

## On the Effectiveness of “Cross-cultural Consensus” on Human Rights

— Reflecting on Zhang Pengchun’s Contributions to the Universal  
Declaration of Human Rights

HONG Lewei\*

**Abstract:** *In the example of formulating the Universal Declaration of Human Rights in 1948, which involved international human rights discourse, the “cross-cultural consensus” put forward based on Confucian culture by Zhang Pengchun, the Chinese representative at that time, is widely considered an empirical reference for resolving confrontations and conflicts in the practice of human rights discourse. However, the effectiveness of this kind of cross-cultural consensus in addressing confrontations and conflicts is worth considering. Under the presumption of cultural differences, any attempt to resolve confrontations and conflicts in the human rights discourse must address the inherently controversial issues. The settlement of disputes and differences depends on how deep the consensus involves the values. Based on this, it reveals that the effectiveness of Zhang Pengchun’s so-called contribution is limited. Therefore, we should not overstate its relevance to the current human rights discourse.*

**Keywords:** *Universal Declaration of Human Rights* ♦ cross-cultural consensus ♦ effectiveness ♦ confucianism

### I. The Cause of Reflection

#### A. The introduction of “effectiveness” consideration

The year 2023 marked the 75<sup>th</sup> anniversary of the adoption of the *Universal Declaration of Human Rights* (hereinafter referred to as the *Declaration*). As a cornerstone document of international human rights law with Magna Carta significance<sup>1</sup>, the *Declaration* is universally recognized as the historical dividing point between the “era of limited human rights” and the “era of universal human rights.”<sup>2</sup> It turns “human

\* HONG Lewei (洪乐为), Assistant Researcher at the School of Marxism at Tsinghua University. Doctor of Laws.

1. John Humphery, “The Magna Carta of Mankind”, in *Human Rights*, P. Davies ed. (London: Routledge Press, 1988), 39.

2. H. Senger, “From the Limited to the Universal Concept of Human Rights: Two Periods of Human Rights,” in *Human Rights and Cultural Diversity*, W. Schmale ed. (Golbach: Keip Publishing, 1993), 47-100.

rights” into “a global orthodox concept universally recognized and accepted.”<sup>3</sup> As the result of the collective efforts of the representatives of various countries, it can therefore be seen as the germination of the modern international human rights discourse. The contributions of Zhang Pengchun, the representative of China, have long been lauded, and have been regarded as an empirical reference for the contemporary practice of the human rights discourse.

Regarding Zhang Pengchun’s contributions to the *Declaration*, it is generally believed that Zhang introduced Confucian wisdom and concepts into the formulation of this document, and in particular, he made the Confucian concept of “human rights” accepted and recognized by representatives of various countries.<sup>4</sup> Some scholars believe that by integrating Confucian cultural elements into the *Declaration*, Zhang Pengchun realized an organic integration of the modern concept of “human rights” with traditional Chinese culture.<sup>5</sup> Other scholars held that Zhang Pengchun endowed the *Declaration* with the concept of “*ren*” (benevolence) in Confucian culture — a philosophical foundation different from Western culture, and greatly enriched the philosophical foundation of universal human rights.<sup>6</sup> Still others have commented that Zhang Pengchun used Confucian culture to construct a set of “new human rights theories in the world” for the *Declaration*, and afforded legitimacy for international human rights discourse.<sup>7</sup> There are also scholars who claim that Zhang Pengchun integrated Confucian culture with other cultures in the drafting process, thus helping to realize aof final consensus.<sup>8</sup> Such praise does not come from Chinese scholars alone. For example, Mary Ann Glendon pointed out that the Confucian culture cited by Zhang Pengchun had been “beneficial” and “pragmatic” in settling controversies.<sup>9</sup> Sumner B. Twiss has argued that without the contributions of Zhang Pengchun and Confucian culture, the *Declaration* would not have been finalized.<sup>10</sup> Some Western scholars also argued that Confucian culture provided a solid basis for consensus on the *Declara-*

3. Carol Hills and Christopher Shaw, An Interview with the Honorable Javier Perez de Cuellar, Secretary General of the United Nations, *The Fletcher Forum of World Affairs*, vol. 14, no.1, winter 1990, page 87-92.

4. Lu Jianping, Wang Jian and Zhao Jun, “Chinese Representative Zhang Pengchun and the Universal Declaration of Human Rights,” *Human Rights* 6 (2003): 18-24.

5. Sun Pinghua, “Zhang Pengchun’s Contributions to the Drafting of the UDHR,” *China Legal Science* 5 (2016): 114-132.

6. Hua Guoyu, “The Humanistic Basis of the Universality of Human Rights: From the Perspective of the Article 1 in the Universal Declaration of Human Rights,” *Journal of Southwest University of Political Science and Law*, vol. 21, no. 2 (2019): 54-64.

7. Ju Chengwei, “On the Contribution of Confucianism to the New Theory of Human Rights: Starting from Zhang Pengchun’s Contributions to the Establishment of the Universal Declaration of Human Rights,” *Global Law Review*, vol. 33, no.1 (2011): 141-149.

8. Huang Jianwu, “Confucian Tradition and the Construction of Contemporary Human Rights,” *Journal of Sun Yat-sen University (Social Science Edition)* 6 (2012): 167-176.

9. Mary Ann Glendon, *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights* (New York: Random House Trade Paperbacks, 2001), chapter 5.

10. Sumner B. Twiss and Confucian Ethics, Concept-Clusters and Human Rights, in *Polishing the Chinese Mirror: Essays in Honor of Henry Rosemont, Jr.*, M. Chandler and R. Little john eds. (New York: Global Scholarly Publications, 2007), 50-67.

tion.<sup>11</sup>

What those discourses have in common is recognition of the close connection between “Confucianism” and the “international consensus on the human rights discourse.” Following this logic, since the cross-cultural consensus at that time led to the finalization of the *Declaration*, it should also be an effective way to resolve confrontations and conflicts of international human rights discourse today. However, since the “human rights discourse” is involved, the “Confucian cross-cultural consensus” at the core should also be considered in a practical sense — can it resolve confrontations and conflicts of international human rights discourse?<sup>12</sup> In this way, we may usher in a kind of “effectiveness” examination, which is also the proper meaning of the practice orientation of the discourse. In contrast to the comparative analysis of some intercultural concepts and concepts pursued in previous discourses, the concern here is not “whether intercultural consensus can be achieved”, but “whether the intercultural consensus achieved is truly effective.” The issue also involves whether the *Declaration* was formulated with the Confucian cross-cultural consensus.

### **B. The basis for effectiveness consideration: consensus vs confrontation and conflict**

Considering the “effectiveness” of things means a dual judgment of “pertinence” and “degree.” In seeking an intercultural consensus on controversial issues, the extent to which differences can be reconciled, and the feasibility of its realization are the proper means for considering its “effectiveness”. In the practice of human rights discourse, the effectiveness of a consensus to resolve confrontations and conflicts can often be intuitively seen. In the more than 70 years since the formulation of the *Declaration*, the consensus on human rights among countries has been continuously accumulated and deepened, but confrontations and conflicts in the human rights discourse have not been resolved but have become even worse, indicating that the effectiveness of the consensus that was reached was limited. The general judgment is that a consensus can only resolve the corresponding and commensurate antagonistic conflicts.

Since the process of formulating the *Declaration* was the origin of international human rights discourse, the confrontations and conflicts between them undoubtedly came to the fore in the drafting of the *Declaration*. The distinct political overtones of the human rights discourse were evident in its formulation. Although there was no wave of human rights diplomacy and intervention in the West at that time,<sup>13</sup> the confrontation of interests and political games between countries was already fully revealed in its drafting. The eight members of the drafting panel alone were “all from seriously antagonistic countries.” Needless to say, the camps of the United States

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11. Allida M. Black and Mary Jo Blinker, *Fundamental Freedoms: Eleanor Roosevelt and the Universal Declaration of Human Rights* (Massachusetts: Facing History and Ourselves Publication, 2010), 43-50.

12. Jürgen Habermas, *The Post-National Constellation*, translated by Cao Weidong (Shanghai: Shanghai People's Publishing House, 2002).

13. It is generally believed that it was only after the 1960s that the West began to vigorously pursue human rights diplomacy to interfere in the sovereignty of other countries. Previously, there had been no such confrontation or conflict caused in the international human rights discourse. See Adamantia Pollis, “Towards a New Universalism Reconstruction and Dialogue,” *Netherlands Quarterly of Human Rights* 16 (1998): 32-54.

and the Soviet Union were antagonistic; Zhang Pengchun, as a representative of the People's Republic of China, was also at odds with the Soviet Union, and Charles Malik, who represented the Arab world, was also at odds with the West.<sup>14</sup> Many scholars are convinced that this contemporary context of confrontations and conflicts makes the discourse of the *Declaration* practically relevant. The question, however, is whether the level of confrontation in the formulation of the *Declaration* was comparable to that of today.

## II. Neglected Historical Facts: The Existence of a Consensus Context

The answer is clearly negative. Since the scenario of “interfering in the sovereign internal affairs under the pretext of human rights,” the most important cause of confrontations and conflicts at present, did not occur during the formulation of the *Declaration*, the confrontations and conflicts between countries remained at the macro level of ideologies and national camps, and these were far less serious. Moreover, “human rights” was an emerging concept back then, far from reaching the importance of being tied to national image and diplomatic interests today. All parties were only committed to its formulation as an international human rights document, and naturally upheld the value orientation of striving for the greatest common denominator. This determined the upper limit of confrontations and conflicts at that time, while establishing the basic consensus context.

