

A COLLABORATION BETWEEN
Berlin Forum on Global Politics
Institute for Global Dialogue
RECLAIM! Universal Human Rights Initiative

THE GLOBAL POLITICS OF BRINGING THE UNIVERSAL DECLARATION OF HUMAN RIGHTS (UDHR) INTO THE 21ST CENTURY HUMAN RIGHTS

UMUNTU NGUMUNTU NGABANTU

DIGNITY

FREE AND EQUAL

LIBERTY

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NEVER AGAIN



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Preface

The legal notion that there are universal intrinsic human rights, shared by all human beings, was a creation of the 20th century and perhaps its most distinctive political-philosophical idea. Despite multiple precursors from earlier times, in the wake of the Second World War, this concept was codified in the Universal Declaration of Human Rights (UDHR), which was passed without dissent by the General Assembly of the United Nations (UN) on 10th December, 1948. In its Preamble and 30 constituent Articles which spell out fundamental human rights, the Declaration was not a treaty or binding law, but rather a statement of aspirations. Despite that limitation to its power, the UDHR provided a foundation for all subsequent international human rights laws, especially major covenants and declarations that followed it in succeeding decades. More than 70 years on, it remains the most influential statement in the history of human rights thought.

Nevertheless, it is pertinent to ask whether the UDHR continues to be relevant to the world of the 21st century. Indeed, does the very idea of human rights have the same potency nowadays that it did in the 20th century? If one surveys international politics today, it is apparent that neither the UDHR nor the international legislations on human rights that followed created a world that strictly observed and adhered to them. Indeed, violations of human rights are ubiquitous and, in some countries and regions, seemingly endemic. Furthermore, it is important to note that the UDHR has received much criticism over the decades. On the one hand, it has been criticized for its apparent omissions, specifically for not having noted additional freedoms and claims that also deserve protection. On the other hand, it has been faulted for claiming too much, for being a product of “the West” and, therefore, for lacking compatibility with other societies and models of development. Indeed, the very concept of human rights has itself come under similar criticisms. One should be careful about dismissing these critiques as responding solely to the political interests of authoritarian regimes or powerful majority groups, since these critiques also include many from academics, legal scholars, and human rights practitioners, and have led to further developments in human rights legislations and frameworks.

And yet, the majority of these critiques do not argue against the core principles enshrined in the UDHR and its potential to better the human condition and societies worldwide. From that perspective, the UDHR is just as relevant as ever.

The crucial issue is the lack of political will to realize its potential. Thus, the flaw lies not in the legal documents and frameworks themselves, but in the global politics of human rights. Rather than depicting the UDHR as a failure, it can be seen as a living document whose interpretation has been broadened through additional conventions and treaties, and which can be broadened further to be fully applicable to contemporary realities. In that view, the UDHR as well as the field of human rights as a whole deserve a fresh look, especially to clarify how they can be strengthened. That approach, in turn, can give the idea of human rights itself new potency, as more individuals and communities call upon and implement the UDHR and subsequent major covenants and declarations.

This publication gives the UDHR just such a fresh look. We, the editors, have brought together 24 articles by a large international group of human rights scholars and practitioners, experts and activists, each examining one particular aspect of the history of the UDHR, the expansion and implementation of its Articles, its role in the prevention of violence, and its potential to address a changing world. This publication has two immediate goals. The first is to address the question of whether the UDHR is relevant not only to human rights as understood in the mid-20th century, but also to contemporary values, dynamics, and conditions worldwide in the 21st century. As argued in these articles, the answer is a strong affirmation of the relevance and importance of the UDHR, and human rights in general, at present and in the future. The second is to illustrate, with specifics, how the UDHR and its Articles can be further adapted and implemented to uphold and safeguard human rights in the early 21st century, even as global political dynamics move in the opposite direction, swayed by the siren songs of populism, authoritarianism, nativism, and extremism.

We offer this publication to all those who are interested in the future of human rights, and trust that it will inspire them to realize the importance of the collective endeavor of bringing the UDHR into the 21st century, and ensuring the dignity of all persons worldwide.

the Editors,
Miguelángel Verde Garrido
Philani Mthembu
Adam Wilkins
(Berlin & Pretoria, June 2020)

Introduction

The Universal Declaration of Human Rights (UDHR), set forth by the General Assembly of the United Nations (UN) on 10th December, 1948, is the foundational document for national and international laws concerning human dignity. It proclaims that the human rights spelled out in its 30 Articles are truly universal, applying to all human beings, and inalienable, hence not subject to repeal or abolition by any country or organization. More than seven decades later, the UDHR has come to serve as the yardstick for subsequent conventions and international legislations on human rights and dignity. Despite the various and sometimes severe criticisms it has received over the years, no UN member state has ever forsworn or abandoned it.

To understand the significance and the status of the UDHR today, however, it is useful to understand its historical context, namely its origins in the wake of the Second World War. The concept of legally guaranteed universal human rights arose from the consequences of global and total warfare, where the long-held distinction between military and civilian targets in wartime disappeared almost completely. Genocide and ethnic cleansing reached their most brutal levels ever, as both politico-military blocs sought the unconditional surrender of their enemy and waged war accordingly. When the Second World War ended, more than 70 million people had died, and close to 50 million of those caught in the war who had survived became refugees, displaced, and/or stateless people. Under the auspices of the newly founded UN, the international community responded to the reality of war with a commitment to establish international legal protections that could safeguard fundamental rights and freedoms, not only social and political, but economic, cultural, and legal as well.

The commitment to universal human rights underlying the UDHR came from realizing that when governments fail to defend, or even violate, the civil liberties and fundamental rights of their citizens, it becomes the responsibility of the international community to maintain them. Similarly, this international responsibility extends to those people who are outside of their countries, since human dignity, freedoms, and claims are universal and their protection cannot be implemented solely in terms of citizenship and national governments. That achievement was accomplished more than 70 years ago, and while the scope and number of wars have diminished and continue to diminish since then, these and various other forms of violent conflict continue to recur globally. Worryingly, despite the reduced frequency and scale of wars, there

are nowadays even more refugees and displaced people than after the Second World War: more than 70 million people, half of whom are only children. Hence, it is important to clarify why the UDHR continues to have the relevance and significance for the world of the third decade of the 21st century that it did in the middle of the 20th century. Certainly, the world today is dramatically different from the post-war period of the 1940s, when European empires still held vast sway over colonies across the world, and the Cold War between the United States (US) and the Union of Soviet Socialist Republics (USSR) was just beginning. The pertinency of the UDHR is proven further not only by the resurgence of refugees and displaced people, but also by the fact that the contemporary world is experiencing a revival of extremism, nationalism, populism, and authoritarianism, which have spread left and right across the political spectrum. Correspondingly, there is an increasing disregard for civil liberties, the rule of law, and democratic institutions on the part of leaders, politicians, and bodies of various governments worldwide, even in long-established democracies.

In particular, this neglect for human rights and application of the UDHR is evident in the two most powerful countries in the world, the US and China, which seem intent on actively subverting the universal and inalienable character of the UDHR under the guise – ironically – of protecting human rights. They have both sought to construct alternative narratives and frameworks to outline their respective positions on human rights, spurring a geopolitical competition that does not contribute to strengthening the UDHR. Thus, China has organized a South-South Human Rights Forum, which claims that while human rights are not inalienable, their exercise can be overruled. “Human rights with Chinese characteristics” are proposed as subservient to models of development and stability responding to countries’ “specific conditions”. China has argued that it is emphasizing the rights of the collective, particularly socio-economic rights and the right to development, over those of individuals. It is trying to persuade other states – some 70 countries, mostly African – to adopt this weakening interpretation of human rights, turning its back on its own cultural and religious diversity as well as its post-Second World War commitments. Meanwhile, the US has established a so-called Commission on Unalienable Rights, which actually weakens the developments in human rights enshrined in the conventions and international legislations that were adopted after the UDHR. It reformulates human rights to echo the principles of certain denominations of Christianity, emphasizing those that allegedly coincide with the latter over those that al-

legedly do not. Thereby, it has refused to continue supporting international efforts to establish and uphold the sexual equality of women as well as lesbian, gay, bisexual and transgender (LGBT) people in addition to various socio-economic rights, proposing that these are strictly domestic matters. By doing so, the US undermines the implementation of these human rights, and has decided to defund and restrict numerous international efforts to forward them. It has also turned its back on its own diversity as well as the spearheading commitments it made in the wake of the Second World War.

Besides such destabilizing geopolitical moves, the increasing complexity of our globalizing world confronts us with novel environmental and technological concerns that were largely undreamt of in the late 1940s. Critical amongst these are: the climate change emergency; the proliferation of information warfare and propaganda over the Internet; and, not least but most recently, the pandemic of the coronavirus known as COVID-19, which overtook the world in 2020, and has already led to profound social and economic disruption, and to new measures of control by many governments. Undoubtedly, when the well-being of the whole of a society is at stake, measures that limit certain freedoms – such as those of movement and of privacy – may be required to curb the spread of the disease. However, under the pretense of containing the global pandemic, various countries have declared states of emergency that enable sweeping powers, and which in the case of Hungary are now indefinite; many others have deployed mass surveillance of communications and location data, with Israel having done so without parliamentary deliberation; several others have criminalized the dissemination of “fake news” in the vaguest terms (with questionable arrests having already occurred in Thailand, Azerbaijan, Cambodia, and Turkey, to name but a few); and, the leader of Philippines and that of the state of Chechnya, Russia, have even declared that people who break quarantine and lockdown laws should be summarily executed. The critical question and concern is whether these emergency measures will be retained for long-term social, economic, and political control after the global pandemic has ended.

In the last decade alone, the world has experienced many disruptive events and developments, which have contributed to a significant decline of democratic institutions and, because of that, an immense increase in violations of human rights and civil liberties. Examples include: the brutal repression of the Arab Spring in most of the countries where it occurred; the

murderous civil wars still raging in Syria, Libya, and Yemen; ethnic cleansing on a massive scale in Myanmar (formerly Burma); and, the mass detention and internment of a million Uyghur people in Xinjiang province, China. The scope of these developments, along with many other conflicts and events, has devastating effects for human rights observance. With more than 300 human rights defenders and activists killed worldwide in 2019 alone, the scope also shows to be truly global: massacres and other violent crimes born of religious, ethnic, gender, and sexual hatred have soared in North America and Europe, Africa and Asia, Latin America, and Oceania.

The topic of human rights today thus presents a major paradox. On the one hand, the idea and language of human rights have become the closest thing to a *lingua franca* (i.e., a common tongue) for discussing and handling the crucial events and dynamics of national and international politics. While it is clear that various political leaders are contemptuous of the idea of human rights and that others are indifferent to it, none of them deny it completely, no matter how frequently they violate certain human rights in practice. Even at their worst, the vast majority of political leaders give the idea of human rights at least occasional lip service. Therefore, what was a radical, sweeping new concept in the aftermath of the Second World War has become a desirable and intrinsic part of accepted political discourse globally. On the other hand, however, disregard for violations of human rights has also become endemic, with their observance in sharp and worrisome decline. In effect, even among the many political leaders who consider the idea and language of human rights as crucial for establishing and maintaining constructive, just, and prosperous societies, there can exist a huge gap between their widespread formal acceptance and their actual upholding and safeguarding. The ultimate paradox resides in the fact that although the state of the UDHR and human rights at present should be healthier than ever before, it may seem that it is far weaker than it ever was.

We, the editors and the contributing authors of this publication, share a grave concern for this state of affairs, but reject any fatalistic conclusions. The observance of the human rights proclaimed in the UDHR and its 30 Articles is weakened in today's world, but the principle and language of universal and inalienable human rights remain as valid as ever.

Due to the fact that the UDHR remains the gold standard of human rights, we believe that it also continues to offer re-

serves of potential for upholding, extending, and safeguarding human dignity and equality throughout the globe. To realize this potential, however, it needs to be far more widely known and to be far more widely quoted by those who fight against violations, overrule, and indifference for human rights. The more that the UDHR is quoted, called upon, discussed, and implemented, the more potent it will become. Consequently, this publication seeks to increase recognition of the UDHR and its Articles and, thereby, strengthen their use on behalf of human rights at the global and local level. We collect more than twenty articles written by scholars and experts, practitioners and defenders of human rights, who come from almost that many countries. Our intention is to provide a comprehensive and accurate picture of the UDHR, from its history and apparent omissions to the further developments in international human rights law that it seeded, and to its contemporary prospects and challenges in the new world of the early 21st century. The five sections that structure the publication convey the broad scope of the endeavor, and offer the reader the opportunity to freely choose the sequence in which they read about the history and philosophy of the UDHR, the manner in which its particular Articles can be expanded, how the UDHR can be enforced and implemented further, the prevention of war and violence, and the manner in which to address the UDHR and human rights in a changing world.

