Cassin was the father of the concept, he wrote: "Anatole France once said that it is as difficult to prove fatherhood as it is to trace the path of an arrow in the air or of a fish in water."¹⁴⁸ As an academic he fully understood the process whereby ideas are discussed amongst interested parties and slowly refined over time. If one person pulls these ideas together at a certain point in time and given opportunity, it is nonetheless understood that many contributed to the concept. In addition to the people mentioned in this article, Humphrey would almost certainly have discussed the UNHCHR concept with his old mentor, Percy Corbett,¹⁴⁹ with Egon Schwelb,¹⁵⁰ his former assistant in the Division of Human Rights, and others such as his McGill colleagues F.R. Scott¹⁵¹ and Maxwell Cohen.¹⁵² Humphrey was simply and serendipitously in the right place and the right time to use his position to foster the concept at its earliest stage. In his arguments to suggest

¹⁴⁸ Humphrey (1973), *supra* note 43, p. 220.

¹⁴⁹ Percy E. Corbett (1892-1983), Canadian lawyer and academic, had recruited Humphrey to teach at McGill University in 1936. During the Second World War Corbett moved to the U.S. where he worked at Yale and Princeton. Humphrey continued to meet or correspond with Corbett to discuss issues related to the international law of human rights until the latter's death. For a fuller analysis of the relationship between the two, see A.J. Hobbins, "Mentor and Protégé: Percy Corbett's relationship with John Peters Humphrey," *Canadian Yearbook of International Law*, XXXVII (1999), pp. 3-56.

¹⁵⁰ Egon Schwelb (1900-1979), Czechoslovakian-born American lawyer, was Assistant Director of the UN Division of Human Rights (1947-1962). On reaching mandatory retirement he became a Senior Fellow at Yale Law School (1962-1968). While Humphrey and Schwelb generally agreed on principles they frequently argued over approaches and methodologies. Schwelb was clearly in the development process, Humphrey noting in his diary: "Peter Benenson sent me copy of a letter he wrote to Roger Baldwin on the High Commissionship which attempts to reestablish the project on the right track after Schwelb's suggestions for revision." Hobbins, *supra* note 3, Vol. 4, p. 79. 20 January 1965. Schwelb, no longer constrained by the status of an international servant, felt free to express his concerns about the acceptability of the proposal to national delegations. Humphrey continued to collaborate with Schwelb after his retirement. In 1972, as rapporteur, he opened the report of the International Committee on Human Rights to the International Law Association with an acknowledgement of Schwelb's contribution to the work of the committee, including authorship of part of the report. International Law Association. *Report of the Fifty-fifth Conference*, New York, 1972. (London: International Law Association, 1974), pp. 571-572.

¹⁵¹ Francis "Frank" Reginald Scott (1899-1985), Canadian lawyer and poet, was two years ahead of Humphrey in the McGill Faculty of Law, where he also taught from 1928 until his retirement. Scott, a socialist, was extremely influential in forming Humphrey's early political views, which themselves led to the inclusion of social and economic rights in the first draft of the Universal Declaration of Human Rights. See A.J. Hobbins, "'Dear Rufus...': a Law Student's Life at McGill in the Roaring Twenties from the letters of John P. Humphrey", *McGill Law Journal* XLIV (No. 3, 1999), pp. 753-778 and "Humphrey and the Old Revolution: Human Rights in the Age of Mistrust", *Fontanus* VIII (1995) pp. 121-136.

¹⁵² Maxwell Cohen (1910-1998), Canadian lawyer, was a professor of law at McGill University (1946-1978) and Dean (1964-1969). He later became an Ad Hoc Judge on the International Court of Justice (1981-1985). He took Humphrey's position in 1946 and re-hired him after he retired from the UN. A comprehensive study of Cohen's achievements can be found in R. St. J. Macdonald, "Maxwell Cohen at Eighty: International lawyer, Educator and Judge" *Canadian Yearbook of International Law* XXVII (1989), pp. 3-56.

that the Universal Declaration of Human Rights was the product of the efforts of hundreds of people he stated:

The Universal Declaration of Human Rights has no father in the sense that Jefferson was the father of the American Declaration of Independence. Very many people – in the Commission on Human Rights, in its drafting Committee, in the Commission on the Status of Women, in the two sub-commissions, in the General Assembly, in the specialized agencies, in departments of national governments and in the nongovernmental organizations – contributed to the final result. It is indeed this very anonymity which gives the Declaration some of its great prestige and authority.¹⁵³

One suspects that he would have said the same thing about the UNHCHR, when that office became a reality just a year before he died.

¹⁵³ Humphrey, *supra* note 40, p. 43. Humphrey reacted negatively to the periodic attempts to have Cassin recognized as the father of the Universal Declaration of Human Rights, the most recent of which may be the book by Marc Agi, *René Cassin: prix Nobel de la paix, 1887-1976: père de la Déclaration universelle des droits de l'homme*, (Paris: Perrin, 1998). See Mary Ann Glendon, "John P. Humphrey and the Drafting of the Universal Declaration of Human Rights" 2 JHIL 250 (2000).