### A. The suppression of confrontations and conflicts by common demands

According to records, since the first session of the Commission on Human Rights in 1947, the controversy has mainly centered on propositions of the ontological significance of the concept of “human rights,” for example, “whether there is a ‘born’ right for everyone,” “what the basic rights of humanity are,” and “whether this document is universally binding for all countries.” Those questions were controversial at the time of the *Declaration*,<sup>15</sup> but now seem to be irrelevant. The most heatedly debated theme back then was the elaboration of the concept of “human rights” and the philosophical basis and cultural origin of the *Declaration*, so much so that the philosophical question of “what constitutes humanity” was hotly discussed.<sup>16</sup> This shows the stark difference between the human rights discourse of the past and the present in controversial issues. Truly, the argumentation of such abstract philosophical propositions would not lead to major confrontations and conflicts in the field of real political discourse.

In fact, the completely different philosophical positions of the two central figures in the Drafting Committee, Zhang Pengchun and Charles Malik, never slowed down the drafting of the *Declaration*. From the outset, the two men put aside their differences and left the drafting of the first draft to the official UN Human Rights Director

14. Official Documents of the United Nations: Meeting Records & Documents of the Drafting Committee, 1<sup>st</sup> Session, E/CN.4/AC.1/W. 2/REV.2.

15. Official Documents of the United Nations: Meeting Records of Commission of Human Rights, 1<sup>st</sup> Session, E/CN.4/1/REV.1-E/CN.4/21; Eleanor Roosevelt, *On My Own* (New York: Harper Press, 1958), 30-41; Joseph Lash, *Eleanor: The Years Alone* (New York: W. Norton Press, 1972), 290-300.

16. The More Important Speeches and Interventions of Charles Malik, Taken from the Records of the Human Rights Commission, 1<sup>st</sup> Session, E/CN.4/13.

John Humphrey and later the French representative René Cassin. More importantly, most of the representatives shared a common vision, values and goals, and agreed that this document “should abandon all philosophical bases from the outset”<sup>17</sup> in order to finalize the concept of “human rights” as soon as possible and have it accepted and followed by all countries in the world. This document was not founded on “abstract philosophical ideas, but on pragmatic demands,”<sup>18</sup> that is, it was intended as “a programmatic document sufficient to accommodate and develop different philosophies, different religious beliefs and even different social and political theories” for establishing and protecting the fundamental rights of the whole of humanity.<sup>19</sup>

The logic here is that when it was found that the higher degree of context for consensus and lower degree of confrontations and conflicts means lower value and significance of the “cross-cultural consensus” obtained, and diminished effectiveness of the consensus. The favorable context for the international community to reach a consensus in the formulation of the *Declaration* should not be ignored. After the two catastrophic world wars, “human rights” began to take on the status of humanity’s “last utopia”<sup>20</sup>, and formulating a universal bill of human rights became the common aspiration of all to prevent mankind from repeating the mistakes of war. The urgency of the vision can be seen in the establishment of the Commission on Human Rights and the progress in the finalization of the *Declaration*.<sup>21</sup> In spite of conflicts, no representative of any country ever said “no” to the *Declaration* itself,<sup>22</sup> because all religious and philosophical debates were put aside in relation to the importance of this document.<sup>23</sup> It can be said that in the context of the consensus, the conclusion of the *Declaration* was almost a historical necessity; the only thing uncertain was never whether the document could be concluded, but whether it could be concluded more smoothly and as soon as possible. Throughout the minutes of the entire decision-making process, there is no record of confrontations and conflicts such as those between the U.S. and Soviet camps or controversy over religious and cultural views threatening to have this

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17. John P. Humphrey, *Human Rights and the United Nations: A Great Adventure* (New York: Dobbs Ferry Transnational Publishers, 1984), 48-51.

18. Maritain Jacques, “Introduction,” in *Human Rights*, page 10, quoted from Mary Ann Glendon, *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights* (New York: Random House Trade Paperbacks, 2001), 76; Official Documents of the United Nations: Documents of the Economic & Social Council, 2<sup>nd</sup> Session, E/56/REV.1.

19. Richard P. Mackeon, “Philosophic Bases,” in *Human Rights*, p.35, quoted from Mary Ann Glendon, *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights* (New York: Random House Trade Paperbacks, 2001), 77.

20. Samuel Moyn, *The Last Utopia: Human Rights in History* (Beijing: The Commercial Press, 2016), 1.

21. M. Glen Johnson, “The Contributions of Eleanor and Franklin Roosevelt to the Development of International Protection for Human Rights,” *Human Rights Quarterly* (1987): 9\_26;

22. Official Documents of the United Nations: Meeting Records of the Human Rights Commission, First Session, Summary Records, E/CN.4/SR. 9; Mary Ann Glendon, *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights* (New York: Random House Trade Paperbacks, 2001), 142.

23. UNESCO, *Human Rights: Comments and Interpretations* (New York: Columbia University Press, 1949), 17\_19.

document shelved or even aborted.<sup>24</sup> The few delays occurred mainly in the drafting process of the first draft, rather than in the subsequent negotiation process. It can even be said that there was no fierce confrontation or conflict during the entire formulation of the *Declaration*.

### **B. The tone of the content established by common values**

What is even more remarkable is that at the first stages of drafting, the representatives have reached a consensus on the content of the *Declaration*, based on a number of common values of human orientation and humanism. Those values, symbolizing the “entrenched common beliefs of nations,” are translated into fundamental rights to which all human beings are entitled.<sup>25</sup> Indeed, attitudes towards these fundamental rights to human dignity do not vary much, regardless of national or cultural background. So, their inclusion in the *Declaration* is a foregone conclusion.

Long before the *Declaration* was drafted, UNESCO consulted around the world on fundamental values and fundamental rights, and the responses were strikingly similar.<sup>26</sup> The list of rights in the document was largely finalized from the outset, providing a considerable basis for consensus in the subsequent process and forestalling large-scale controversies over the macro issue of which rights should be established and protected in the *Declaration*. The potential controversy shifted from the necessity of “fundamental rights” to their importance in the formulation of the *Declaration*, making reconciliation and compromise over the expression to give them “weight” more likely.<sup>27</sup> If a compromise could be reached over the necessity of rights, other disputes naturally became unimportant. When the list of fundamental rights was determined, the expression of those rights became the central issue.

### **C. Collective avoidance of religious and cultural elements**

Of course, there would be controversies over the expression of fundamental rights, not only because of the aforementioned differences in the importance expressed, but also because of religious and cultural disputes over the use of specific terms. Specifically, the drafters will try to introduce or involve their own religious and cultural content in the description of a right; even for the same consensus values and corresponding rights, they tended to give very different expressions based on their belief in Christianity, Islam, Buddhism, Confucianism, or Hinduism, etc. In terms of

24. A case in point is that even though Carson copied the style of the 1789 French *Declaration of the Rights of Man and of the Citizen* in formulating the first draft of the *Declaration*, he did not draw much opposition, not even from the Soviet representative, who was wary of Western culture. See *Official Documents of the United Nations: Meeting Records of the Drafting Committee*, 1<sup>st</sup> Session-2<sup>nd</sup> Session;

25. Official Documents of the United Nations: Meeting Records & Documents of the Drafting Committee, 1<sup>st</sup> Session, E/CN.4/AC.1/W.2/REV.2; E/CN.4/AC.1/SR.2.

26. Official Documents of the United Nations: Documents of the Drafting Committee, 1<sup>st</sup> Session, E/CN.4/AC.1/3; Maritain Jacques, “Introduction”, in *Human Rights*, page 268-271, quoted from Mary Ann Glendon, *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights* (New York: Random House Trade Paperbacks, 2001), 75.

27. Of the 30 articles in the *Declaration*, 19 relate to civil and political rights, while only six relate to economic and social rights. The proportion is unmistakably a product of reconciliation and compromise. See the United Nations website, accessed August 2, 2023, [https://www.un.org/zh/udhrbook/UDHR%20booklet%20CH\\_web.pdf](https://www.un.org/zh/udhrbook/UDHR%20booklet%20CH_web.pdf).

expression, they would not only follow the specific logic of the religious culture, but also use the specific language of the religious culture, often making it difficult for people of other religions and cultures to accept. As mentioned above, the Drafting Committee took the initiative to set aside differences in religious and cultural positions from the very beginning, in order to ensure a smooth process. More importantly, it worked hard to ensure that the content of the document were not monopolized or infiltrated by any kind of religious philosophy, thus guaranteeing to a great extent the neutrality and universality of the *Declaration* and avoiding fierce confrontations and conflicts caused by the clash of religious and philosophical stands. That is not to the merit of Zhang Pengchun alone.

In fact, many representatives, driven by the so-called “national pride,”<sup>28</sup> still tried to squeeze “expressions” of their own religious culture in their expression of rights, in order to give stronger national and cultural characters to this universal document. However, these attempts were ultimately unsuccessful.<sup>29</sup> The freedom from the religious or cultural imprint in the text of the *Declaration* owes not only to the drafting panel’s adherence to the principles of universality and inclusiveness, but also to the document’s positioning as a “spiritual inspiration and guide to behavior” and its macroscopic and abstract stylistic design, in order to be “generally and flexibly applicable to the practical needs of all humankind.”<sup>30</sup> This pithy style of expression naturally restricted the representatives from introducing the values of their own culture, because the limited wording of each article allowed the pithy description of the right itself, leaving no room for cultural interpretation. Moreover, the representatives at that time decided that the *Declaration* was not a final document, but only a basic framework for international human rights issues, leaving room for later revisions and negotiations.<sup>31</sup> Besides, the document does not have the compulsory force of international law, but merely exists as a charter for spiritual guidance,<sup>32</sup> that does relate to national interests. The fact further forestalled controversy among the representatives.