Most crucially, we offer this collection of articles not only to scholars and experts, human rights activists and practitioners, but also to everyone interested in social, economic, political, and/or cultural human rights and their future. It is our hope that these will inspire further discussion and create wider awareness of the crucial importance of human rights, and help to bring the UDHR into the 21st century as an instrument that continues to be invaluable for building a better, more humane world.

the Editors,
Miguelángel Verde Garrido
Philani Mthembu
Adam Wilkins

(Berlin & Pretoria, June 2020)

List of Acronyms and Abbreviations

A

A4P: Action for Peacekeeping

AAA: American Anthropological Association

Agenda 2030: 2030 Agenda for Sustainable Development

C

Code: Voluntary Code of Ethics for the General Elections 2019

D

DID: digital identities

DRC: Democratic Republic of Congo

E

ECI: Election Commission of India

ECHR: European Convention on Human Rights

EU: European Union

F

FARC: Revolutionary Armed Forces of Colombia (Fuerzas Armadas Revolucionarias de Colombia)

FDR: Franklin D. Roosevelt

FFM: fact-finding mission

G

GDP: gross domestic product

Genocide Convention: Convention for the Prevention and Punishment of the Crime of Genocide

I

IAMAI: Internet and Mobile Association of India

IAT: Implicit Association Test

IBRD: International Bank for Reconstruction and Development

ICC: International Criminal Court

ICC Statute: Rome Statute of the International Criminal Court

ICL: international criminal law

ICS: improved cook stove

ICCPR: International Covenant on Civil and Political Rights

ICESCR: International Covenant of Economic, Social and Cultural Rights

ICRC: International Committee of the Red Cross

ICT: information and communication technology

ID4D: Identification for Development

IDA: International Development Association

IE: Independent Expert

IEA: International Energy Agency

IGLHRC: International Gay and Lesbian Human Rights Commission

IHL: international humanitarian Law

IHRL: international human rights Law

ILGA: International Lesbians and Gay Associations

IMF: International Monetary Fund

IMO: International Organisation of Migration

IP: indigenous people

IPCC: Intergovernmental Panel on Climate Change

ISIL: Islamic State in Iraq and Levant

L

LGBT: lesbian, gay, bisexual, and transgender

M

MOI: means of implementation

N

NCRB: National Crimes Record Bureau (of India)

NIEO: New international Economic Order

NGO: non-governmental organization

O

OHCHR: Office of the United Nations High Commissioner for Human Rights

P

PKK: Kurdistan Workers' Party (Partiya Karkerên Kurdistanê)

PKO: peacekeeping operation

PMT: political micro-targeting

R

R2D: Right to Development

R2P: Responsibility to Protect

S

SDGs: Sustainable Development Goals

SOGI: sexual orientation and gender identity

SSID: self-sovereign identity

U

UDHR: Universal Declaration of Human Rights

UN: United Nations

UNESCO: United Nations Educational, Cultural, and Scientific Organization

UNGA: UN General Assembly

UNHRC: United Nations Human Rights Council

UPR: Universal Periodic Review

UK: United Kingdom

US: United States of America

USSR: Union of Soviet Socialist Republic

V

VDPA: Vienna Declaration and Programme of Action

W

WFP: World Food Program

WHO: World Health Organization

WTO: World Trade Organisation

WWII: World War II

The Word “Human” in the 21st Century: A Critical Revaluation

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Abstract: Owing to identity-based politics, the use of the word “human” to refer to individual persons has been systematically replaced with ethnic, gender, and other choice-based terms, which rely on specific features that distinguish particular groups of people rather than a universal framework that bridges gaps between diverse groups. This refusal to be viewed as essentially human – which insists on universality and entails truth, justice, and compassion for all people – happens despite modern technologies creating enormous spaces of interaction between peoples across national differences – albeit the nature of the communication often reproduces existing patterns of social and political behavior. This article argues for the validity and continuing relevance of the word “human” as a term of universal binding and affiliation. Its boundaries necessarily include non-white people, women, working classes, social and sexual minorities, subaltern groups, and nameless others for whom it is a way of asserting their presence in an unequal world. The potential of the term “human” or by extension “humanity” or its avatars “human rights” or “human condition” have hardly been exhausted, and the poor and the weak continue to seek inclusion through the term “human” for their all-too-human suffering and their need to be part of a humane society.

Keywords: Humanity; Enlightenment; universality; altruism; human

Introduction

In the book *Gandhi: A Spiritual Biography*, Sharma (2013) mentions that in 1947, when Mahatma Gandhi was asked to give his opinion on the proposal for a Universal Declaration of Human Rights (UDHR), he responded by saying: “I learned from my illiterate but wise mother that all rights to be deserved and preserved came from duty well done. Thus the very right to life accrues to us only when we do the duty of citizenship to the world” (p. 43). Two things are important here: one is that an “illiterate but wise” woman from the 19th century, who also happened to be Gandhi’s mother, understood that there are universal rights that ought to be both “deserved and preserved”; and, that these rights are inseparable from one’s obligations towards the world. The right to life is thus rooted in the conviction with which



one fulfils one’s duty as a citizen of the world and is not independent of “liberty and security of person” (UN General Assembly, 1948: Article 3); the required conditions, the most important of which is freedom from hunger and exploitation, have to be met in order for an individual to experience a truthful and meaningful existence. The universal component of “rights” lies in the fact that certain things are not merely cultural constructions, such as a person’s sense of his/her innate dignity. No further explanation is necessary beyond a point and every person is worthy of such dignity irrespective of their external differences from others. This is the broader context to the UDHR (UN General Assembly, 1948), which celebrates the innately human character of any and every individual person while also recognizing that culture and social relations play an important role in shaping the collective imagination of groups.

The Idea Of A Basic Humanity

At the heart of the UDHR (UN General Assembly, 1948) is an understanding that the idea of a basic humanity is common to all outside physical, cultural, and political differences. Though what constitutes the "human" or what parameters are those one may associate with human behavior could theoretically be debated, an implicit acceptance that there is indeed something called human is useful to recognize another human being as a body that is vulnerable to sickness, pain, and death, and therefore in need of empathy. That the same body has a voice, feelings, a choice, and is able to think in terms of right and wrong is enough reason to believe in the power of persuasion, the value of education, and a humane treatment as ways of responding to one's fellow beings. Such a perspective is directly related to the conviction that the most dreaded criminal is capable of change and hence must be viewed as a human person. Every other external difference could be worked out through an honest recognition that the other person is only "you" in another body. Thus, moral behavior and human consideration are irreplaceable and far outweigh political demands made in the name of natural justice.

Johannes Morsink (2009) in making an argument for "the inherence of human rights in the human person" (p. 8) roots his position in the moral consciousness that "each human being has inalienable dignity" (p. 9). Morsink notes that the drafters of the UDHR are reaching out to the 18th century Enlightenment period in order to present the "doctrine of inherent human rights" (p. 17), which consists of two theses: one is that "people everywhere and at all times have rights that are not man-made" (ibidem) and another is that "ordinary people in any of the world's villages or cities can come to know in a natural manner – unaided by experts – that people everywhere have [...] moral birthrights" (ibidem). Theoretically it is possible to visualize situations where someone might not be in a position to express their individuality or selfhood in terms that are explicit to everyone else. That however is no reason for everyone else to deny the person's moral birthright to exist on their terms, provided that the right coexists with a set of duties prescribed by the group which are not incompatible with one's humanness.

A historical instance of the profound impact of the recognition of the inherent humanity of a person can be observed in the case of the Jewish people, whose presence in world history, according to the historian Eric Hobsbawm (2013), was at best marginal until the 18th century.

Most of world history until the late eighteenth century could be written without more than marginal reference to the Jews, except as a small people who pioneered the monotheistic world religions [...]. Practically all the intellectual history of the Western world, and all that of the great cultures of the East, could be written without more than a few footnotes about the direct Jewish contribution to them [...] (Hobsbawm, 2013: 77).

The marginality of Jews, as Brusteine (2003) observes, was owing to groundless racial hatred that attempted to find its justification in religion:

Christian anti-Semitism, rooted in the beliefs that Jews were collectively responsible for the death of Jesus and that Jews failed to accept Christ as the Messiah, held center stage within the Christian anti-Jewish mental world until the twelfth century. Beginning in the twelfth century, religious anti-Semitism would undergo a major transformation in terms of its intensity and its incorporation of new anti-Jewish themes (Brusteine, 2003: 52).

Blind hatred demonized the Jewish people in the most unimaginable ways possible, which included blaming them for almost everything that happened, ranging from the Black Death to "serving as agents of the Antichrist" (Brusteine, 2003: 51). This kind of hatred had both social as well as state sanction owing to which the Jews "were subjected to a series of restrictions" (idem: 55) while "the Christian Church in Europe would progressively curtail the activities of the Jewish people" (ibidem).

Given this background of deliberate marginalization both by the state and civil society, it became impossible for the Jews to prove their capabilities until the arrival of the Enlightenment that emancipated them, though anti-semitism did indeed take new forms in secular Europe. Hobsbawm (2013) notes: "It is evident that an enormous oilfield of talent was waiting to be tapped by the most admirable of all human movements, the Enlightenment of the eighteenth century, which, among its many other beneficial achievements, brought about the emancipation of the Jews" (p. 78). The Enlightenment period that in spirit produced the UDHR also brought about the emancipation of a people leading to "progress that made it possible for Jews to make the second major contribution to world civilisation since their original invention of a tribal monotheism that gave universalist ideas to the founders of Christianity and Islam" (idem: 62).

The remarkable contribution of the Jewish people to civilization thanks to the emancipation made possible by the Enlightenment proves that people are most creative, productive, and self-reliant only when they are recognized as human beings and treated as social and political equals. In the absence of recognition and equality, marginalized individuals and groups to a great extent become inward-looking, and show no signs of being useful members of the larger world community.

Right to Universal Recognition

The spirit of the UDHR is about providing people with "the right to recognition everywhere as a person before the law" (UN General Assembly, 1948: Article 6) along with being "equal before the law" as well as "entitled to equal protection against any discrimination" (UN General Assembly, 1948: Article 7). Historically oppressed, marginalized and sidelined groups, the poor and the impoverished, immigrants, refugees, the ones who are colonized both externally and internally, individuals persecuted by governments and mafias, the subaltern and the voiceless, it is for them that the UDHR is a manifesto of hope and belief in the possibility of a future where each individual person is entitled to their humanity. The universality of the UDHR is about a context in which one is able to transcend the inevitable barriers that language and culture create between peoples in order to be able to articulate one's humanness without in any way being prejudiced by other groups or individuals. In essence, the UDHR is about the right to be oneself, to become oneself, and grow as an individual in ways that one has envisioned for oneself. It is about nurturing what is reasonable and good in every human being, rather than encouraging the philosophy of "man is wolf to man", which underlies the ruthless pursuit of self-interest.

In principle, it is imperative that the issues related to what humanness means be clarified. Are questions related to human rights as old as human existence on this planet as embodied in a biological need for autonomy and freedom? Are human rights in the form of a quest for dignity and self-respect at the

heart of human nature as Shakespeare demonstrates through the characters of Shylock and Caliban who voice their marginalization in the face of blatant discrimination? Or are criteria associated with human rights a milestone in the evolution of society towards a future where every other identification mark becomes relatively insignificant before one's right to humanness? How does the UDHR, both as a goal towards a just society and a means to an end that is an honest self-realization, propose a worldview where human beings are not portrayed as greedy and selfish, but as rational and compassionate towards one another and the environment? The latent altruism in the UDHR needs to be comprehended in order to be able to appreciate the fact that the human rights' document echoes a positive view of the human person.

The UDHR is an important step towards collective humanization: it does not mean that we all think and speak alike; it simply means we are able to appreciate and understand each other's fears and anxieties and be willing to speak of them with respect for the personhood of those involved in the dialogue for change. In the book *The Heart of Altruism: Perceptions of a Common Humanity*, Kristen Monroe (1996) deals with the question of what motivates people to help others even when it poses a great risk to their own safety. Among the extensive interviews made, one of the interviewees observes how seemingly normal people happen to dehumanize others, as ordinary as themselves, without a feeling of guilt:

You first call your victim names and take away his dignity. You restrict his nourishment, and he loses his physical ability and sometimes some of his moral values. You take away soap and water and then say the Jew stinks. And then you take their human dignity further away by putting them in situations where they even will do such things which are criminal. And then you take food away. And when they lose their beauty and health and so on, they are not human anymore. When he's reduced to a skin-covered skeleton, you have taken away his humanity. It is much easier to kill nonhumans than humans (Monroe, 1996: 205).

It is this dehumanization that made the violence of slavery, the pogroms, genocides, and the colonialization of millions across Africa, Asia, and Latin America a reality of the modern world. As ironic as it may seem, those who committed the acts of dehumanization were normal men without the connecting thought that their victims could be as normal as themselves. What is to be noted is that the UDHR is a genuine belief in the altruism that, according to Monroe (1996), "centers on this sense of a shared humanity, a perception of self at one with all mankind" (p. 206).

Conclusion

The belief that each person is as deserving as all others of what nature has to offer through the collective labors of humankind makes one genuinely benevolent without a tendency towards condescension – as is sometimes characteristic of wealthy and powerful nations and people. Monroe (1996) summarizes what it means to be altruistic in the most universally acceptable sense of the term:

I would characterize it as a different way of seeing things; it certainly represents a different way of seeing the world and oneself in relation to others. Altruists have a particular perspective in which all mankind is connected through a common humanity [...] a very simple but deeply felt recognition that we all share certain characteristics and are entitled to certain rights, merely by virtue of our common humanity (Monroe, 1996: 206).

Though the idea of a common humanity is a novel one, it would be inaccurate to say that historically there were no individuals who displayed such a spirit of altruism at crucial points in their lives. Azzam (2009), the biographer of Saladin, observes that at the end of his life, the sultan embraced his favorite son al-Zahir, "ran his hand over his son's face and kissed him" (p. 242), before he gave the latter a final piece of advice:

I warn you against shedding of blood, indulging in it and making a habit of it, for blood never sleeps. I charge you to care for the hearts of your subjects and to examine their affairs [...] I have only achieved what I have by coaxing people. Hold no grudge against anyone, for death spares nobody. Take care in your relations with people, for only if they are satisfied will you be forgiven [...]. (Azzam, 2009: 242)

This advice is important not only because it comes from a conqueror who, despite being one of the major actors in the brutal Crusades, managed to retain his humanity, but is also something that governments of powerful nations, majoritarian states and groups need to bear in mind in reference to how they treat weaker nations and minorities. The self-evident fact that people are mortals and are aware of it is enough reason not to endorse or indulge in the politics of murder and deceit. Machiavellian leaders and governments succeed in the real world, but their success is a short term one. In the end they will be seen for what they are, and as the barber who is mistaken for Hitler says in Charlie Chaplin's (1940) *The Great Dictator*: "The hate of men will pass, and dictators die, and the power they took from the people will return to the people. And so long as men die, liberty will never perish." Underlying the Universal Declaration of Human Rights is the promise of a world where people have a right to food, healthcare, education, and a decent life without having to give up their dignity or make compromises of a self-defeating kind.

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Are the Universal Declaration of Human Rights (UDHR) and the Idea of Human Rights Just Artifacts of Western Culture?

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Abstract: *In recent decades, the Universal Declaration of Human Rights (UDHR) has been criticized as both an artifact of Western culture and as an attempt by the countries of the West to impose their value systems upon the 'Global South'. This critique is based on the assertion that the UDHR is simply an outgrowth of the Enlightenment as it unfolded in 17th and 18th century Europe. Correspondingly, the whole general idea of "human rights" is sometimes dismissed as having a parochial foundation in western philosophy. This article reviews the evidence and concludes that these criticisms are ill-founded. In reality, the UDHR was shaped in part by people from the Global South, while the general idea of human rights has deep roots in the concept of a shared, universal humanity. This concept was espoused by the major religions of the world (Judaism, Christianity, Islam, Buddhism, Hinduism), and also promulgated by important philosophical systems that developed in Asia and Africa. It follows that human rights have a much broader and deeper grounding than critics have asserted, and that the claim to "universality" in the UDHR is justified.*

Keywords: *Universality of human rights; philosophy of human rights; history of human rights; Universal Declaration of Human Rights (UDHR)*

To the memory of Kamal Boullata, a dear friend, a world-class painter and a passionate supporter of human rights

Introduction

The adoption of the Universal Declaration of Human Rights (UDHR) by the United Nations (UN) General Assembly in 1948 was a landmark event in the history of human rights. The previous amorphous notion that there are general and intrinsic human rights was replaced by the concrete formulation set forth in the UDHR, and its ratification by the General Assembly of the UN sealed the concept into international law.

That was 71 years ago. A crucial question concerns how significant the UDHR is today. Is it truly relevant to the world in the 21st century or is it primarily of historical interest, marking a legal and ethical high point following World War II (WWII)? On the one hand, no country has officially repudiated it, and all current members of the United Nations, consisting of 194 nations (up from 56 at the time of ratification), by virtue of their membership in the UN, are formally committed to observing it. Furthermore, it was reaffirmed at the World Conference on Human Rights held in Vienna in 1993, where 170 nations were represented. On the other hand, it has always lacked its own enforcement mechanisms, and it is undoubtedly the case that violations of human rights, as specified in the 30 Articles of the Declaration, are worldwide and growing.

Closely connected to the question of efficacy is that of universality. The UDHR has moral force because of its claimed universality. If it came to be regarded as an artifact peculiar to its time and place, it would lose much of its power. Specifically, it has been argued in recent decades that the UDHR is a product of its time and of Western culture, tracing back to the Enlightenment – the European philosophical movement of the late 17th to the early 19th century that emphasized rational thinking and liberal political ideas (Moyn, 2010, 2019; Willmot-Harrop, 2003; Kennedy, 2012). If the intellectual base of the UDHR is that narrow, it would lose much of its legitimacy and force as a potential instrument for protecting people around the world.

Related to this is the deeper criticism that the very idea of human rights movement, as embodied in the UDHR, is an attempt to impose Western cultural norms on the rest of the world. Several leaders of Asian nations, in particular Matahir Mohammed (Malaysia) and Lee Kuan Kew (Singapore), voiced this criticism in the early 1990s. They argued that Western human rights systems emphasized the rights of individuals, while the countries of Asia rely on "Asian values" – i.e., communitarian value systems rooted in Asian societies (de Bary, 1998) This general line of argument buttressed authoritarian regimes in Asia and still does so, though less conspicuously, in China and North Korea and, increasingly, in India (Mody, 20th December 2019).

Thus, the question of the UDHR's relevance today becomes two-fold. First, is the UDHR simply a narrow reflection of 1940s Western political culture? Second, more broadly, is the general concept of human rights itself simply a creation of the 'West'? This article begins with a brief look at the conceptual sources for the UDHR, both the traditionally acknowledged ones and the lesser known non-Western ones. It then examines the broader religious and philosophical currents of thought that contributed to the concept of human rights, showing that the UDHR was not something foisted on the world by 'the West'. Furthermore, it also shows that the roots of the human rights concept derive from deep within many cultures. This article is intended to be complementary to that of Schulze (2020) in this volume.

The Immediate Roots of the UDHR

That the UDHR reflected its time, the late 1940s, and 'Western' culture is impossible to contest. It was an early development in the history of the UN, which itself was an outgrowth of the WWII aims of the Allies, mostly the dominant Western nations of the time. Inevitably, the UDHR mirrored its time: in its language and its concerns – indeed, how can any statement es-

cape such influences? – as well as in its omissions. In particular, its gaps are now striking. Foremost, there is no mention of the rights of subject peoples in colonies – though the empires of the United Kingdom and France still held sway over hundreds of millions of people – or of the rights of sexual minorities or of reproductive freedoms, important issues today. The UDHR also sanctioned the broad right to own property, and it did not address the issues of income and wealth inequality. Accordingly, it has been treated in some quarters as endorsing Western 20th century capitalist society (Willmott-Harrop, 2003; Moyn 2010, 2019).

Its overall structure also reflected Western culture, specifically the political thought of the Enlightenment. Two of the UDHR's critical precursors were the American Declaration of Independence (1776) and the Declaration of the Rights of Man and of the Citizen (1793), the French version of the American declaration, which clearly display the influence of the Enlightenment. Those two documents, in turn, helped inspire the speech on the Four Freedoms that Franklin D. Roosevelt (FDR) gave to Congress on 6th January 1941, whose influence is apparent in the preamble to the UDHR.

The influence of the 'West' is also seen in the make-up of the Commission on Human Rights, those who drafted it. Two of the central figures were Eleanor Roosevelt, FDR's widow and the Chair of the Commission, and John Humphrey, an eminent Canadian legal scholar and the first leader of the United Nations Division of Human Rights (Morsink, 1999). A third critical 'Western' figure was René Cassin, the French jurist and legal scholar who had previously done much work in international law through the League of Nations. He played a particularly instrumental role in the detailed structuring of the UDHR, a role recognized 18 years later with the award of the Nobel Peace Prize (Winter and Prost, 2013).

However, not all of those drafting the document were from the West. Three key contributors were Peng Chun Chang from China, Charles Malik from Lebanon, and Hansa Mehta from India – the latter being the only woman involved besides Eleanor Roosevelt. Each brought his or her distinctive contributions, shaped by their respective cultural backgrounds, to the drafting of the UDHR (see Schulze in this volume). Of course, each had also been exposed to Western cultural traditions earlier in their lives, but to reduce their participation to the effects of that influence is to misuse the concept of "authenticity" and to ignore the complexity of the genesis of the UDHR (Sikkink, 2017: 84–88). Correspondingly, the debates leading up to the final draft were broad and contentious (Morsink, 1999).

There were other non-Western inputs shaping the UDHR. Two singular events deserve note. The first was a draft statement by the Chilean jurist Alejandro Álvarez on the universal rights of individuals in international law, made in 1917, while World War I was raging, for the conference of the American Institute of International Law, held in Havana, Cuba. Although Álvarez' statement was not incorporated into the published version of the proceedings, the evidence indicates that it was highly influential, not least in the 1930s, and contributed to human rights awareness more broadly. Closer to the drafting of the UDHR, and undoubtedly more directly influential, was the ratification of the 1948 American Declaration of the Rights and Duties of Man, adopted unanimously by 20 states of Latin America and the United States, in Bogotá, Colombia. This document affirmed and spelled out basic and universal human ri-

ghts, reflecting a long Latin American tradition of concern for human dignity, liberties, and rights by Latin American church officials and political leaders, in particular the legendary Simón Bolívar, a crucial figure in the liberation of the Latin American countries from the Spanish Empire. These Latin American roots of the UDHR are described in Sikkink (2017: 55–83).

The More Diffuse Roots of Human Rights in Ancient Religious Traditions

The core premise of human rights thinking is that humanity is one, whatever the visible differences of skin color, religion, and culture there may be between peoples and that, as such, all people are entitled to the same basic treatment by the governing authorities. This belief in humanity's oneness is present in the foundational documents of the various world civilizations, and it has direct implications for one's behavior toward fellow humans. As Micheline Ishay (2004) says in *The History of Human Rights*:

Modern ethics is in fact indebted to a worldwide spectrum of both secular and religious traditions. Thus, the concepts of progressive punishment and justice were professed by Hammurabi's Code of ancient Babylon; the Hindu and Buddhist religions offered the earliest defenses of the ecosystem; Confucianism promoted mass education; the ancient Greeks and Romans endorsed natural laws and the capacity of every individual to reason; Christianity and Islam each encouraged human solidarity, just as both considered the problem of moral conduct in wartime (Ishay, 2004: 7).

Though none of the great religion-founding documents of Judaism, Christianity, Islam, Hinduism or Buddhism, used the term "human rights", the concept of fair and just treatment for all humans – i.e., the foundation of human rights thinking – was implicit in all. From the perspective of the 21st century, both Judaism and Christianity are usually seen as 'Western', but when these religions were new, there was no concept of East and West, and indeed they spread from the region now designated 'the Middle East' into Europe during the first millennium of the Common Era. It is false to say that these religions, which were certainly influential in human rights thinking, had "Western roots", however much they later came to be associated with the West. It is more accurate to say that the 'Western' religions of Judaism and Christianity were originally philosophical-religious systems imported from Asia Minor.

Similarly, Islam, Buddhism, and Hinduism originated outside of Europe, and then spread widely from their points of origin. All three of these religions have major universalist and humanist aspects which, today, can be readily related to the concept of human rights (Ishay, 2004: chapter 1). Similarly, Confucianism, which is not considered a religion, but rather a major ethical and societal system, is founded on humanistic principles that bear a distinct resemblance to human rights thinking (Confucius, 1956; Ishay, 2004: 42–43). Furthermore, there is a long history of the long involvement of Africans with what can today be described as human rights thinking (Ibawah, 2018). In its early days, this current of thought was inextricably tied up with the fight against slavery, both that internal to African societies and that involved in the trans-Atlantic trafficking of African slaves, from the 17th century onwards. In the early 20th century, but before the ratification of the UDHR, such African thinking became entwined with the anti-colonialist movements there, flowering in the 1950s and 1960s. At the base of so much African thinking about human rights and

the anti-colonial movement from the 1950s onwards was the idea of 'Ubuntu':

The essence of Ubuntu is captured in the famous phrase 'Umuntu ngumuntu ngabantu' (A person is a person through other people). The humanness of the person who has Ubuntu comes from knowing that the fate of each person is inextricably intertwined with their relationship with others (Ibawoh, 2018: 31).

It would be difficult to come up with a better term for the core belief underlying human rights.