There was a clear consensus in the establishment of the *Declaration*. The confrontations and conflicts back then were also different from those of today—in fact, they were not even “confrontations or conflicts” in the strict sense of the word, but only “disputes.” Those controversies were largely dissipated in the common expectations of the *Declaration* by the representatives of various countries. Although we cannot assert that this consensus played a decisive role in the formulation of the *Declaration*, it at least showed that Zhang Pengchun had been faced with only limited

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28. Mary Ann Glendon, “Knowing the Universal Declaration of Human Rights,” *Notre Dame Law Review*, 1998, 73 (5), p.142.

29. Mary Ann Glendon, “Knowing the Universal Declaration of Human Rights,” *Notre Dame Law Review*, 1998, 73 (5), pp.11-54.

30. “Memorandum and Questionnaire Circulated by UNESCO on the Theoretical Bases of the Rights of Man,” in *Human Rights*, page 255.

31. Official Documents of the United Nations: Meeting Records & Documents of the Drafting Committee, 2<sup>nd</sup> Session, E/CN.4/82/ADD.2, E/CN.4/82/ADD. 2.

32. Official Documents of the United Nations: Meeting Records & Documents of the Drafting Committee, 1<sup>st</sup> Session, E/CN. 4/AC. 1/W. 2/REV.2; E/CN.4/AC.1/SR-2; Richard P. Mckeon, *Freedom and History and Other Essays* (Chicago: University of Chicago Press, 1968), 40.

confrontations and conflicts at that time, and that the cross-cultural consensus he contributed to, based on Confucian culture, should also be considered in that context.

### III. Levels of “Cross-cultural Consensus”

First of all, with regard to the popular concept of “cross-cultural consensus” among human rights scholars, the mechanism for its achievement is what needs to be explained urgently. “Cross” means that the basic process of achieving consensus must be a leap of acceptance from one culture to another mainly through the detection and comparison of some similar concepts or views between cultures.

Those concepts and views are regarded as the results of cross-cultural consensus and, hence, are named “commensurate” between cultures.<sup>33</sup>

It is important to realize that the two cultures connected by this process are often not on the same footing. One culture serves as the benchmark for consensus initiation, while the other serves as the target object for detection and comparison. In other words, consensus is initiated by the concepts and views provided by the former culture to detect similarities with the latter culture in order to achieve consensus. The distinction between the priorities of the two cultures naturally depends on the initiator’s cultural stance, and the consensus is often expressed in the language of the initiator’s culture. Although Zhang Pengchun had traveled extensively in the West and had been proficient in many cultures, he still insisted on unilaterally initiating Confucian culture to test consensus with other cultures, undoubtedly due to national self-esteem and cultural feelings. Consensus concepts and views initiated by one culture will inevitably be tested by the recognition and acceptance of the cultural positions of others. As we all know, there were eight abstentions at the adoption of the *Declaration* by the United Nations General Assembly,<sup>34</sup> showing that confrontations and conflicts were constant in the field of international discourse, and that the conclusion of *Declaration* was not based on the genuine consensus of the representatives of various countries, but primarily on the tacit compromise in the context of consensus at that time. The document was adopted “through repeated compromises, which whitewashed many antagonisms.”<sup>35</sup> On the other hand, whether or not the Confucian cross-cultural consensus played an essential role in the formulation of the *Declaration*, its effectiveness for addressing confrontations and conflicts in the current human rights discourse is indisputably limited.

Zhang Pengchun’s contributions to the formulation of the *Declaration* have long been attributed to the Confucian “cross-cultural consensus” contribution. It will be elaborated at three levels: The strategy for consensus, the concept for consensus, and

33. Stephen C. Angle, *Human Rights and Chinese Thought*, translated by Huang Jinrong and Huang Bin (Beijing: China Renmin University Press, 2010), 51.

34. Official Documents of the United Nations: Meeting Records of General Assembly, 3<sup>rd</sup> Session-Plenary, A/PV.180-, A/PV.183. These abstentions were from six countries in the Soviet camp, Saudi Arabia and South Africa. And even for those who have voted in favour, ratifying the Declaration, a non-binding document of international law, is not the same thing as fully accepting and abiding by it. Official Documents of the United Nations: Meeting Records of General Assembly, 3<sup>rd</sup> Session-Plenary, A/PV.180-, A/PV.183.

35. Yasuaki Onuma, *Human Rights, State and Civilization*, translated by Wang Zhi’an (Beijing: SDX Joint Publishing Company, 2014), 361.



the sustaining basis for consensus.<sup>36</sup> Each level encompasses the dual dimensions of the content and methods. After a brief presentation, we will try to introduce the effectiveness consideration, which will make the discussion different from the previous discussions.

### A. The strategy for consensus

The “strategies” at this level can be understood as the consensus “process” and different from the consensus “content”, referring to the practical work done by Zhang Pengchun to promote the consensus of all parties in formulating the *Declaration*. The entire process of the *Declaration*’s development was fraught with international and intercultural controversies, which should not be left unchecked, although they did not pose substantive hindrance because of restraint from the consensus. Zhang Pengchun’s most recognized contribution consisted in mediating and coordinating all parties, promoting the resolution and compromise of problems, and preventing disputes from constraining the process. Humphrey considered Zhang Pengchun “a master of the art of compromise,” saying that Zhang was used to invoking Confucian maxims in controversies and always ready to offer a way out of the deadlock.<sup>37</sup> Mrs. Roosevelt praised Zhang Pengchun’s humor and erudition for bringing joy to everyone, saying that he seemed to “be able to save the day with witty Chinese proverbs” in times of controversy.<sup>38</sup> Until the final draft of the *Declaration*, Zhang Pengchun continued to act as a mediator in disputes, and he was especially adept at explaining the *Declaration*’s Articles to delegates from multicultural backgrounds,<sup>39</sup> of course, thanks to his profound intercultural knowledge and diplomatic experience over the years.<sup>40</sup> In the face of some pointless controversies that bordered on nonsense, Zhang Pengchun used the phrase “Sweep the snow in front of one’s door” “overlook the frost on others’ roof tiles.”<sup>41</sup> Such witty and popular proverbs helped to get the representatives to set aside their disputes and focus on the process.

36. With regard to Zhang Pengchun’s contributions to the Declaration, most of the previous discussions have also dealt with these three aspects. Huang Jianwu divided it into two aspects, namely “organizing and coordinating the work of the committee” and “exerting influence on important provisions.” Ju Chengwei unfolded his argumentation from three aspects: “opposing Western-centrism,” “abandoning disputes in philosophical theories and religious beliefs,” and “restraining conscience with reason.” Lu Jianping focused on Zhang’s game wisdom in the formulation of some controversial clauses. Hua Guoyu emphasized Zhang’s certain bases supported by Confucian culture. Sun Pinghua further refined Zhang’s technical and content contributions into six aspects, etc. However, the division of “levels” here is not only a simple enumeration of Zhang’s contributions to consensus, but also reflects the hierarchical idea of the degree of consensus obtained, which directly corresponds to the actual effect in settling confrontations and conflicts. See relevant footnotes in the previous elaboration.

37. John P. Humphrey, *Human Rights and the United Nations: A Great Adventure* (New York: Dobbs Feiry Transnational Publishing, 1984), 17.

38. Gudmundur Alfredsson and Asborn Eide, “*The Universal Declaration of Human Rights: A Common Standard of Achievement*,” translated by the China Society for Human Rights (Beijing: Sichuan People’s Publishing House, 1999), 4-6.

39. Ruth Hsin-Yueh and Cheng Sze-Chuh, “A New Loyalty” (1946), in *Peng Chun Chang 1892-1957: Biography and Collected Works* (Cape Town: Privately published, 1995), 150.

40. Mary Ann Glendon, *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights*, translated by Liu Yisheng (Beijing: China University of Political Science and Law Press, 2016), 147-148.

41. Official Documents of the United Nations: Meeting Records of General Assembly, 3<sup>rd</sup> Session, Third Committee, 105<sup>th</sup> Meeting (A/C. 3/SR.105), 1948, page 177.

Even before the *Declaration* was drafted, Zhang Pengchun reminded Humphrey, who was in charge of the first draft, in an informal meeting, that “we should try to prevent the text from being unduly dependent on Western cultural origins.”<sup>42</sup> He insisted that the document must be applicable to all countries and cultures.<sup>43</sup> He confessed that as a member of the Drafting Committee, he had never forced the introduction of his national cultural concepts into the *Declaration*, in order to persuade delegates to uphold empathy, so as to move out of cultural disputes and return to a vision of universality.<sup>44</sup> Zhang Pengchun realized that the most effective strategy for handling cultural controversies was to make the *Declaration* unconstrained by any culture. The strategy is, in essence, a kind of “subtractive” thinking that puts all on an equal footing, reflecting his wisdom in the game and trade-offs. Besides, Zhang Pengchun also gave a unique suggestion on the progress of the formulation, insisting that in the drafting stage “efforts should be made to avoid substantive issues in the cultural and political fields” and “to seek a ‘master plan’ of the human rights law.”<sup>45</sup> In this way, cultural differences were circumvented as much as possible, and the drafting process was accelerated.

In the midst of the complex and volatile inter-state relations and cultural confrontation, Zhang Pengchun ensured the smooth conclusion of the *Declaration* with his superb diplomatic wisdom, and also established a good reputation among the delegates of various countries. However, the “cross-cultural consensus,” seen as a means of resolving confrontations and conflicts, must not stop at being a method and strategy of negotiation. Instead, it should touch on the content of communication in negotiation. Although the level of consensus at that level was limited and served as only a method and strategy to achieve the goal of shelving disputes for the time being in order to continue the formulation of the *Declaration*, it undeniably had the most intuitive and most easily achieved consensus effect. With the deepening of the consensus, the difficulty of realizing it from the level of “the underpinning concept” to the level of “the sustaining basis” would obviously increase. In view of the fact that consensus achieved by “the underpinning concept” is the mainstream and most important in human rights discourse, while consensus achieved by “the sustaining basis” is rare and difficult, consensus achieved by “the sustaining basis” is treated first.