Conclusion: Seeing Universal Human Rights as a Living, Robust Tree

To picture the UDHR as a Western "invention" is to miss so much of what went into its making as well as the diverse geographical and cultural origins of those who shaped it

(Morsink, 1999; Sikkink, 2017; Ibawoh, 2018). If one were to seek a metaphor for the UDHR or the human rights movement more generally, one might think of a robust tree: the UDHR and the covenants it later gave rise to would be the main branches, while the trunk itself is Enlightenment political thinking. The trunk itself, however, was an outgrowth of a largely hidden complex, a large root system that included the great religions of the world and the philosophies of its different regions, such as Confucianism and the African concept of Ubuntu. In effect, the tree of human rights is far more than its trunk. To see the UDHR as simply a product of the West, as proposed by certain Western scholars (following on from some non-Western politicians), is itself a form of Western provincialism, one to be rejected in favor of a much more inclusive view that recognizes the long history of ideas of human universalism and, indeed, the long struggle to achieve human rights around the world (Weitz, 2019).

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Diplomats from the Global South and the Universal Declaration of Human Rights (UDHR) – Plurality and Universality

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Abstract: After the end of the Cold War and the new progress in the international human rights program, the attention of social scientists to the emergence and the impact of the Universal Declaration of Human Rights (UDHR) increased. Recent studies have documented the multitude of concepts, competitions, and assessments of the members of the United Nations Commission on Human Rights (UNCHR). Far from an uncontested document, the final approval of the UDHR involved a whole set of compromises amongst the men and women who established it. Important diplomats from non-European countries were important actors in this historical process. Possessing their own ideas, motives, and intentions, Hansa Mehta from India, Charles Malik from Lebanon, and Peng Chun Chang from China were a small but powerful group of actors who influenced the outcome. Unfortunately, there is still an insufficient number of comparative studies evaluating the work of these diplomats from the Global South in the UNCHR. A more detailed explanation of the unique “southern perspective” is helpful for the public and the scientific community, especially with regard to the “renewed considerations on the universality of human rights”.

Keywords: Global South; plurality; universality

Introduction

Since the significant work of Johannes Morsink (1999) on the Universal Declaration on Human Rights (UDHR) drafting process was published, a new set of studies on various aspects of the UDHR has emerged. Morsink gave us an intensive overview on the issues, negotiations, and results in the United Nations Commission on Human Rights (UNCHR). Afterwards, new studies examined the role of small states in the establishment of the international human rights regime (e.g., Waltz, 2001; Waltz, 2002), while others investigated



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the political ideas and motivations of individuals (e.g., Glendon, 2001; Winter & Prost, 2013). As shown by this work, at the end of the drafting process, the UDHR was a balanced set of compromises on many points between different individuals. Therefore, it was also more compatible with distinct cultural traditions, political systems or social experiences than it would have been if drafted by a narrower group.

Consequently, contemporary results point to the multitude of philosophical concepts and personnel competitions (Adami, 2015; Hoover, 2013). This article supports this view and examines the complexity of thought and action, in particular, by the non-western diplomats Peng Chun Chang (China), Charles Malik (Lebanon), and Hansa Mehta (India) as illustrations. The aim is to conceptualize the reality and the plurality of non-western thought that went into framing the UDHR.

Currently, one of the most important features of the international human rights discourse, over the past seven decades, has been the so-called North-South conflict. This dispute has deep theoretical roots, practical implications, and affects many norms. Scholars, politicians, and activists often distinguish between “western” and “non-western” concepts, and see the reason for this phenomenon in cultural relativism. Chang, Malik, and Mehta, however, would not have supported this kind of assessment during their tenures in the UNCHR. All three diplomats were in favour of a human rights contract with universal scope. Nevertheless, they strongly disagreed about major aspects of human rights. The article will illustrate the variety of non-western thought about human rights during the establishment of the UDHR. Thus, it is possible to understand different views from the Global South and to make a strong case for the universality of human rights ideas in the UDHR and in the present.

For this study, the perceptions of contemporaries like John Humphrey (director of the United Nations Division of Human Rights) and Eleanor Roosevelt (chair of the United Nations Human Rights Commission) in addition to the travaux préparatoires (that is to say, the official records of negotiations) of the UDHR will be included. From a theoretical point of view, the comparison raises questions about the philosophical and historical foundation of human rights, the concrete content and structure as well as the possibility to implement and realize them.

Peng Chun Chang (1892-1957) – A Deliberate Approach

Peng Chun Chang, who was the vice-chairman of the UNCHR until his resignation in 1952, highly influenced the drafting process of UDHR as a reasonable and insightful intellectual. John Humphrey, in contrast, called him “a master of the art of compromise” (Humphrey, 1984: 23). He acted as a consensus builder to achieve a friendly understanding between the delegates about controversial topics. Eleanor Roosevelt (1959) was impressed with the thoughtfulness of the philosophical discussions he shared with Charles Malik (p. 96). However, scholarship has recognized his central part only recently. The first biography that emphasized his role in the UNCHR was published just one year ago (Roth, 2018). Other studies show a man who was deeply committed to democracy, modernity, and education (Krumbein, 2015; Liu, 2015).

Our study of Chang’s engagement in the UNCHR confirms the most important assumptions with regard to the origin, structure, and realization of international human rights politics. He was in favor of separating a general declaration from a commentary list and from proposals for implementation (UN Commission on Human Rights, E/CN.4/AC.1/SR.4: 11). One striking aspect was his ability to mediate between diverse opinions. Chang recognized that “the idea of human rights was born in Western Europe” (UN Economic and Social Council, Third Committee, A/C.3/SR.127: 397) during the era of Enlightenment. Nevertheless, he didn’t consider it an approval of west-

western supremacy at all. He was strictly against debates on the nature of man or references to any god to preserve the ambitions of universality (UN Economic and Social Council, Third Committee, A/C.3/SR.98: 113-114). This was a vexing task as the UNCHR involved Christians, Muslims, and atheists as well as conservatives, liberals and socialists. Therefore, Chang supported the more general term of “consciousness”, which was – once established in the Preamble – a huge success for him (Krumbein, 2015: 337). He saw education as an important tool for the acceptance and realization of these freedoms (UN Economic and Social Council, Third Committee, A/C.3/SR.91: 48). Moreover, Chang engaged very much in discussions on social and economic rights like “food and clothing” (UN Commission on Human Rights, E/CN.4/SR.71: 13) or unemployment benefits (UN Commission on Human Rights, E/CN.4/SR.65: 7). In addition, his main concerns also included the duties of men and women towards their societies (UN Economic and Social Council, Third Committee, A/C.3/SR.95: 87). There was a significant difference to other diplomats like Malik and Mehta, who were more concerned about the possibility of repression by state actors than Chang.

This brief overview presents Peng Chun Chang’s idea of a deliberate human rights agenda. The Chinese delegate rejected the necessity to discuss its metaphysical basis. As an outstanding cosmopolitan scholar, who lived and worked in China and the United States, he avoided controversial topics, which possibly inhibited forming a consensus in the UNCHR and, as a consequence, the development of an international human rights regime. Furthermore, he had clear preferences for certain social and economic rights relative to traditional western concerns about political liberties. After his death in 1957, Humphrey wrote in his diary that Chang was the delegate with whom he “felt most in spiritual intellectual communion” (Hobbins, 1998: 232).

Charles Malik (1906-1987) – A Philosophical Approach

Charles Malik’s human rights policy is often considered as impartial and unbiased (Malik, 2000; Nasrallah, 2012). Nevertheless, this is not the full picture. Firstly, he advocated very controversial positions during his tenure in the United Nations system and afterwards. As Lebanese foreign minister during the 1950s, he supported a stronger involvement of the United States in the Middle East, rejected the proliferation of Soviet influence, and was sceptical about Zionism and Arabism. The sovereignty and independence of his home country were his main political goals along with the realization of universal human rights (Arsan, 2015). Secondly, he voiced some remarkable opinions during the shaping process of the UDHR because of his strong Christian background. Humphrey (1984) called him “an energetic defender of liberalism and traditional values” (p. 25).

Being the rapporteur of the UNCHR, Malik was essential for ensuring a clear structure of the discussions and their progress during the sessions. In general, he was a great intellectual source and used his knowledge and determination for the advancement of the human rights idea. However, his diplomatic skills were deficient, especially in the early meetings. Malik harshly rebuked Hansa Mehta for her lack of interest in philosophical discussions (Hoover, 2013: 227). While Mehta could not identify an additional value in these discussions, Malik insisted that detailed debates about the historical foundations and terminological definitions of human rights norms are essential premises for the practical execution of the human rights program.

Significant aspects of his prioritisation were references to any god and the family as the foundation of society (UN Commission on Human Rights, E/CN.4/SR.37: 11) as well as his scepticism towards the role of state interventions (UN Commission on Human Rights, E/CN.4/SR.9: 3). Human rights were moral principles and not merely the result of social debates. The atrocities of totalitarian regimes during the Second World War were the most obvious evidence of the danger of statism (UN General Assembly, A/PV.180: 847). Consequently, there is a need to protect minority groups (UN Commission on Human Rights, E/CN.4/SR.14: 6) and property rights (UN Commission on Human Rights, Drafting Committee of the Commission on Human Rights E/CN.4/AC.1/SR.8: 10). And whichever the case may be, human rights education is a helpful tool for the fulfilment of the UDHR (UN Commission on Human Rights, E/CN.4/SR.67: 14).

Malik's negative thinking about the role of the state and his preference for political and civil rights are a reason why Johannes Morsink (1999) regards him rather as a libertarian than as a Catholic thinker in the scholastic tradition (p. 224). However, his philosophical agenda is not to be ignored. No one in the UNCHR was as much involved as he was in discussing the theoretical foundations of human rights and the nature of human beings during the drafting process. The fact that Chang and Malik were not able to work together as allies was a persistent reason for Humphrey (1984) to complain (p. 29). Nevertheless, these insights into ontological and epistemological questions are immense gains, especially when considering recent attacks on the universality of human rights.

the British Empire, who was several times in prison, she was an exceptional delegate in the UNCHR. Before and after her tenure, she worked as an educator and activist for the rights of women and for children's rights. Mehta is mostly known for her engagement in favour of a more inclusive language in Article 1, which recognized women as equals to men (Morsink, 1999: 118, 199; Adami, 2015: 9-10; Glendon, 2001: 90). Nevertheless, contemporary scholarship identifies other exceptional elements of her human rights conception. Bhagavan (2010; 2013) considered her a supportive delegate for Prime Minister Nehru's vision of "One World", which aimed to transform the global system over a long period. An international human rights regime, based on a broad consensus between the different states, was an essential part of this idea. Despite her personal experiences, Mehta abstained from charges against colonialism during the drafting process (Schulze 2018). Contemporaries like John Humphrey (1984) described her as "a determined woman who wanted an effective international system for the implementation of human rights" (p. 24). Indeed, she mostly focused on the practical dimension of human rights.

In particular, her ideas centered on institutional change at the international level for a universal protection of the human rights programme. She showed neither sympathy for long and detailed discussions about the historical foundations of human rights or on philosophical explanations about the nature of humanity, of the kind favored by Malik and Chang. From the beginning, Mehta spoke against a "vague resolution, including mystic and psychological principles" (UN Commission on Human Rights, E/CN.4/SR.15: 2), and supported a straightforward document. Her most notable proposal was an unsuccessful draft for a legally binding bill of human rights, which she introduced during the first session (UN Commission on Human Rights, Draft Resolution for the General Assembly Submitted by the Representative of India E/CN.4/11). Even if Humphrey (1984) criticized the attempt due to its lack of conceptual coherence and that it was missing support from her government (p. 26), her backing of the right of the Commission to receive petitions impressed him (p. 28). Moreover, Mehta often worked with delegates from western countries like Great Britain (UN Commission on Human Rights, E/CN.4/SR.54: 9) and supported William Roy Hodgson, the Australian delegate, with his idea of a kind of an international human rights court (UN Commission on Human Rights, E/CN.4/SR.27: 6). She aimed to constitute a general right to education (UN Commission on Human Rights, E/CN.4/SR.68: 6) and to asylum (UN Commission on Human Rights, E/CN.4/SR.57: 6). Furthermore, she was against any reference of human duties in the document (UN Commission on Human Rights, E/CN.4/SR.51: 3). The task was to draft a declaration of rights, not a list of obligations for citizens towards their society. Finally, Mehta was against detailed descriptions or unnecessary details: for instance, she was uncomfortable in discussions about the "nature" of families (UN Commission on Human Rights, E/CN.4/SR.58: 13) or debates on what a "good" social order meant (UN Commission on Human Rights, E/CN.4/SR.67: 2 and 3).

This short summary illustrates the distinct features of Hansa Mehta's human rights agenda. Firstly, there are striking differences to Chang and Malik concerning the importance of philosophical and historical discussions. Secondly, she focused on legal instruments and mechanisms for the implementation of human rights. Thirdly, she avoided issues like collective self-determination or social and economic rights during the drafting process, which is the most remarkable aspect about



Hansa Mehta (1897-1995) – A Practical Approach

Hansa Mehta from India was another non-European diplomat who influenced the development of the UDHR in a decisive way. As the only woman on the Commission, except for Eleanor Roosevelt, and as a former anti-colonial fighter against

her understanding of human rights norms. These topics were pivotal for anticolonial movements and the new independent countries, which assumed increasing importance in the 1950s and 1960s.

Conclusion

The discussion in the article shows the complexity and ambivalence of visions and concepts proposed by diplomats from non-European countries during the establishment of the UDHR. All three delegates discussed here were important actors in shaping the framework and the content of the UDHR. As explained above, they agreed on certain topics, and were opposed on others. For instance, they shared a consensus on the importance of human rights in general, the importance of universality in human rights, and the special role of education for the realisation of these rights. However, there were personal disagreements and difficulties between Chang, Malik, and Mehta in relation to certain ideas, priorities, and attitudes. These topics included the relevance of the historical and philosophical foundation of human rights for the future of the project, the integration of social and economic rights in

the structure of the document, and the relationship between humans and society with regard to duties and obligations.

The theoretical results of this article point to different, but interconnected, ontological and epistemological insights. First, it describes the general agency of individual actors from the Global South during the emergence of the human rights regime. Second, it confirms the plurality of human rights ideas, visions, and concepts from these diplomats. And third, it illustrates that diversity in human rights research and activism can be a helpful tool for the universal acceptance and realization of these norms. During the last decade, a diversity of scholarly literature was published by western and non-western academics that contributes to these findings. Some authors examined the role of women during this process (Adami 2019), while others focused on later periods of time (Jensen 2016) or development in non-European states (Ibhawoh 2018). The need for further studies on individual and collective actors from the Global South during the foundation and establishment of the international human rights regime is more important than ever. Social sciences and humanities can contribute tremendously for the universal recognition of human rights.



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The Universal Declaration of Human Rights (UDHR) and Post-War Constitutional Democracy: Common Origins

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Abstract: *The slogan “never again” permeated the post-World War II (WWII) politico-intellectual atmosphere. Societies endeavored to re-conceptualize the immediate past and ensure commitment to a safer and more just future. The WWII stigma drove many developments both in the international arena and constitution-making. The birth of new constitutionalism coincided with the rapid development of international human rights law, kicked off by the Universal Declaration of Human Rights (UDHR). The paper argues that the UDHR and post-WWII constitutionalism are premised on the same intellectual assumptions of democratic reason and personalism that emerged in interwar Catholic political thought. Post-war intellectuals designed three key safeguards that underpin both settings: (1) the transformation of human rights into claim rights; (2) containment of the people’s power to (re)establish the constitutional order (pouvoir constituant); and (3) embedding into the constitutional setting the idea of militant democracy (i.e., the ability of democratic constitutional order to defend itself against those who want to abolish it). The force and enigma of the UDHR stem from and are intrinsically linked to the post-WWII world order. It emerged from within a more general project of re-conceptualizing constitutionalism via human rights, but the “Grand Design” that underpinned its drafting remains fulfilled only partially.*

Keywords: *Constitutionalism; personalism; Catholic political thought; human rights as claim rights*

Introduction

The Universal Declaration of Human Rights (UDHR) opened a new era of human rights protection, and its provisions in-

augurated a dramatic growth of international and national legal frameworks for human rights and freedoms. Looking at the UDHR from a 70 years perspective, it might seem that its adoption was a logical and predictable development of the post-World War II (WWII) international community. But was it so? The UDHR and the human rights agenda appeared as a *deus ex machina*, if we take into account the prevailing academic and diplomatic discourses that predated the San Francisco Conference (i.e., the United Nations Conference on International Organization) and the subsequent struggle for the international bill of rights. Many national constitutions drafted after the collapse of European continental empires declared fundamental rights, but the enjoyment of those rights was preconditioned by citizenship and their enforcement depended upon legislative actions and state machinery. The majority of these post-WWI constitutions, however, collapsed under the death blows of collectivist authoritarian movements in the years preceding the Great War (i.e., WWII).

In the interwar period (1919-1939), human rights were predominantly perceived as collective rights. Collectivism underpinned the Minority Treaties system inaugurated at the Versailles Peace Conference (Fink, 2004; Mazower, 1997; Mazower, 1998: 40-76). International institutions – for example, the Permanent Court of International Justice, the League of Nations, and others – supplied the necessary legal and political corroboration to this vision of human rights. Both on the national level and internationally, the Versailles system remained a hostage of two competing forces: the need to tackle discrete populations and the influx of stateless persons, and the ideal of national homogeneity (Weitz, 2008: 1313). As collectivism, which rejected the classical liberal individualism of the 19th century, gained sway in the public discourses of the majority of European polities, the balance between the two forces swiftly tilted towards the authoritarian communitarian and totalitarian ideologies that gradually ousted democratic regimes in a majority of European states.

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The ensuing collapse of the interwar system and the disaster that was WWII required a re-conceptualization of the immediate past. The WWII stigma drove many developments both in the international arena and constitution-making, which brought about the rapid evolution of international human rights law and post-modern constitutional democracy.

Strangely enough, many core concepts of the modern human rights discussion – like dignity – appeared as no more than buzzwords in the diplomatic discourse that, within only a few years, acquired a clear legal import and meaning. Neither dignity nor human rights were even mentioned in the Dumbarton Oaks documents (Moyn, 2010: 85; Schabas 2013: lxxv)². Two years separate a passing reference to ‘dignity’ in the Preamble to the United Nations (UN) Charter (Łuków, 2018: 318–319; Vodiannikov, 2018: 50) from the legally coloured opening declaration of the UDHR, which reads “all human beings are born free and equal in dignity and rights”, and bears witness to a striking proliferation of the human rights agenda and dignitarian constitution-making in western Europe.

To explain these developments, we need to look at the broader context of social and political thought of the interwar and war periods, which paved the way for the Christian Democratic renaissance of post-war Western Europe (Kaiser, 2007: 163ff). Human rights came to the world not just as one part of the European reinvention of its humanism (Moyn, 2010: 87), but more crucially as an attempt to invent and erect effective safeguards against democracy dysfunctions and the reoccurrence of totalitarian disasters. The origin of the underlying idea of such safeguards can explain both how human rights transgressed from marginal discussions to a mainstream discourse, and why their evolution in international law has been continued over the decades.

The Christian Democrat Lineage of UDHR and Modern Constitutionalism

The 1789 French Declaration of the Rights of Man and of the Citizen was precisely about the rights of men and citizens. The French Declaration, which was solidly based on class, race, and gender difference (Winslow, 2004: 190; Rosenfeld, 2012: 340)³, inaugurated the era of rights of citizens of the new body politic, where enjoyment of such rights was predicated and directly linked to citizenship (Pulzer, 2004). Classical liberal thought between the 19th and early 20th century understood rights through membership in the body politic – i.e., the nation-state. A citizen’s personality was determined via national culture and the nation-state mediated the integration process.

Rights under such a paradigm were perceived as individual empowerments aimed at contributing to the nation. Inherently unequal, individuals were allowed to contribute to the national body politic in various ways that befitted them. And here laid the fundamental flaw that opened the totalitarian Pandora’s box of liberal democracy: rights and freedoms may only be accorded to members of the body politic and in relation to conduct that benefits the nation. A person detached from his or her nation, his or her political community, found himself or herself rightless. This paradox – the “right to have rights”

(Arendt, 1962: 296–297)⁴ – manifested itself in its acutest forms during the interwar period with its mass population movements and transfers, and later with persecution of minorities and the Holocaust.

The intellectual spirit of the interwar period was by no means conducive for human rights, which were perceived as a cor-

⁴ This human rights paradox was fuelled by the inherent tension between human rights and the modern nation-state: “[M]an had hardly appeared as a completely emancipated, completely isolated being who carried his dignity within himself without reference to some larger encompassing order, when he disappeared again into a member of a people. From the beginning the paradox involved in the declaration of inalienable human rights was that it reckoned with an ‘abstract’ human being who seemed to exist nowhere, for even savages lived in some kind of a social order. If a tribal or other ‘backward’ community did not enjoy human rights, it was obviously because as a whole it had not yet reached that stage of civilization, the stage of popular and national sovereignty, but was oppressed by foreign or native despots. The whole question of human rights, therefore, was quickly and inextricably blended with the question of national emancipation; only the emancipated sovereignty of the people, of one’s own people, seemed to be able to insure them. As mankind, since the French Revolution, was conceived in the image of a family of nations, it gradually became self-evident that the people, and not the individual, was the image of man” (Arendt, 1962: 291). In this sense, exclusion from a body politic entailed exclusion from mankind.

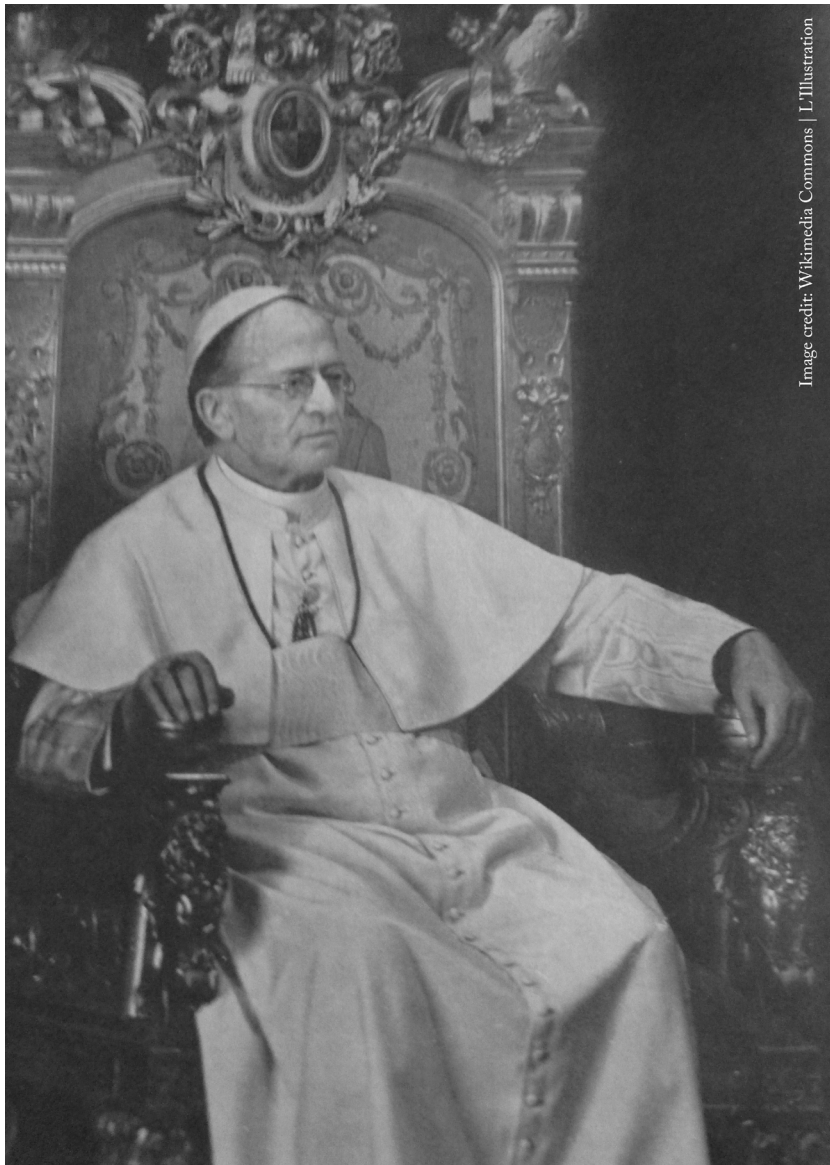


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² There was only one cursory reference: “promote respect for human rights and fundamental freedoms” (Dumbarton Oaks Proposals for a General International Organization, 1945: 19).

³ The same goes for the American Revolution (Wiesner-Hanks, 2011: 87)

nerstone of liberal democracy and antithetical to the nation-state. Private endeavours to propagate human rights (Baderin and Ssenyonjo, 2010: 5; Mazower, 2004: 385-386) remained sporadic, and were counteracted by the prevailing critics of individualism and propaganda success of communism in the West (Moyn, 2010: 91). Mark Mazover (2004) observes:

Between the two world wars, talk of rights was far less common than it would subsequently become, and not even groups like the National Council for Civil Liberties or the French League for the Rights of Man were much concerned with human rights in the broad sense we have come today to associate with the term. Some far-sighted international lawyers formulated noble declarations and tried to pressure the League into adopting them: almost no one, at the time, took any notice (Mazover, 2004: 379-380).