## B. The sustaining basis for consensus

This level of “the sustaining basis” has an ontological or existential connotation, i.e., a trans-historical justification on which consensus is realized,<sup>46</sup> and a foundational concept as the “core.” This is naturally related to whether the final consensus of the

42. Eleanor Roosevelt, *On My Own* (New York: Harper Press, 1958), 77.

43. A. J. Hobbins, *On the Edge of Greatness vol. 1, 1948 -1949: Diaries of John Humphrey f First Director of the UN Division of Human Rights* (Montreal: McGill-Queen’s University Press, 1999), 55-56.

44. Official Documents of the United Nations, The Meeting Records of the Third Committee, 98<sup>th</sup> Meeting, October 9, 1948, SR.

45. Mary Ann Glendon, *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights* (New York: Random House Trade Paperbacks, 2002), 59.

46. Jack Donnelly, “Cultural Relativism and Universal Human Rights”, *Human Rights Quarterly*, vol. 6, no.4 (1984): 400-419.

*Declaration* itself is supported by some kind of foundation, and more importantly, and from what kind of religion or culture was this foundation derived. It was previously known that at the outset of the *Declaration*, the Drafting Commission resolved to make the document unbound by any single philosophical or religious system of thought<sup>47</sup>, and positioned it as “a purely normative document to be concluded as soon as possible, with philosophical arguments left to posterity”<sup>48</sup> and as “the result of the wisdom and vision of all nations and cultures.”<sup>49</sup> Therefore, it can be seen that the consensus context at that time eliminated the risk of the *Declaration* being exclusive to one culture.

However, as the beginning of the universalization of the “human rights” concept, this document “inexorably”<sup>50</sup> relied on its conceptual origin of “Western culture,” and several bills of rights in Western history constituted almost the entire frame of reference for the drafting. However, this does not mean that the *Declaration* should also be viewed as solely based on or monopolized by Western culture. Instead, it should be understood that all along, the only recognized basis of this document was “human dignity,” which is not the exclusive concept of any culture. However, the Western culture was almost the only frame of reference for the modern human rights vocabulary, and the drafting committee had to be on guard against its excessive influence on the overarching provisions, especially the Preamble and Article 1, whose wording would have a direct bearing on the tone of the *Declaration*.

When a representative gave an expression reminding the basis of a certain culture, or triggering such associations, Zhang Pengchun would oppose it on a multicultural stance. In essence, the opposition is similar to the “subtractive” approach mentioned above, i.e., excluding from the *Declaration* the basis provided by cultures, thus creating a negative consensus situation. Admittedly, it is mainly aimed at expressions of Western Christianity and natural law, reflecting Zhang Pengchun’s sensitivity to the crucial issue of sustaining basis. He asserted that “every culture has an ontological interpretation of human rights,” but stressed that the *Declaration* “must be universally applicable to the whole world.”<sup>51</sup> Clearly, whatever culture provided the basis, it would be a deviation from this vision.

Throughout the development of the *Declaration*, there had been attempts to introduce religious concepts, and Article 1, as the “cornerstone” of the entire document, was at issue. It implies the use of the language of a culture to explain the basis of the “human rights” concept and the source of the universal validity of this document. Ma-

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47. UNESCO, *Human Rights: Comments and Interpretations* (New York: Columbia University Press, 1949), 10.

48. Official Documents of the United Nations: Meeting Records of the Commission on Human Rights, 1<sup>st</sup> Session, E/CN.4/1/REV.1-E/CN.4/21 • Anthony J. Langlois, “Chapter 1: Normative and Theoretical Foundations of Human Rights”, in Michael Goodhart, *Human Rights: Politics & Practice* (Oxford: Oxford University Press, 2009), 17.

49. Jaya Wickrama, “Hong Kong and International Protection of Human Rights”, in *Human Rights in Hong Kong*, edited by Raymond Wacks (Oxford: Oxford University Press, 1992), 120.

50. R. Randle Edwards, Louis Henkin and Andrew J. Nathan, *Human Rights in Contemporary China* (New York: Columbia University Press, 1986), 134.

51. Mary Ann Glendon, *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights* (New York: Random House Trade Paperbacks, 2001), 132.

lik, along with many other representatives of Western and Latin American countries, advocated the inclusion of Christian and natural law concepts such as “God”, “Creator” and “Nature.”<sup>52</sup> Although the intention was not to give their religious beliefs a dominant position in the *Declaration*, but only to seek philosophical and ontological support for the modern concept of “human rights”, Zhang Pengchun still firmly opposed those attempts and strongly advocated the removal of all cultural overtones from Article 1.<sup>53</sup> He stressed that the era of the complete dominance of Christianity to the exclusion of other religions in Western history was long gone, and that this document should show the equal status of religions and cultures, adding that the introduction of a certain cultural concept would upset this balance.<sup>54</sup> Perhaps because he took notice of the influential position of Christianity and natural law, Zhang Pengchun adopted a tactful approach, arguing that although the *Declaration* rejected such wording as “God-given” and “given by birth”, those believing in God could still spontaneously perceive God’s existence in theopen-ended expressions.<sup>55</sup> Meanwhile, he affirmed the relevance of the Western Enlightenment of the 18<sup>th</sup> century to the modern conception of human rights, but he explained that the *Declaration* should be worded without any cultural stances in order to achieve the broadest possible consensus.<sup>56</sup>

The justification for the universalization of the “human rights” concept is that the conceptual core of human rights should not be monopolized by any one religion or culture; otherwise, the *Declaration* would not be accepted by other cultures. Therefore, Zhang Pengchun’s contribution to the removal of religious or cultural expressions from the *Declaration* lied not only in upholding the universal macroscopic purpose, but also in the prudence in expression of specific provisions at the micro level. He strove to prevent the infiltration of all religions and cultures to achieve the desired effect of convincing the global public. However, it should also be pointed out that it was unlikely for any party to dominate the international human rights discourse where multiculturalism collisions were prone. That is also a prerequisite for the realization of human rights universality. To some extent, the “subtractive” approach on which the *Declaration* is based was a tacit contextual consensus. Moreover, “subtraction” itself was still at the level of method and strategy, and further consensus still had to be achieved by relying on concrete concepts.

### C. The concept for consensus

The “concept” here should be understood with the necessary limitations. It refers

52. Delegates from countries such as Brazil advocated the inclusion of the phrasing “all human beings were created in the image of God”, which entailed that the “reason and conscience” of human beings, as defined in the *Declaration*, had also been given by God. See Official Documents of the United Nations: A/C. 4/243.

53. Official Documents of the United Nations: Meeting Records of General Assembly, 3<sup>rd</sup> Session, Third Committee, 96<sup>th</sup> Meeting, A/C. 3/242.

54. Official Documents of the United Nations: Meeting Records of General Assembly, 3<sup>rd</sup> Session, Third Committee, 96<sup>th</sup> Meeting, A/C. 3/SR. 96.

55. Official Documents of the United Nations: Meeting Records of General Assembly, 3<sup>rd</sup> Session, Third Committee, 96<sup>th</sup> Meeting, A/C. 3/244/REV.1/CORR.1.

56. Official Documents of the United Nations: Meeting Records of the Human Rights Commission, First Session, Summary Records, E/CN.4/SR.9; Johannes Morsink, *The Universal Declaration of Human Rights: Origins, Drafting, and Intent* (Philadelphia: University of Pennsylvania Press, 1999), 281.

to ideas that have substantive content relevant to human rights issues, and thus distinguish them from those that are procedural issues at the level of “strategic instruments” (e.g., Zhang Pengchun’s views on mediating disputes between parties and promoting the consensus process). Admittedly, this dimension is the absolute main part of the intercultural consensus. Given that where there are confrontations and conflicts, there must be controversial issues and concepts,<sup>57</sup> the key question here is whether the concept for consensus is the original dispute, and whether the consensus achieved was the concept of the dispute. That issue is directly related to the effectiveness of consensus at this level.

First, we must clarify where the “dispute” lies. According to general understanding, there are mainly three inherent controversies in the international human rights discourse.<sup>58</sup> The first is “the division of human rights subjects,” which concerns the relationship between collective human rights and individual human rights, and that between collective subjects and individual subjects (which also involves the judgment of value levels); the second is “value levels among human rights types,” which is mainly manifested in the priority of civil and political rights and economic and social rights in the value hierarchy; the third is “the relationship between human rights and sovereignty,” which concerns the precedence between human rights and sovereignty and the justification of using human rights as a basis for sovereign intervention. These three issues were evident as early as the drafting of the *Declaration*. It not only basically corresponded to the two camps of confrontation and conflict today, but also contained three sets of conceptual differences from the perspective of cultural differences, which were still applied to the interpretation of controversial issues. So, as a representative of Chinese culture (with Confucianism as the main body), what was the consensus concept contributed by Zhang Pengchun at that time?

According to the records, Zhang Pengchun’s contributions to the “concept” level was not as full and detailed as the previous two levels, and they mostly involved the interpretation of the “human rights” concept and some fundamental principles of human nature, as well as the conceptual expression around the basis of “ren.” Normally, when we identify an idea as a “conceptual contribution to the *Declaration*”, it must be presented directly in the text, or it can be intuitively interpreted to show relevance to the text. Otherwise, such an idea can only count as a contribution at the level of the aforementioned “strategic instruments”, without substantive relevance to the *Declaration*. According to statistics, about 11 articles in the *Declaration* including the preamble are obviously influenced by Zhang Pengchun’s views and suggestions, mainly in

57. The “controversy” here is akin to what John Rawls called a “reasonable disagreement” in that it must be placed in a rational argumentative process. However, those “irrational differences” cannot be regarded as “disputes” in the strict sense but are more like confrontations in the simple sense. For example, the content of confrontations and conflicts triggered by Western countries in distorting and smearing the human rights situation in other countries is not debatable.