Post-Versailles parliamentary liberal democracies found themselves under growing pressure as immoral and individualistic from both popular revolutionary left movements and no less popular radical right-wing groups. Extreme communitarian ideologies – i.e., communism, fascism, and Nazism – found wide support as possible alternatives to democracy (Ertman, 1998: 476). Within a short period, the majority of countries in Central and Eastern Europe that had democratic constitutions gave way to authoritarian regimes⁵. No less spectacular democratic failures occurred in Italy, Spain, Germany, and Austria⁶.

Citizens of interwar Europe embraced authoritarian ideologies and suspicious attitudes towards liberal democracy not out of genuine hostility to parliamentary institutions. On the contrary, anti-liberal and anti-democratic ideas offered easy and plausible explanations to current plights of post-war societies and who should be blamed. And as these ideas permeated Catholic political thought in the 1920s and 1930s, they received legitimization and moral currency.

This period in Catholic political thought was marked by fierce debate between proponents of parliamentary democracy and adepts of an authoritarian version of corporatism (Patch, 2010: 402). These debates nurtured an intellectual environment wherein the human rights agenda emerged as mainstream in the post-war period international relations and constitution-making⁷.

⁵ In 1920, out of 28 European states only two (Hungary and Soviet Russia) were not parliamentary democracies. By 1938, thirteen of these democracies failed (Bermeo, 1997: 1-2).

⁶ Paradoxically, the democracy failures in many countries occurred against the background of an ever buoying civil society and associational life (Ertman, 1998, 498; for Weimar Republic, see Koshar, 1986: 179-208, 298-99; Koshar, 1987; Berman, 1997; for Italy, see Putnam, 1993: 148-151; Adler, 1995), and further expansion of suffrage, lobbied by antiliberal forces to expand their electoral support base (Ertman, 1998: 502).

⁷ It seems paradoxical that the transformation of human rights from an attribute of being a citizen into an inherent attribute of being a human and the reinvigoration of human rights discourse occurred in the same intellectual milieu as the proliferation and doctrinalisation of totalitarianism and communitarian authoritarianism. The idea of “total state” that was coined by Carl Schmitt originally meant something different from totalitarianism as it was conceptualised in post-WWII political thought. Total state in his interpretation was a remedy against popular and sovereign will that made the state weak – to be strong, autonomous, and prosperous, it should penetrate into areas, not previously regulated or supervised, to become total (Frye, 1966: 826). For Schmitt, the modern state strived for totality by penetrating “all domains and all spheres of human existence”, and this made it weak due to its incapacity to resist the onslaught of parties and organized interests (Caldwell, 2005: 366). What the state needed was to ensure control over the army and the bureaucracy, and leave other areas to self-management or

The turning point in Catholic political thought occurred in the last months of the pontificate of Pope Pius XI, which followed increasing pressure and assaults in Nazi Germany and fascist Italy on Catholic organisations and clergy (Conway, 2005: 202). Previously, the Holy See had focused more on collectivities like workers (‘Quadragesimo Anno’, 1931) and on sacraments like marriage (‘Casti Connubii’, 1930)⁸. The work of Catholic intellectuals Emmanuel Mounier and Jacques Maritain prepared the philosophical foundation for this shift, and political events in Nazi Germany prompted the Pope to find an alternative to communitarian totalitarianism (Moyn, 2010, 91; Moyn, 2014, 46). In 1937, through the *Mit Brennender Sorge* encyclical, the Pope emphatically proclaimed that “man as a person possesses rights he holds from God, and which any collectivity must protect against denial, suppression or neglect” (para. 30). A few days later in the *Divini Redemptoris* encyclical, Pius XI inaugurated the new doctrine of social justice and the personalist conception of rights against totalitarian collectivism:

In the plan of the Creator, society is a natural means which man can and must use to reach his destined end. Society is for man and not vice versa. This must not be understood in the sense of liberalistic individualism, which subordinates society to the selfish use of the individual; but only in the sense that by means of an organic union with society and by mutual collaboration the attainment of earthly happiness is placed within the reach of all. In a further sense, it is society which affords the opportunities for the development of all the individual and social gifts bestowed on human nature. These natural gifts have a value surpassing the immediate interests of the moment, for in society they reflect the divine perfection, which would not be true were man to live alone. But on final analysis, even in this latter function, society is made for man, that he may recognize this reflection of God's perfection, and refer it in praise and adoration to the Creator. Only man, the human person, and not society in any form is endowed with reason and a morally free will (Divini Redemptoris, 1937: para. 29).

This fundamental shift in Catholic political thought from collectivities (e.g., workers, family, community) to a personalistic vision of human beings with inherent rights became the direct antecedent of post-war human rights discourse. The encyclical effectively opened a new era as it provided the human rights discussion, previously neglected and marginalized, with the highest moral authority in the political sphere of the day. The work and statements of the next pope – Pius XII, who equally participated in drafting these messages – made the shift irreversible. These labors of the Pontifex and the doctrine espoused in the Christmas messages of 1942 and 1944 (‘Internal Order’, 1942; and, ‘Democracy and a Lasting Peace’, 1944) provided the intellectual nexus that integrated the constitution-building of post-war Europe and the international human rights regime into the same paradigmatic process. Quite telling of this was not only that this new Catholic doctrine was taken on board while drafting the Irish democratic constitution of 1937, where human dignity first acquired con-

to the free economy (Caldwell, 2005: 366). This line of thought appealed to the mainstream sympathy of the Vatican bureaucracy towards the corporatist state ideology later realized in Portugal and Austria (Patch, 2010: 401). But the intellectual context of Catholic social thought in the 1920s and 1930s was marked by fierce debate between proponents of parliamentary democracy and adepts of an authoritarian version of corporatism (Patch, 2010: 402).

⁸ As Gerhard Besier critically concluded, “On the level of theology and ideology [the Vatican] continued to support the authoritarian project of overcoming modern individualism and the democratic parliamentary systems. The political ideal of the Holy See remained the Christian corporatist state with a single state religion guaranteed by concordat” ((Patch, 2010: 409)

stitutional standing in its Preamble, but also in the draft of the Vichy constitution of 1944 (Projet de constitution, 1944) and strategically in Franco's Fuero de los Españoles (Spanish State, 1945). Not by chance the human rights agenda during the San Francisco conference and the UDHR drafting was predominantly sponsored by Catholic states of Latin America (Waltz, 2001).

The UDHR historical accounts are largely focused on the decisive role of the eminent drafters: Eleanor Roosevelt, John Humphrey, Rene Cassin, Charles Malik, Peng-chun Chang and others. These accounts also give credit to lonely voices of visionaries from the interwar period, and illuminate the personal role of former US President Franklin D. Roosevelt in the human rights struggle during the war period. But what should also not be overlooked is that the developments in European intellectual environment generated by the dramatic shift in Catholic political thought⁹ were those that made possible for the human rights agenda to be put on the table of the newly established UN and be taken seriously there.

“Never again”: Unfulfilled “Grand Design”

Both the world community and various nations hit by the WWII disaster faced the dilemma of re-conceptualizing the immediate past, and founding a new political order that would ensure a safer and more just future as well as establish safeguards against the reoccurrence of both democracy majoritarianism and right-wing fascist governments. In his last interview, Stéphane Frédéric Hessel, one of the UDHR drafters, outlined the “Grand Design” of the UN founding fathers:

In San Francisco, on 26 June 1945, a text was adopted in which it was said that from now on the human rights were to be the foundation of the new organization, and the organization was given a mandate to write a Charter of Human Rights. This Charter was to comprise a Declaration, a binding treaty, i.e. a Covenant, and possibly a Court, with authority to sanction the violations (Krapf and Hessel, 2013: 759–760).

The UDHR, therefore, was conceived initially not as a statement, but as a program (Krapf and Hessel, 2013, 759), that is to say, as a programmatic shift from collective rights to the ideal of individual rights capable of being enforced in courts of law.

However, as early as June 1947, the drafters of the declaration revisit the working conception: the document to be adopted should be brief, but include all the basic principles of a Bill of Human Rights. As Dr. Malik eloquently encapsulated: “It should be a fundamental matrix of doctrine from which positive law might be elaborated, a battle cry for freedom, for liberty, a Credo embodying the basic philosophy of the United Nations regarding human rights” (UDHR Travaux Préparatoires, 2013, 797).

This move was undoubtedly dictated by the difficulty of getting a more ambitious effort approved by the UN. In September 1948 the Commission on Human Rights presenting the draft had pointed out the declaration of human rights

⁹ Also telling is the fact that the first preliminary work for the declaration was undertaken by the Committee on the Theoretical Bases of Human Rights (or as it is conveniently called – the Philosophers’ Committee) assembled in 1946 by Jacques Maritain under the auspices of UNESCO (Global Citizenship Commission, 2016, 29). The findings of the Philosophers’ Committee were, however, rejected by the Human Rights Commission on procedural grounds and not distributed to the UN members (Normand and Zaidi, 2008, 185; Stamos, 2013. 68–69).

was only the first step in the elaboration of the human rights programme called for by the Charter; it was essential that it should be followed by a covenant of human rights, drafted in the form of a treaty, and containing provisions for implementation (UDHR Travaux Préparatoires, 2013, 2038). Eleanor Roosevelt made it clear: the draft declaration was “a statement of basic principles of inalienable human rights, setting up a common standard of achievement for all peoples and all nations” (UDHR Travaux Préparatoires, 2013, 2038).

The new world order concept cherished by the UN founding fathers and the UDHR drafters was based on the idea of the revival of democracy. As Hessel encapsulated, at the time of UDHR drafting, “the word in use to define evolving societies was the word ‘democracy’. And it was assumed that all states had to be democratic” (Krapf and Hessel, 2013: 758). But in contrast to the procedural democracy of the interwar period, the new form of democratic government was construed as embedding strong safeguards against majoritarian abuses. Constitutional democracy that emerged in that period sought to combine institutional settings bestowed with different sources of legitimacy (i.e., popular elections, the rule of law, and the constitutional judiciary) with higher ranking principles and values (i.e., human rights) that were legally enforceable even against the majoritarian whims of the day (Pinelli, 2011: 6).

Those intellectual forces that underpinned the UDHR drafting and its public support played no less of a prominent role in constitution-making. This endeavor to implement “never again” is specifically eloquent in the preparatory work for the German Grundgesetz (Basic Law), in other words, the records of negotiations concerning the German constitution. To the drafters of the German post-war constitutional act, it was essential to enshrine a system of government such that it could at all costs prevent any possibility of another lawless regime (Unrechtsregime) (Borowski, 2003: 159). The new inventory of democratic safeguards that emerged in the post-war German constitutionalism includes: (1) the transformation of fundamental rights of the constitution into legal rights or claim rights (Borowski, 2003: 160); (2) effective protection of human rights and democratic values by a constitutional court, capable to overturn will of parliamentary majorities that assaults human rights or values; (3) restriction of the parliament to amend the constitution – a clear reference to the Nazi party seizing power in 1933 with the help of parliamentary procedures; (4) the doctrine of “militant democracy” (streitbare Demokratie) – i.e., the ability of democratic constitutional order to defend itself against those who want to abolish it (Wise, 1998: 302).

So the founding fathers of the Grundgesetz and the UDHR pursued a similar philosophy, and in a similar fashion tried to establish safeguards against totalitarian menace. However, unlike their German colleagues, the UDHR drafters found themselves in a situation where neither a binding human rights treaty nor an international human rights court were feasible¹⁰.

¹⁰ Ironically, the opponents of the UDHR accused the declaration of resurrecting individualism (UDHR Travaux Préparatoires, 2013: 2273, 2479, 2994, 3074) – in the same spirit as interwar Catholic political thought waged struggle against liberal democracy. A highly condensed argument was presented by Yugoslav representative Mr. Radovanovic during General Assembly debates:

The text before the Assembly was based on individualistic concepts which considered man as an isolated individual having rights only as an individual, independently of the social conditions in which he was living and of all the forces which acted upon his social status. The Declaration of the Rights of Man of 1789 might have been drawn

So the idea that became the cornerstone of German constitutionalism – human rights as claim rights – evaporated from diplomatic discourses for years.

Confronted with political reality, the UDHR drafters formulated the declaration as a non-binding and inspirational document with a genuine hope that it would be followed by legally binding, programmatic instruments. The moral authority of the UDHR, its humane, liberal, and democratic import, made it very dangerous for any totalitarian regime, especially the Union of Soviet Socialist Republics (USSR)¹¹. Rapidly changing political environment during the first years after WWII, and growing tension between Western democracies and the Soviet bloc countries made the human rights agenda a battlefield of ideologies.

Nevertheless, the UDHR produced a lasting moral impact. It was later followed by two general covenants of legally binding nature (the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), which came into force in 1976, and a plethora of special conventions addressing particular human rights aspects (e.g., International Convention on the Elimination of All Forms of Racial Discrimination, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Rights of the Child, and others). The UDHR inspired the drafters of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), signed two years after the UDHR. The ECHR not only refers to the UDHR in its Preamble's first clauses, but follows the "Grand Design" as well: with human rights as claim rights, and a tribunal to protect them and sanction their violation.

Conclusion

The UDHR saw daylight as part of the establishment of the post-WWII constitutionalism, both national and international, which emerged as an alternative to the liberal democratic and

secular constitutionalism of the interwar period – "the newer constitutionalism" of the Christian Democracy revival in Europe (Moyn, 2014: 44). This constitutionalism, which emerged from Catholic political thought and was fostered by the Christian Democratic revival, is premised on a methodological apparatus where the principles of constitutional democracy and international human rights converge.

The rationale behind the new international human rights discourse kicked off by the UDHR has been well captured by Michael Ignatieff: "Our grounds for believing that the spread of human rights represents moral progress [...] are pragmatic and historical. We know from historical experience that when human beings have defensible rights – when their agency as individuals is protected and enhanced – they are less likely to be abused and oppressed" (Ignatieff, 2001, 4).

Post-WWII constitution-makers in Western Europe implemented the "Grand Design" into contemporary constitutional democracy with its enforceable constitutional rights, representative government, and proactive judiciary. The initial "Grand Design" of the UDHR drafters – a Charter of Human Rights, comprising a Declaration, a binding treaty, and a Court to sanction violations – remains fulfilled only partially. The claim of universality embedded in the document was discarded by the realities of the Cold War. The collapse of the bipolar world order almost thirty years ago delivered a great promise of a new international system of governance based on the core values of human rights, democracy, and the rule of law as contemplated, among others, in the UDHR.

But the post-cold war international order is still characterized by two conflicting concepts: a liberal international order founded on universal liberal values of democracy, the rule of law, and market economy; and, a conservative international order, founded on coexistence, promoting policy coordination, and the ability of states to pursue their own national interests (Odgaard, 2013, 15). Regrettably, today's world is no less distant from realizing the UDHR "Grand Design" than it was seventy years ago.

In reality, the most important impact that the UDHR had was on two areas not contemplated by its drafters – national constitution-making and the ECHR model for regional human rights treaty systems. Serving as a morally imperative reference point for national constitution-makers and the national constitutional bench, the UDHR thus shapes and reproduces a cross-dimensional continuum of human rights protections through national constitutions, constitutional jurisprudence, and international law.

up on such a basis. At that time it represented a revolt against the feudal slavery of man and was the expression of a new and progressive concept of individual freedom. However, the individualistic doctrine which had liberated man from feudal slavery, at the end of the eighteenth century, had re-introduced that slavery in the course of the social development which had taken place during the second half of the nineteenth century, and in particular during the current century, within the framework of a new social capitalistic order which had brought man into a situation of dependence and economic subjugation (UDHR Travaux Préparatoires, 2013, 3074).

¹¹ It is difficult to identify when the Russian text of the UDHR was first published or made available in the Soviet Union. The earliest records refer to the Russian version of the UNESCO Courier of 1958 (No.10), celebrating the tenth anniversary of the UDHR.

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The Right to Food Remains a Silent Battle in South Africa

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Abstract: This paper focuses on the application of the Universal Declaration of Human Rights (UDHR) within the South African context through the lens of securitization, and on the case of access to food being a security issue that needs to be prioritized accordingly. The failure of translating the UDHR into fully realized commitments by the South African government affects the socio-economic prospects of the state in the long term, since the lack of food limits the ability to academically excel as well as to make meaningful societal contributions, which would contribute to the achievement of other articles of the UDHR as well as South Africa's pledges to the Sustainable Development Goals (SDGs)¹.

Keywords: Access to food; human rights; security; South Africa

Introduction

The perspective of this article is that access to food is not only a human right, but also an issue of socio-economic justice, and – ultimately – human security in the broader sense. This article reflects on whether the Universal Declaration of Human Rights (UDHR) remains a relevant vehicle for the promotion of human rights within the South African context specific-

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ly, and understanding food security as a human right. It looks at the commitments made in the UDHR, the post-Apartheid South African constitution, and their translation into actionable Sustainable Development Goals (SDGs) to be achieved by 2030. It reviews progress to assess both success and failures, and concludes that positive lessons on delivering human security at the most basic level – i.e., access to food – can be learned from the review in question.

This article uses the research methodologies of documentary analysis and literature review as well as a conceptual framework of securitization theory. It is focused on the UDHR, specifically Article 25, and the access to food.

Human Security

Traditional security studies were adequate until the early 1990s. However, after the fall of communism during the 1990s in the Union of Soviet Socialist Republics (USSR) and in Eastern Europe as well as after the Al-Qaeda terrorist attacks in the United States of America in 2001, the debate over the nature of “security” intensified. Questions such as what is the referent object of security became more pressing. Ken Booth (1991) argued against the notion that the state is the sole referent object of security, and developed his argument that emancipation of humans is intrinsic to security, thus redefining the concept of security to mean the absence of threats. Booth and Richard Wyn Jones pioneered what is known as the Welsh School, which considers that to be free means to be secure. To be free means that one is not only free from external threats, but also free to choose the way one lives. Christopher S. Browning (2013) quotes from the 1994 United Nations Development Programme (UNDP) Human Development Report to expand the definition of security beyond war and to those aspects that concern everyday human survival.

The Preamble of the UDHR specifically linked human rights to not only peace, but also to freedom and justice. Notably, the realization of such freedom was set forth in the Preamble to be achieved by the member states in cooperation with the United Nations (UN).

The Universal Declaration of Human Rights (UDHR)

Any discussion of the UDHR must be understood within the background of the United Nations General Assembly (UNGA) meeting in Paris that adopted resolution 217 (A), which ratified the UDHR in 1948. The Second World War, which took place between 1939 and 1945, had traumatized millions, and caused an aftermath of damage from which it took decades to recover. According to the World Population Review (2019), more than 100 million people from 30 different countries participated in the war either on the side of the Axis or that of the Allies. It is the war with the most human casualties to date, estimated to have killed between 50 and 55 million civilians in addition to between 21 and 25 million military deaths. The UNGA in 1948 wanted to put measures in place worldwide establishing universal standards that would prevent the devastation caused by the World Wars. It is understandable then that the UDHR was an ambitious statement of intent, which importantly stated in layman terms that while state sovereignty was to be respected, the UDHR superseded domestic and international law. No matter your country of residence, your race or your religion, these rights were internationally recognized as being universally due to every human being.

Furthermore, Article 25 (1) of the UDHR states:

Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control (UNDR, 1948: Article 25 (1)).

For the UDHR, all people, irrespective of their status or background, are entitled to a decent standard of living, including access to food. Article 25 is in line with Article 1, which sets the tone for the entire document: “All human beings are born free and equal in dignity and rights”. (UDHR, 1948: Article 1). The document is admirable in its aim to create a just, peaceful, and equitable world. Article 8 addresses socio-economic justice by declaring that all have the right to redress for “acts violating the fundamental rights accorded to him by the (national) constitution or by law” (UDHR, 1948: Article 8). Article 22 goes further in stating that “everyone as a member of society, has the right to social security” and, perhaps most importantly, “to realization through national effort and international co-operation” (UDHR, 1948 Article 22). There is no ambiguity within the UDHR regarding the fact that all humans have inalienable socio-economic rights, including those directly related to health and well-being, of which access to sufficient food can be argued to be the most basic.

It is important to note that the South African Human Rights Commission (SAHRC) (2018) recognizes that South Africa did not sign the UDHR in 1948. However, when former President Nelson Mandela signed the post-Apartheid constitution into law, the date in which it was done was symbolically and specifically chosen to be 10th December 1996, so as to acknowledge the spirit of embodiment of the UDHR in the constitution, since the latter was adopted on 10th December 1948.

The South African Constitution

The post-Apartheid South African Constitution and Bill of Rights set the foundational basis for governance, law, rights, and responsibilities of all people who reside in South Africa. One of the fundamental constitutional rights is the access to “sufficient food and water” (Constitution of the Republic of South Africa, 1996: (27) (1) (b)). Problematically, this core right lacks a specific definition of what “sufficient” is or which specific sphere of government has the primary responsibility to fulfil the mandate.

The SAHRC (2012) declared their 2012–2013 theme as the right to food. The former chairperson, Advocate Lawrence Mabendle Mushwana (2012), noted in a speech to commemorate Human Rights Month that “in 2001 the African Commission on Human and Peoples’ Rights recognised that the right to food falls under the African Charter on Human and Peoples’ Rights as recognized implicitly by article 4 (right to life) and article 16 (right to health) of the African Charter”. He elaborated that whilst not legally binding, the 2004 Right to Food Guidelines in the Context of National Food Security adopted by the UN Food and Agriculture Organisation (FAO) was an important document to assess how far South Africa had come, after 20 years of political freedom, to ensure that the right to food was realized.

A year later, the Legal Resource Centre (Southern Africa Legal Services Foundation, 2013) clearly articulated that South

Africa is in a state of “unconstitutional” affairs, given that, two decades after Apartheid, many of the basic guaranteed constitutional socio-economic rights have failed to be adequately implemented in spite of litigation and court orders that compel government action.

That there are no coordinated national legislation or policies in this regard further complicates the matter. In addressing the listeriosis outbreak of 2017–2018, which can be reasonably extrapolated to general weaknesses in the food security system, Professor Lise Korsten (2018) explained that South Africa was ill-prepared for the outbreak due to a combination of factors including piecemeal legislation and the food industry’s self-regulatory system, which includes the absence of standardized health and safety regulations. Prof. Korsten argued that the scale of the outbreak was a result of the lack of a central governance authority equipped with enabling legislation, human capacity, and required resources. The bottom line was that South Africans would never be fully food secure unless there was political will to properly coordinate, steer, and implement such matters. This lack of prioritization and of political will was demonstrated in the incumbent President’s 2019 State of the Nation Address (Ramaphosa, 2019), which gave food security only two passing references. A few weeks later, the National Budget Speech (Mboweni, 2019) failed to address the issue at all.

The 2030 Agenda for Sustainable Development and Sustainable Development Goals (SDGs)

The UNGA, having realized that urgent attention was required to actualize the economic security articles of the UDHR, adopted resolution 70/1 in 2015, which established 17 Sustainable Development Goals (SDGs). Two years later, the FAO (2018) issued a warning that an estimated 821 million people worldwide remained under-nourished and food insecure. According to the FAO, SDG 2 – which aims to end hunger, achieve food security and improved nutrition, and promote sustainable agriculture – was not on track to be achieved by 2030, that is to say, to eradicate hunger and malnutrition worldwide.

The failure to enact the right to access sufficient food has consequences beyond hunger. According to Walthouse (2014), chronic hunger and malnutrition affect all aspects of education and life, because food is the fuel the human body requires to undertake all activities. It has physical and psychological effects in the short and long-term. These include: increased vulnerability to lifestyle diseases such as high cholesterol, diabetes, and hypertension; lowered immunity leading to chronic illness; and, behavioural problems and environmentally induced mental illnesses such as depression and anxiety disorders. This means that primary to tertiary students’ brains cannot function optimally for them to achieve desired educational outcomes. Likewise, work is compromised by the inability to have the energy to carry out tasks efficiently and effectively. In the South African context, it is particularly devastating, since it places an enormous burden on the education and health public sectors as well as initiatives to create employment and overcome inequality.

The State of Food Access in South Africa

In a recent survey by Statistics South Africa (Stats SA, 2019) measuring the extent of food insecurity in South Africa, it was reported that while the number of people who experienced

hunger at some point in their lives decreased to 13,5 million in 2002, it continued to remain high at 6,8 million in 2017. Effectively, this translated to 1,7 million households across South Africa being food insecure. In perspective, Stats SA pronounced in the report that while South Africa as a country and at the national level was food secure, almost 20% of South African households in 2017 had inadequate access to food. Quoting Oxfam (2019; see Stats SA, 2019), it explained that food insecurity was considered to be a state in which people were unable to access sufficient, safe, and nutritious food to meet their dietary and lifestyle requirements.

Progress has been made, but as Moyo (2019) has argued: “The inability of a large proportion of South African households to reliably access the necessary levels of nutrition is a fundamental aspect of perpetuating cycles of poverty”. He echoed the sentiments of Korsten (2018), having noted that though the right to food has been legislated since 1994, it was disjointed resulting in an inability, a quarter of a century post-Apartheid, to fully realise the right to food.

Conclusion

The UDHR was enacted 71 years ago. The post-Apartheid era constitution was adopted in 1996: 23 years ago. The symbolic signing of the Constitution on the same day the UDHR was adopted 48 years prior entwines human rights centred documents, which indirectly espouse Abraham Maslow’s hierarchy of needs (1943), of which access to food is the most basic level of need, being physiological.