58. Yuan Zhengqing gave a similar summarization, concluding that the focus of controversy in human rights discourse was mainly on the issue of “human rights subjects and their priority contents” and “the relationship between human rights and sovereignty.” In fact, the response to the three issues has always had a profound impact on the construction of human rights discourse in China. See Yuan Zhengqing, Li Zhiyong and Master Xiaofei, “China and the Reconstruction of International Human Rights Norms”, *Social Sciences in China* 7 (2016): 189-203.

the interpretation of human rights and the logic and method of expressing some rights. Strictly speaking, the former belonged to conceptual contributions while the latter were strategic contributions. Take for example the most well-known concept of “conscience” in Article 1. In his interpretation, Zhang Pengchun emphasized the presupposition of “cruelty and ruthlessness inherent in humanity” and regarded it as the root cause of the past wars and disasters.<sup>59</sup> Therefore, he insisted that human rights should be given a sustaining basis like “*ren*” with a strong moral and ethical constraint, so as to make up for the shortcomings of “rationality” solely as the basis. This requires that people “treat the needs and rights of others with empathy, as if they were their own,”<sup>60</sup> and that individuals should respect the freedoms and human rights of others while enjoying them. In this way, the concept of “human rights” is given a Confucian moral connotation, as finally clarified in Article 29 of the *Declaration*.

Besides, the expression in Article 1 of the *Declaration* that “we should act toward one another in the spirit of brotherhood” also benefited from Zhang Pengchun. In his view, this expression forms a state of balance in rights and obligations with the expression “all human beings are born free and equal in dignity and rights” in the first half of Article 1, and more importantly, it avoids the extreme individualization of the rights expressed in the following paragraph.<sup>61</sup> The word “brotherhood” here implies a moral stance that an individual should have towards others.<sup>62</sup> Although this formulation was first proposed by Carson in the first draft of the *Declaration*, its true relevance to the “human rights” concept was based on Zhang Pengchun’s interpretation, which apparently placed it in the conceptual system of “*ren*”. “*Ren*” inherently implies a moral requirement for one’s conduct in the world, and it must be practiced in the treatment of other individuals in social relations. As Zhang Pengchun put it, human beings “should show concern and respect for others” in mutual perception, and “convince others with kindness” according to the highest criterion (*Mencius: Lilou II*).<sup>63</sup> Such an interpretation not only conferred the logical self-consistency of rights in Article 1, but also echoed Article 29, which describes the obligations of individuals to society. Zhang Pengchun held that the goal and vision of the *Declaration* should not only “be simply to protect the rights of individuals, but also to promote the moral progress of humanity,” which should be achieved through the “introduction of a sense of obligation.”

Zhang Pengchun had always been a “staunch supporter” of economic and social

59. Official Documents of the United Nations: Meeting Records of the Drafting Committee, 1<sup>st</sup> Session, E/CN.4/AC.1/SR.13.

60. Official Documents of the United Nations: Documents of the Economic & Social Council, 2<sup>nd</sup> Session, E/56/REV.1; see Mary Ann Glendon, *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights*, translated by Liu Yisheng (Beijing: China University of Political Science and Law Press, 2016), 75.

61. Official Documents of the United Nations: Meeting Records & Documents of the Drafting Committee, 1<sup>st</sup> Session, E/CN.4/AG.1/W.2/REV.2; Mary Ann Glendon, *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights* (New York: Random House Trade Paperbacks, 2001), 145.

62. Official Documents of the United Nations: Meeting Records of the Drafting Committee, 1<sup>st</sup> Session, A/C.4/243; Official Documents of the United Nations: Meeting Records of the General Assembly, 3<sup>rd</sup> Session, 96<sup>th</sup> Meeting, A/C.3/SR.96.

63. Ruth Hsin-Yueh and Cheng Sze-Chuh eds, “A New Loyalty” (1946), in *Peng Chun Chang 1892-1957: Biography and Collected Works* (Cape Town: Privately published, 1995), 150.

rights.<sup>64</sup> This category of rights was considered to be “new” at the time, and broadly included the right to work, the right to remuneration, the right to education, the right to rest and leisure (paid leave), the right to a decent life including food, housing, health care and social services, the right to unemployment and old-age security, and so on. Unlike the traditional civil and political rights featuring passive protection (mainly in the form of non-interference of the state in individual freedom), the economic and social rights requires the state to actively fulfill certain obligations for protection.<sup>65</sup> This has led to intercultural disputes over the existence relationship and value hierarchy between the two types of rights. Basically, the West tends to prioritize the former while the East tends to focus on the latter. Essentially, the difference rises from the importance attached by different cultures the level of material development and people’s livelihood and well-being. Zhang Pengchun compared the Confucian concept of “*datong*” (great harmony, *The Book of Rites · Liyun*), to the concept of “Utopia” in Western culture<sup>66</sup>, emphasizing the necessity of Confucian economic and social rights.

It can be seen that Zhang Pengchun also emphasized strategy at the level of “underpinning concept for consensus.” Zhang integrated Confucian ideas into the interpretation of the “human rights” concept and the basic issues of human nature, and formed an organic unity with the mainstream views of the delegates, rather than unilaterally relying on rigid and edifying conceptual output. This was undoubtedly a wise move, given that Confucian culture did not have an authoritative position, nor was it necessarily acceptable to others. In the multicultural context of the time, attempts to incorporate ideas from any particular culture into the *Declaration* were already sensitive and could easily provoke resistance from representatives of other cultures. However, if only used to explain the nascent “human rights” concept, the subtle ideas of humanism and human orientation in Confucian culture were more valuable and more easily accepted by other cultures.

It should be pointed out that Zhang Pengchun’s main object of detection in the cross-cultural process was Western culture, and he leveraged the similarity of the two cultures in certain conceptual content to achieve consensus. However, there was not so much “realization” as “emphasis.” It is important to note that the consensus contributed by Zhang was not aimed at addressing the inherent differences between Chinese and Western cultures; in fact, the differences back then were far less stark than they are today (due to the collusion between the National Government and the United Kingdom and the United States for interests, and the prevailing Westernization trend). Those Confucian concepts served more to consolidate the existing consensus. As mentioned above, the effectiveness of consensus depends on its correspondence to and degree of match with the adversarial conflict, or more specifically, the alignment

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64. Mary Ann Glendon, *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights*, translated by Liu Yisheng (Beijing: China University of Political Science and Law Press, 2016), 186.

65. Manfred Nowak, *Introduction to the International Human Rights Regime*, translated by Liu Huawen, edited by Sun Shiyuan (Beijing: Peking University Press, 2010), chapter 3.

66. Peng-Chun Chang, “World Significance of Economically ‘Low Pressure Areas’”, Speech at the 2<sup>nd</sup> Session of the Economic and Social Council, June 4, 1946, quoted from Mary Ann Glendon, *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights* (New York: Random House Trade Paperbacks, 2001), 185.

in content between the adversarial conflict and the concept on which the consensus is based. Therefore, the concept on which consensus is based needs to respond to the conceptual controversy involved in the confrontation or conflict in order to effectively resolve it. However, Zhang Pengchun's Confucian consensus does not seem to really touch on the issue of intercultural controversy. This point will be discussed further later on.

Therefore, Zhang Pengchun's contribution to the formulation of the *Declaration* is presented at three levels of cross-cultural consensus. Then, we introduced the consideration of the effectiveness of the consensus, which is based on the correspondence and degree of matching between cross-cultural consensus and the confrontation or conflict, and whether Zhang Pengchun's contribution was a Confucian "cross-cultural consensus" in a strict sense. The significant reference value given by previous scholars to Zhang Pengchun for his contribution to the current practice of human rights discourse makes it necessary to extend the consideration of time and space to fit the realistic observation and practical orientation of this discussion.

#### IV. The Effectiveness Consideration of "Cross-cultural Consensus"

##### A. The strategy for consensus: "Confucian Wisdom" or "Diplomatic Prowess"?

In terms of contribution at the strategic level, Zhang Pengchun did not seem to have touched on many elements of Confucian culture, and the much lauded "Confucian wisdom" was not so obvious. This strategy stemmed primarily from his charisma and diplomatic skills, as well as his important status as Vice President of the Commission on Human Rights and as a core member of the drafting panel. Although Zhang Pengchun often leveraged Confucian proverbs to handle disputes, those proverbs as a cultural product tend to entail barriers for cross-cultural understanding at varying degrees, necessitating interoperable interpretation procedures.<sup>67</sup> In fact, the proverbs were always accompanied by explanations from the perspective of other cultures, and even supported with proverbs of similar meanings from multiple cultures. It can be seen that the consensus effect is not entirely based on the unique value of Confucian proverbs, but also depends on the commonality of the content and meaning. For example, the aforementioned proverb "Sweep the snow in front of one's door; overlook the frost on others' roof tiles" expresses a moral critique of excessive self-interest at the expense of the common good. In fact, the practice is common across many cultures, but the Confucian culture offers a more sophisticated and resonant expression. The strategy here is not destined to be a mono-cultural Confucian one; instead, it benefited from Zhang Pengchun's "super-ability to understand the cultures of others,"<sup>68</sup> that is, the excellence in interpreting one's own views in the context of other cultures.<sup>69</sup> However, this does not mean that Confucianism is superior to other cultures in achieving

67. A. J. Hobbins, "Mentor and Protege: Percy Corbett's Relationship with John Humphrey," in *Canadian Yearbook of International Law*, 1999, page 3.

68. Mary Ann Glendon, *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights*, translated by Liu Yisheng (Beijing: China University of Political Science and Law Press, 2016), 226.

69. John Humphrey, *International Human Rights Law*, translated by Pang Sen (Beijing: World Affairs Press, 1992), 143-147.



consensus.

It should be clarified whether Zhang Pengchun’s contributions were based on his personal diplomatic skills or on Confucian culture. The point has always been obscure in previous discourses. Obviously, the latter played only a very small part, and in most cases, purely diplomatic tactics and the discourse power based on his high position saved the day — those had nothing to do with the so-called “Confucian wisdom.” Although Confucian culture can provide thinking of methodological significance for dispute resolution (e.g., “harmony without difference,” “do unto others as you would have them do unto you”, etc.), it has limited applicability in the international human rights discourse because mostly it is at the macro and abstract levels and can show its value when deeply understood. As suggested in Humphrey’s praise, Zhang Pengchun’s personal wisdom and contributions were not attributable to Confucian culture, but rather to Zhang Pengchun’s personal charisma and diplomatic skills, which cannot be attributed to the consensus effect of Confucian culture.

This dimension is not even a consensus contribution in the strict sense of the word, because it does not touch on the ideas at issue, but only provides a procedural rather than a substantive solution. In fact, the consensus was achieved also because of the consensus context and the willingness of the delegates to compromise. Even if this kind of procedural consensus is put in the category of “cross-cultural consensus,” according to the idea of matching consensus with confrontation or conflict, it is undoubtedly at the most shallow level, and absolutely unable to dissolve the inherent factors of international confrontation or conflict, for example, the confrontation of interests and cultural differences between countries. In fact, it even does not help to reconcile differences in ideas. Consensus at this level is more like a compromise in the formulation process, so much so Zhang Pengchun has been dubbed “the master of the art of compromise.” However, after all, it is difficult for procedural compromises to address the root cause alone. Zhang Pengchun’s usual patience and calmness in handling controversies during the review stage of the *Declaration* was gradually exhausted. “Zhang Pengchun’s role became less important. He lost his temper frequently, and made many enemies.”<sup>70</sup> This shows the practical limitations of consensus at this level.

### **B. The sustaining basis for consensus: “Subtraction” or “Addition”**

As a matter of fact, the disenchantment of the Western religion and culture in the *Declaration* was by no means the contribution of Zhang Pengchun alone. Instead, it depended on the established consensus context and multicultural tone at that time, since the delegates had reached a tacit understanding on the basis for preventing a certain religion or culture from monopolizing the *Declaration* and human rights. In fact, whenever there was a proposal to include words such as “God”, “human rights by nature” and “human beings created by their Creator”, there was a protest silence in the room, because “it is clear to everyone that such a proposal cannot be accepted

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70. J. Hobbins, *On the Edge of Greatness vol. 1 1948-1949: Diaries of John Humphrey, First Director of the UN Division of Human Rights* (Montreal: McGill Queen’s University Press, 1999), 88, quoted from Mary Aim Glendon, *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights* (New York: Random House Trade Paperbacks, 2002), 161.

by mainstream opinion.”<sup>71</sup> They knew that the inclusion of these words into the *Declaration* “will inevitably undermine the universal status of the document.”<sup>72</sup> Zhang Pengchun’s contribution at this level was precisely based on the consensus context, and what he strove to eliminate was never the “Western basis”, but the language reminiscent of the Western basis.

The key point at this level is that Zhang Pengchun did not seem to be satisfied with the approach of “subtraction,” but also tried to introduce the basis, i.e., the concept of “*ren*” at the core of Confucian culture. It remains unclear whether Zhang Pengchun intended to use “*ren*” as the basis for the *Declaration* at that time, although many previous discourses have regarded it as the basis for his contributions. According to the records, back when Carson submitted the first draft for discussion, Zhang Pengchun formally proposed to the drafting panel the concept of “*ren*,” the basis of Confucianism, which he intuitively interpreted as “two-man mindedness.” However, the grand and deep connotations of the concept “*ren*” makes it impossible to find a precise equivalent in Western culture, and difficult to even give a sufficiently appropriate translation in English. It could only be expressed as “sympathy” and “two people can feel each other’s existence.”<sup>73</sup> This expressive dislocation even made “*ren*” synonymous with “compassion” in Western culture. The drafting group eventually used “conscience” in referring to “*ren*.” Although this was far from what Zhang Pengchun intended to express, “*ren*” marking Confucian culture was introduced into the *Declaration* in some form after all.

Zhang Pengchun’s rationale for introducing “*ren*” was the conviction that the concept was a one of the (only) two most basic characteristics of human nature, the other being “reason.”<sup>74</sup> It would be categorically insufficient to express the latter only in the first cornerstone article of the *Declaration*.<sup>75</sup> This is seen by many domestic scholars as making up for the shortcomings of the Western rationalist view of human rights.<sup>76</sup> From this we can already see an intention to provide a sustaining basis, which was somewhat against the principle of universality and the purpose of de-culture, which Zhang had always proclaimed, since the word “*ren*” was essentially a basis provided by a culture and exclusive to it, like the aforementioned terms “God”, “Creator” and “nature.” Perhaps, to Zhang Pengchun, the word “rationality” that formed the basis of the *Declaration* was still a concept of Western culture, and the Confucian

71. Official Documents of the United Nations: Meeting Records of the Drafting Committee, 2<sup>nd</sup> Session, E/CN.4/AC.1/SR. 23; Charles Malik, “The Drafting of the Universal Declaration of Human Rights,” U.N. Bulletin of Human Rights, 1986, page 91 and 97.

72. Official Documents of the United Nations: Meeting Records of the Human Rights Commission, 2<sup>nd</sup> Session, E/CN.4/SR.34, page 5.

73. Official Documents of the United Nations: Meeting Records of the Drafting Committee, 1<sup>st</sup> Session, E/CN.4/AC.1/SR.8, page 5 and 7.

74. Mary Ann Glendon, *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights* (New York: Random House Trade Paperbacks, 2001), 66.

75. Official Documents of the United Nations: Meeting Records of the Drafting Committee, 1<sup>st</sup> Session, E/CN.4/AC.1/SR, page 2.

76. Hua Guoyu, “Do Human Rights Need a Unified Foundation: Religious and Philosophical Disputes in the Drafting of the ‘Universal Declaration of Human Rights,’” *Tribune of Political Science and Law* 5 (2020): 3-12.

culture must be introduced to break its monopoly status.

Intriguingly, this exclusively Confucian concept did not draw any opposition, but became smoothly accepted and became the basis of the *Declaration*, together with “rationality.” The reason may be that under Zhang Pengchun’s interpretation, “*ren*” was not only used as a basis for symbolizing human nature, but also had the methodological significance of resolving confrontations and conflicts to achieve consensus. In other words, it became a kind of attitude and literacy in the face of disputes, containing not only moral qualities such as tolerance, empathy, empathy, and non-coercion, but also “the ability to look at problems from the perspective of others.”<sup>77</sup> Thus, “*ren*” became bound to the needs of all parties for dispute resolution, and even a kind of consensus procedural principle. In fact, it was affirmed by other delegates out of consideration for its value as a means of consensus strategy. The more important reason seems to be that “*ren*” was never truly understood by them, and was widely associated with the famous “philosophy of conscience” in the West.<sup>78</sup> In this way, the identity with this concept was naturally strengthened, but the cultural elements of Confucianism to which it belongs were greatly diluted. It is actually difficult to tell “*ren*” from “conscience” in the *Declaration*, or which is the ontology and which is the interpretation. Probably, “*ren*” had already been Westernized when it was proposed.<sup>79</sup>

It can be seen that Zhang Pengchun’s contribution to “the sustaining basis for consensus” actually contains two parts, namely positive and active parts. As far as the former part is concerned, Zhang Pengchun’s “disenchantment” of Western culture in the *Declaration* did not carry much Confucian elements. It was mainly still an application of “subtractive” thinking, so it is difficult to characterize it as a Confucian cross-cultural consensus. As far as the latter part is concerned, Zhang Pengchun introduced the Confucian “*ren*” directly as the basis into the *Declaration*. That is a Confucian cross-cultural consensus with substance and goes straight to the “core.” So, how effective is this consensus in dealing with confrontations and conflicts?

From a practical point of view, the effectiveness of consensus at this level is undoubtedly limited. Neither Zhang Pengchun’s contribution to the *Declaration* in removing the Western features from the core nor his provision of a Confucian basis actually stopped the controversy. Throughout the drafting process, there had been widespread skepticism about the “core of Western culture” in the *Declaration*. Many delegates argued that defenders of multiculturalism such as Zhang Pengchun and Malik had long been Westernized due to their educational background and profes-

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77. A. J. Hobbins, *On the Edge of Greatness vol. 1 1948-1949: Diaries of John Humphrey, First Director of the UN Division of Human Rights* (Montreal: McGill-Queen’s University Press, 1999), 55.

78. Geng Ning and Sun Heping, “The Concept of Conscience in European Philosophy,” *Journal of Zhejiang University (Social Sciences)* 4 (1997): 23-29.

79. Later generations generally believe that the definition of “conscience” was a serious misreading of “*ren*” and completely failed to reflect the essence of this concept. The theory was of course based on Zhang Pengchun’s extremely Westernized interpretation. It can be seen that in order to gain cross-cultural understanding and recognition, it is inevitable that the comprehensiveness and accuracy of the meaning of a certain cultural concept will be sacrificed. See Ju Chengwei, “On the Contribution of Confucianism to the New Theory of Human Rights: Starting from Zhang Pengchun’s Contributions to the Establishment of the Universal Declaration of Human Rights,” *Global Law Review* 1 (2011): 141-149.

sional experience, and that most of the articles and expressions in the *Declaration* were based on Western cultural concepts.<sup>80</sup> Such skepticism did not subside with the finalization of the *Declaration*, and have been perpetuated in the confrontations and conflicts of the international human rights discourse since then.

One of the more rational doubts is that, despite the multicultural foundation of the *Declaration*, its core is still given by Western culture.<sup>81</sup> A.J. Milne, for example, argued that the “standard of common ideals” in the *Declaration* consisted only of “the values and institutional rights of a liberal democratic industrial society”, implying that all countries should become the Western “liberal democratic industrial societies.”<sup>82</sup> Costas Douzina claimed that the *Declaration* merely “repeated verbatim” some of the traditional Western natural rights and liberalism.<sup>83</sup> The more radical skepticism was directly related to international political issues. Makau Mutua denounced the *Declaration* as nothing more than a product of the West’s push for “neo-colonialism,” saying that the document “attempted to arrogantly impose certain ideas on three-fourths of the world’s population.”<sup>84</sup> At the 50<sup>th</sup> anniversary in commemoration of the *Declaration* in 1998, the Iranian delegate criticized the *Declaration* for being full of “Western religious and cultural concepts” and ignoring Islamic and other cultures.<sup>85</sup> Regardless of whether such a wide range of doubts are justified or not, they at least show that the controversies surrounding the basis of the *Declaration* have never ceased, and plainly indicate the limitations of Zhang Pengchun’s “subtractive” thinking and the consensus achieved at that time.

In fact, this also shows that Zhang Pengchun’s introduction of “*ren*” was not successful. “*Ren*” as the basis not only had failed to shake the inherent position of the “core of Western culture”, it has also hardly been cherished in the field of international human rights discourse. To this day, people tend to emphasize the “dignity”, “humanity”, “freedom” and “universality” of the *Declaration*, but rarely mention “*ren*”. If “*ren*” is really the basis for the *Declaration* and even the “human rights” concept as some scholars have claimed, then it should be inextricably entangled with the *Declaration*. In other words, it should be mentioned together with this document on all occasions. However, the fact seems to be in the contrary. Its lukewarm reception in the international human rights discourse speaks volumes about its limits as a consensus. In the minds of the delegates at that time, “*ren*” was “conscience.” We even have reason to speculate that the realization of the “*ren*” consensus was mainly based on Zhang

80. Mary Ann Glendon, *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights* (New York: Random House Trade Paperbacks, 2001), 141 and 225.

81. Johannes Morsink, “The Philosophy of the Universal Declaration,” *Human Rights Quarterly* 6 (1984): 225.

82. A. J. M. Milne, *Human Rights and Human Diversity: An Essay in the Philosophy of Human Rights*, translated by Xia Yong and Zhang Zhiming (Beijing: Encyclopedia of China Publishing House, 1995), 3.

83. Kostaz Duzner, *The End of Human Rights*, translated by Guo Chunfa (Nanjing: Jiangsu People’s Publishing House, 2002), 13.

84. Makau Mutua, “The Ideology of Human Rights,” *Virginia Journal of International Law* 36 (1996): 589.

85. UN Summary Record, E/CN.4/1998/SR.2, page 9.

Pengchun’s Westernized interpretation and expression,<sup>86</sup> which did not seem to be a cross-cultural process in the true sense of the word, but a direct transplant of some Western or universal concept. As a result, even if “*ren*” temporarily gained the status of a basis, it would inevitably decline, and it could hardly deal with confrontations and conflicts effectively. As a matter of fact, when faced with the complicated and difficult international political situation in the later period, Zhang Pengchun seemed “discouraged and disappointed.” He even proposed to delete the important expression “they are endowed with reason and conscience,” which had been the result of his contributions.<sup>87</sup>

The limitations of the effectiveness of the consensus can be attributed to three points:

First, a basis is almost inevitably subject to its cultural origin. In most of the cases, it is provided through a certain religion or culture. It tends to have an important position in the core of the religion or culture in which it lives, and is often exclusive to it, from the concept to the meaning. It is true that people of any cultural background will not easily accept and follow the basis set by other cultures, even if it is simply a verbal title.<sup>88</sup> They are only willing to accept the basis provided by their own culture, which is a matter of cultural sentiment and a consideration of national interests.<sup>89</sup> Even a document as successful as the *Declaration*, which is based entirely on a multicultural stance, has never ceased to face the question of its “Western cultural core.” That is the root cause of the limitations of the effectiveness of the basic consensus.

Second, a basis almost inevitably faces the problem of cross-cultural cognitive barriers, as an extension of the question of cultural origin. The basis condenses the grand and profound meaning system of the culture to which it belongs, and has cultural exclusivity, inevitably leading to difficulty in cross-cultural understanding. In fact, “cross-cultural” entails an academic field with a very high intellectual threshold, which requires a certain proficiency in the two or more cultures involved. In the case of the *Declaration*, scholars such as Zhang Pengchun, Malik, and Carson, who were knowledgeable and proficient in multiple cultures, were unable to make up for the

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86. In fact, as early as the first session of the Commission on Human Rights (January 27-February 10, 1947), Malik proposed the concept of “conscience,” insisting that “the reason and conscience of every human being are the most precious treasures and are inalienable” and that “the freedom of conscience of every human being is supreme.” Zhang Pengchun first proposed the concept of “*ren*” and its translation “conscience” in a discussion meeting on Carson’s draft after June 16 the same year. At this time, “conscience” already had a solid consensus foundation, which undoubtedly greatly helped the acceptance of “*ren*.” See Verbatim Record, in *The More Important Speeches and Interventions of Charles Malik*, page 35-37; Official Documents of the United Nations: Meeting Records of the Human Rights Commission, First Session, Summary Records, E/CN.4/SR.9.

87. Official Documents of the United Nations, Human Rights Commission, First Session, (E/CN.4/SR.50), page 9.

88. The word “*ren*” was replaced by the word “conscience” and interpreted in a Westernized way once it was proposed. It was not directly transliterated or rendered into the closer “benevolence.” This explains its acceptance by people from other cultures.

89. Just as since the founding of the People’s Republic of China, we have regarded “human rights” itself as a fundamental basis for Western culture and capitalism. Arguments such as “human rights are a bourgeois thing” and “human rights are not socialism” occupied the mainstream discourse and trend of thought for a long time, and it was not until the first white paper on human rights in 1991 that China formally accepted the concept of “human rights.”

shortcomings of the cross-cultural counterpart of “*ren*”, indicating that cross-cultural understanding is never easy. Zhang Pengchun called on delegates to “put aside their work and spend six months studying Chinese culture” to truly understand his views.<sup>90</sup> The costs and sentiments required were almost an impossible wish in the field of international human rights discourse beset with confrontations and conflicts. Moreover, even if a deep understanding and integration (at the theoretical level) was achieved, it would be difficult to translate the results into national discourse (discourse practice), after all, complex and profound cross-cultural arguments are never its content.

Third, a basis is often unrelated to the specific issue in dispute, just like the level of “strategy.” It is true that all “controversies” were caused by disputes of ideas, mainly differences of ideas between cultures. As the core and cornerstone concept for consensus, the basis was often expressed in macroscopic abstract and highly condensed language, for example, “*ren*” was expressed as “two-man mindedness.” This means that it can only provide a principled guide for the resolution of confrontations and conflicts, and the reconciliation of specific disputes still had to rely on the integration of specific concepts between cultures. It can be seen that the basis stayed at the level of “abstract principles” and could hardly achieve concrete results. So, relying solely on it to resolve confrontations and conflicts would naturally be unrealistic.

Compared with the widespread praise for his contribution to “strategy”, Zhang Pengchun was far from being recognized for his contribution to the “basis.” In fact, the praise is mainly for his “subtractive” idea and the disenchantment of Western religions and cultures, while his contribution of “*ren*” to the basis has long disappeared from the arena of international human rights discourse. Therefore, this level of consensus is not only the least effective, but also the most difficult to achieve and gain recognition. In the following section, we will move on to the “conceptual” level of the controversy.

### C. The concept for consensus: “Shallow” or “Deep”

The consideration of effectiveness at this level is also inseparable from the consensus context of the time. UNESCO is known to have consulted around the world long before the drafting of the *Declaration*, and the responses on the issue of fundamental rights and fundamental values were surprisingly consistent.<sup>91</sup> The discovery of a series of conceptual “commonalities” across cultures and even ideologies symbolized the “common belief” of nations on human rights. In other words, the *Declaration* reaffirmed and defended the human values annihilated in the Second World War and established them in the name of the list of universal human rights.<sup>92</sup> The fundamental values of human rights were widely recognized and expressed in cultural traditions

90. Allida M. Black and Mary Jo Blinker, *Fundamental Freedoms: Eleanor Roosevelt and the Universal Declaration of Human Rights, Facing History and Ourselves* (Colorado: National Foundation Inc., 2010), 155.

91. UNESCO Committee on the Theoretical Bases of Human Rights, “Final Report,” *Human Rights: Comments and Interpretations*, WINGATE, 1949, page 258-259.

92. Maritain Jacques, “Introduction” in *Human Rights*, page 10, quoted from Mary Ann Glendon, *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights* (New York: Random House Trade Paperbacks, 2001), 77.

that had had no concept “human rights.”<sup>93</sup> Generally, the essence of these values is that “some things are so terrible that no one will openly agree to them, and others are so correct that no one can openly oppose them.”<sup>94</sup> This means that the *Declaration* satisfied the broadest possible consensus in content, out of consideration for different national and cultural backgrounds. Inevitably, its drafting would avoid inherent differences between cultures as much as possible, and would instead adopt a general, abstract and “ambivalent” style of discourse.<sup>95</sup> It can be said that the entire 30 articles are all expressions of the most basic human rights and freedoms, that is, the purpose of the *Declaration*, Malik said, is to enable “human rights” to sprout in different social systems and living customs, and the “new consensus at a deeper level” hinges on the continuous practice and innovation of later generations.<sup>96</sup> The focus of this statement is that the representatives of all parties at that time wanted a “shallow” broad consensus, that is, the clear certainty of the conceptual consensus in the *Declaration*.

As far as Zhang Pengchun’s conceptual contribution is concerned, the consensus of “*ren*” as the basis was due to its close connection with the value of human nature and its Westernized interpretation. In conceptual reference, it was replaced by the Western word “conscience,” so the Confucian concept of “*ren*” was naturally regarded by the delegates as surrounding “conscience.” Those concepts were placed in a common understanding context because they are related to the foundation of human nature, and their Confucian cultural feature was thus considerably downplayed. The issue of individual obligations was also not initiated by Zhang Pengchun, and when UNESCO first consulted around the world for proposals for the drafting of the *Declaration*, a considerable number of responses from Asia and Europe emphasized the importance of individual obligations.<sup>97</sup> In both Humphrey and Carson’s drafts, there was a statement of the individual’s obligation to society, and Carson even proposed that “every human being has a fundamental duty to society... commitment to the public interest, even at the expense of the private interest” be added to the general principles of the *Declaration*. Even the American Anthropological Society, which was influential at the time, noted that the drafting of the document “should not be based on the individuals alone, but must regard individuals as a member of society”, because “the life of

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93. Michael Novak, “Human Dignity, Human Rights,” *First Things*, November 1999, page 39.

94. Charles Malik, “The Basic Issues of the International Bill of Rights,” Speech Delivered to Conference of American Educators, Lake Success, New York, February 26, 1948, quoted from Mary Ann Glendon, *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights* (New York: Random House Trade Paperbacks, 2001), 222.

95. Hersch Lauterpacht, *International Law and Human Rights* (Westport: Praeger, 1950), 425. Quoted from Shen Zongling, “The Evolution of Western Human Rights Doctrine after World War II,” *Social Sciences in China* 5 (1992): 57-70.

96. Charles Malik, “The Basic Issues of the International Bill of Rights,” Speech Delivered to Conference of American Educators, Lake Success, New York, February 26, 1948, quoted from Mary Ann Glendon, *A World Made New-Eleanor Roosevelt and the Universal Declaration of Human Rights* (New York: Random House Trade Paperbacks, 2001), 223.

97. Mary Ann Glendon, *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights* (New York: Random House Trade Paperbacks, 2001), 75.

the individual must be dependent on and bound by society.”<sup>98</sup> It is difficult to see the distinction between individualism and collectivism in Eastern and Western cultures, yet we have been accustomed to such differences.

This brings us back to the original questions: “Is the idea of consensus achieved the subject of the original controversy”? And, “has consensus been achieved for the controversial idea”? Comparing the three controversial issues and concepts in the current human rights discourse, it can be seen that the conceptual consensus contributed by Zhang Pengchun did not really touch on the issue and dispute, or it can be said that even if he touched on it, it was mostly superficial and did not actually solve the problem, that is, no consensus had been achieved on the concepts causing controversy. As a result, the effectiveness of consensus at this level was also quite limited. In fact, these issues and the resultant confrontations and conflicts only really erupted a few years after the *Declaration* was enacted, and these elements are still common in the confrontations and conflicts between Chinese and Western human rights discourses, but the Confucian concept which Zhang Pengchun contributed at that time has long since disappeared.

This conceptual limitation apparently stemmed from the existing framing of these controversial issues in the consensus context. The *Declaration* focuses on the most fundamental rights and concepts of human nature, and is akin to the “common divisor” and “common belief” among nations and cultures. There was no need to resolve those controversial issues and ideas at that time, nor were they in line with the consensus of the parties, i.e., what was desired was the immediate adoption of a universal document containing the most fundamental human rights and freedoms. Therefore, there was need for in-depth discussion of intercultural disputes. In fact, not only did the consensus context in which the *Declaration* was formulated limit cultural disputes to a lower threshold; even the controversial issues and ideas themselves had not yet taken shape at that time. Here, it is necessary to present a morphological contrast between the controversial issues.<sup>99</sup>

Issue 1: “The division of human rights subjects,” i.e., the relationship between collective human rights and individual human rights, and that between collective subjects and individual subjects.

— Conceptual controversy involved: Western culture focuses on individual values, while Eastern culture focuses on collective values.

Question 1: During the formulation of the *Declaration*: Did individuals with rights and freedoms have certain obligations to society?

— Conceptual controversy: None.

Issue 2: “The value hierarchy between different types of human rights,” i.e., the

98. Maritain Jacques, “Introduction”, in *Human Rights*, page 10, quoted from Mary Ann Glendon, *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights* (New York: Random House Trade Paperbacks, 2001), 77-79.

99. For a record of the discussion of those issues and ideas at the time, see Mary Ann Glendon, *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights* (New York: Random House Trade Paperbacks, 2001), chapter 3-7; and related footnotes before.



value hierarchy of civil and political rights vs. economic and social rights.

— Differences in concept: Western culture focuses on the value of civil liberties, while Eastern culture focuses on economic and social values.

Question 2: During the formulation of the *Declaration*: Did economic and social rights exist and should they be expressed in the *Declaration*?

— Conceptual controversy: None.

Issue 3: The issue of the “relationship between human rights and sovereignty,” that is, which of the two is more important, and whether human rights can be used as a legitimate basis for interfering in the sovereign internal affairs of other countries.

— Conceptual controversy: Western culture holds human rights above sovereignty, while Eastern culture believes that sovereignty is above human rights.

Question 3: During the formulation of the *Declaration*: Did this document have the risk of infringing on the sovereign internal affairs of other countries?

— Conceptual controversy: None.

It follows that the controversial issues and ideas of human rights discourse were still in their infancy during the formulation of the *Declaration*, and could not even constitute disputes in the real sense, because there were few conceptual differences between cultures on each issue. As far as “question 1” is concerned, the consensus required for all parties can be realized with the concept “individuals have certain obligations in society,” and there is no need to heed the disputes regarding “whether the collective can be the subject of human rights” and “whether the individual value is higher or lower than the collective value.” As far as “question 2” is concerned, the consensus required is only to realize the notion that economic and social rights exist and should be expressed in the *Declaration*, without focusing on which of them should take precedence.<sup>100</sup> Regarding “question 3,” the consensus required for all parties is to be realized with the concept “the *Declaration* does not constitute a threat to the sovereignty of a state’s internal affairs”, and there is no need to focus on the disputes of “between human rights and sovereignty, which is more important.” Obviously, consensus<sup>101</sup> was achieved relatively smoothly for the former concept in all the three groups, and the conceptual dispute for the latter did exist, but were temporarily shelved due to the limitation of the consensus context.

It is in this context that the Confucian concepts given by Zhang Pengchun were

100. As a matter of fact, there had been some discussions on the hierarchical judgment of individual vs. collective values, economic and social rights vs. civil and political rights in the formulation of the *Declaration*, but these discussions did not grow into controversy. In fact, the overwhelmingly prevailing view at that time was that individual values took precedence over collective values, and that civil political rights were more important than economic and social rights. Those two points can be seen in the opening sentence “Everyone...”, throughout the *Declaration*, as well as the apparent difference in the number of clauses related to the rights (19 to 6). However, this did not affect the achievement of consensus on these issues at that time. See Mary Ann Glendon, *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights*, New York: Random House Trade Paperbacks, 2001, chapter 3; Official Documents of the United Nations: Human Rights Commission, First Session, Summary Record (E/CN.4/SR.7, 8.)

101. Mary Ann Glendon, *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights* (New York: Random House Trade Paperbacks, 2001).

integrated into this consensus context, and achieved the “shallow” conceptual consensus in the terms of Malik. Those concepts are not controversial in the first place. The corresponding “deep-level” conceptual consensus was the concept of the dispute. Now that the correspondence is clear, the key to effectively defusing confrontations and conflicts is to reach a deep level of consensus.

## V. Conclusion

Zhang Pengchun’s contributions to the *Declaration* have long been regarded as an example — as almost the only example — of the value of Confucianism in achieving a cross-cultural consensus on human rights. In fact, since the *Declaration*, Confucianism has rarely had such a high profile in the international human rights discourse, and Zhang Pengchun’s contributions seem to be the ceiling of the effectiveness of Confucian “cross-cultural consensus.” Today, the so-called Confucian elements in the *Declaration* have long been obscured in the official discourse and only remain in the narratives of scholars, while the inherent controversies between cultures and the confrontation in international politics have long made the confrontation and conflict a constant in human rights discourse. Admittedly, the limited depth of consensus mentioned above is not limited to Confucian culture, but rather the dilemma of effectiveness faced by all cultures in the pursuit of cross-cultural consensus. The cross-cultural consensus based on a certain culture can only stop at a few superficial concepts, it cannot touch the essence of the discursive controversy, making it even more difficult for the consensus results to work. When it comes to the deep values where the controversy lies, the controversy can only be resolved through in-depth adjustment and compromise by one’s own culture. In this way, although the consensus worked, it could no longer be called the “achievement” of the culture, and that was not in line with the consideration of cultural sentiment or even national interests.

It should also be noted that the analysis of cross-cultural consensus of Zhang Pengchun here is not a deconstruction, let alone falsification, but a reflection. This kind of reflection is based on the fact that in the past we have always focused on the existence of Confucian cross-cultural consensus, but have rarely considered its effectiveness in resolving confrontations and conflicts, although that is the proper meaning of consensus. More importantly, the consensus reached in the formulation of the *Declaration* was never the work of Zhang Pengchun alone; most of his achievements had nothing to do with Confucian culture, and could not be attributed to Confucian “cross-cultural consensus.” Therefore, it might be advisable to refrain from exaggerating the significance of this historical example for the practice of human rights discourse in China.

(Translated by *QIAN Chuijun*)