The Stats SA (2019) report clearly showed that progress had been made to overcome food insecurity. Whilst the progress is to be applauded, the remaining 20% unable to secure the most basic of needs cannot continue to battle in silence. This food insecurity creates an inhuman cycle in South Africa, which is still grappling two decades after the arrival of democracy with the triple challenge of poverty, inequality, and unemployment.

Empty stomachs cannot fulfil the potential of the mind. Food security plays a critical role in achieving the mission that the UDHR set out in 1948, that the South African government domesticated in 1996, and that the UNGA in 2015 attempted to revive through the 17 SDGs in practical, measurable, and achievable terms. It should be a cause for concern that the FAO (2018) warned that SDG 2 is unlikely to be achieved by 2030.

We must positively and iteratively reflect on the successes and failures of access to food in South Africa as a basic human right envisioned in the UDHR. The question is not whether the UDHR remains a relevant vehicle: its basis is undoubtedly sound. The question is how to gain re-committed traction to the letter and spirit of the UDHR embodied in the South African constitution so as to overcome food insecurity. What are now required are the political will and clear multi-sectoral strategy to achieve sustainable human security and socio-economic justice for all those who live in South Africa, starting with access to sufficient food.

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How Climate Change and Environmental Sustainability Relate to Human Rights: A Clean Cooking and Indigenous Peoples' Perspective from Kenya

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Abstract: *“Climate change as well as climate policies can have adverse effects on human rights of certain population groups – and can exacerbate situations of injustice. As it stands today, the human rights regime [including the UDHR] is not set to sufficiently address these situations of climate injustice” (Schapper, 2018: 275). To preserve the country’s forests and address adverse climate change impacts, the Kenyan government has opted to ban logging and evict people from public forests. Prices of biomass fuels have consequently skyrocketed as the commodity becomes scarce. Approximately 82% of the Kenyan population cooks with biomass (e.g., firewood and charcoal). Indigenous peoples (IPs), who have historically inhabited and primarily depend on public forests for their economic, social, and cultural survival, have been disproportionately affected. The government is at odds with itself in balancing between environmental sustainability and addressing climate change effects, on the one hand, and promoting climate justice and human rights of its citizens, on the other.*

Keywords: *Climate change; rights of indigenous people (IPs); clean cooking; environmental sustainability; climate justice*

¹ Indigenous peoples (IPs) are recognised and referred to as marginalised communities under Article 260 of the Constitution of Kenya (Republic of Kenya, 2010), and include pastoralists, hunter-gatherers, and fisher peoples.

Introduction

Approximately 82% of the Kenyan population cooks with biomass (e.g., firewood and charcoal) (Energy4Impact, 2013). In rural areas, wood is used by 88.2% of the population (Clough, 2013). It is estimated that about 37% of the households use biomass for improved cook stoves (ICS)², meaning that a significant proportion of households (over 50%: i.e., approximately 5 million households) still use traditional biomass cook stoves³. Consequently, fuelwood consumption remains one of the major factors for degradation of Kenya’s forest resources⁴. Significantly, 92% of biomass consumption in the country is categorized as non-renewable⁵, which poses an obvious threat for the future. Whilst cost is a significant factor affecting fuel

² Improved cook stove (ICS): a stove with thermal efficiency of at least 25% (firewood stoves) and up to 30% (charcoal stoves) and lower emissions, based on the standard Water Boiling Test (WBT). Also: a stove that saves at least 40% more fuel than a traditional stove (i.e., three-stone fire and traditional metallic charcoal stoves), based on a Controlled Cooking Test (CCT).

³ A traditional biomass stove is characterized by lower thermal efficiency (less than 10% for firewood stove and less than 20% for charcoal stoves) and high emissions, according to the Kenyan national definition established by the Kenya Bureau of Standards (KEBS).

⁴ The demand of wood in Kenya is estimated to be about 1 cubic per capita per year, the majority of which (i.e., 84%) is used for wood fuel (i.e., firewood and charcoal).

⁵ Default value of fraction of non-renewable biomass in Kenya under the United Nations Framework Convention on Climate Change (UNFCCC)

purchase, availability and minimum quantity sold, social and cultural factors are also important. Many households in rural areas can collect firewood for free, although it is becoming increasingly unavailable. Indigenous women, including girls, are the primary collectors of firewood and residue fuels for household use.

Kenya extensively depends on forest resources. The forest cover has been dwindling over the years. According to a report by a taskforce set up by the country's Ministry of Environment and Forestry, Kenya's forest cover is estimated to be about 7.4% of the total land area, against a global minimum of 10%. Furthermore, Kenya's closed canopy forest cover currently stands at about 2% of the total land area, compared to the African average of 9.3%, and a world average of 21.4 per cent (Ministry of Environment and Forestry of Kenya, 2018).

In recent years, Kenya's forests have been depleted at an alarming rate of about 5,000 hectares every year. This is estimated to lead to an annual reduction in water availability of approximately 62 million cubic metres, translating into an economic loss to the national economy of over US \$19 million. The depletion has the potential to rollback strides towards the attainment of Kenya Vision 2030 and the government's Big Four Agenda of food and nutritional security, affordable and decent housing, universal healthcare, and manufacturing, if it is not urgently addressed (Ministry of Environment and Forestry of Kenya, 2018).

According to the Taskforce Report on Forest Resources Management and Logging Activities in Kenya, the forest sector is key to Kenya's social and economic well-being, since most of the country's economic sectors rely on natural resources for their sustenance, contributing approximately US \$70 million to the economy, and employing over 50,000 people directly and another 300,000 indirectly. Forest ecosystems also enhance landscape resilience to climate change. In the country's water towers, forests provide environmental services that include water quality and quantity, reduction of soil erosion, and creation of micro-climatic conditions that maintain or improve productivity. Forests are also known to be among the most effective sinks of greenhouse gases, which cause climate change, and hence they are important in contributing to climate change mitigation (Ministry of Environment and Forestry of Kenya, 2018).

Government Response

As a measure to address deforestation and the threats that come with it, as well as making strides toward achieving the global target of 10% forest cover, the government of Kenya, in February 2018, issued a six month ban (i.e., moratorium) on logging (Gitonga, 2018). According to Owino (2018), the ban was extended by one year in November 2018. Throughout the same year and in 2019, the government then embarked on evicting people from reserved forests historically inhabited by hunter-gatherer IPs (Yussuf, 2018). Such evictions clearly pose a conflict between forest conservation and the human rights of the IPs, who rely on forests for subsistence hunting, fishing, and gathering as well as wage livelihoods. In addition, IPs also get biomass from forests, which they use for cooking, lighting, and space heating, while most biomass users rely on it only for cooking.

Unlike other users of biomass, who may have access to alternative energy sources based on their localities and eco-

nomics status, IPs such as hunter-gatherers live in forests, and have limited options besides biomass – the use of which is also influenced by cultural and traditional practices. These IP cultural guidelines require that IPs use only dead wood, for instance, and prohibit logging, while encouraging tree cover preservation. It is thus clear that IPs, unlike most other users of biomass, do not contribute to deforestation through logging. On the contrary, IPs play a unique and major role in forest conservation, as reported by Kaptoyo (2018) in her article *Ogiek gives face to Kenyan forest*.

Major logging activities, as pointed out in the Taskforce report, are carried out by private business, illegal charcoal burners and dealers, as well as people who illegally encroached the forests and cleared large portions of it to do crop farming. It has been stated that some of the latter residents in public forests even possess title deeds controversially issued by the government for their occupation (Tiampati, 15th July 2005).

While issuing the extension of the forest logging moratorium, the Minister for Environment stated that the extension of the ban would facilitate rehabilitation of forests. More importantly, he remarked that the extension would allow the tree planting campaign to be scaled up as the ministry aims to achieve 10 per cent forest cover by 2022 (Kariuki, 2018). The same argument has been advanced for evictions of forest dwellers



(Ministry of Environment and Forestry of Kenya, 2018).

Effects of Government Response

The logging ban has however solicited adverse reactions from several quarters. Owino (2018) reports that the National Assembly Committee on Environment and Natural Resources called on the Minister to lift the ban, since it had stalled the financing of the Kenya Forestry Services (KFS), which heavily depends on sales of matured logs. It was reported that since the ban, KFS had lost approximately 1.8 billion Kenyan shillings (US \$18 million) in sales revenue. The association of constructors added to the revolt by revealing that the cost of construction materials had not only skyrocketed but that these were also scarce.

The social costs are also severe. In the scarcity of biomass fuels, we can argue that just like rural women, IP women experience energy poverty and their energy needs are not met, resulting in severe consequences. For IP women, the options to earn additional income to cater for alternative energy sources



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are minimal, the opportunities to improve their labour productivity are low, and the options for social and political interaction outside the household are restrained. Women deprived of such basic energy services are less likely to earn a living, stay healthy, and have time for learning and fulfilment. These conditions create further barriers to women's ability to voice their energy concerns and claim their economic, social, and cultural rights, reinforcing women's exclusion and exacerbating their problems (Energiya, 2016). Energy poverty further undermines the realization of the Sustainable Development Goals (SDGs), specifically SDG 7, which aims to achieve affordable and clean energy for all.

Policy Responses

In their report, *Policy Matters: Regulatory Indicators for Sustainable Energy*, Foster, et al. (2018) state that "the world as a whole is only about half way towards the adoption of advanced policy frameworks for sustainable energy [...]. The same is true whether one looks at policy frameworks for energy access, renewable energy, or energy efficiency. This slow pace of policy adoption threatens the achievement of the SDG7 goals by 2030 as well as the Paris Agreement climate goals" (p. 2). Similarly, the United Nations Economic Commission for Africa reiterates this position in *Accelerating SDG 7 in Africa: Policy Brief 8* (2019), stating:

Not all countries can achieve the SDG 7 targets with their current policies, levels of ambition, and pace and scale of investment [...]. The low level of access to clean cooking fuels and technologies is evidence of a lack of robust policies and actions to deploy them, particularly in rural areas. Only 17 per cent of sub-Saharan Africa had access to clean cooking in

2017, compared to 12 per cent in 2010 and 13 per cent in 2015. The majority of rural households continue to rely mostly on traditional biomass for cooking (United Nations Economic Commission for Africa, 2019: 92).

The National Energy Policy of Kenya by the Ministry of Energy emphasizes electricity and fossil fuels use, but mentions the importance of biomass fuels, upon which most people depend for their cooking needs. Muigai (2013) notes that the existing legal and institutional framework in Kenya does not effectively promote the realization of the right of access to energy. Currently, Kenya's Ministry of Energy is developing a biomass strategy (KEPSA, 2016), which is a positive step towards guiding access to energy by all. Without significant political commitment and investment though, energy poverty is set to increase even further over the next 20 years as projected in the report by the International Energy Agency (IEA) (2010), *World Energy Outlook*, which notes that 1.2 billion people will still lack access to electricity in 2030, 87% of them living in rural areas; the number of people relying on biomass for cooking will rise from 2.7 billion in 2010 to 2.8 billion in 2030.

Lack of adequate policies and other measures to accelerate access to clean, reliable, affordable, and sustainable energy sources have trapped IP women into the use of biomass, the only free source of energy. According to Piddock et al. (2014), smoke from burning biomass fuels for cooking, heating, and lighting is the main contributor of high household air pollution levels in low-income countries. Kenya is not an exception: typical indoor concentrations of important pollutants, such as respirable particulates – e.g., carbon monoxide, benzene, and formaldehyde from biomass – are excessive in comparison to emissions parameters in cook stoves standards. The Kenya



Cooking Sector Study cites Kenya's Ministry of Health, which reports that 21560 Kenyans die annually due to Household Air Pollution (CCAK & MoE, 2018).

Access to Energy as a Rights Issue – Adherence to UDHR

Individual energy users – men and women – are rights-holders who have a legitimate claim on the state to be the primary duty bearer to protect, promote, and uphold their rights to access basic energy services. Still, IP women face institutional barriers to the realization of their rights – also referred to as “rights failures” – in different ways, mainly because gender inequalities are produced and reproduced by energy system governance institutions, as posited by Danielsen (2012). Moreover, the rights of IP women – for example, land and property rights – are suppressed because of unequal gender relations and because women are not given the privilege of being seen as rights-holders in their own right.

Energy is critical to economic development and poverty reduction. The provision of reliable, affordable, and sustainable energy services, especially for the poorest, contributes decisively to the achievement of the SDGs. Without energy, economies cannot grow and poverty cannot be reduced. Such poverty is arguably a multifaceted issue, and one aspect of poverty is lacking access to energy, which is referred to as energy poverty.

With the actions explained above in place, the government is at odds with itself as it contemplates a balance between environmental sustainability and adherence to climate justice for its citizens as encapsulated in the UDHR.

Indigenous peoples (IPs), particularly hunter-gatherers, who – as explained before – rely entirely on forests for their economic, social, and cultural needs, have been disproportionately affected by the government's actions. 4400 have been left homeless and facing the fact that biomass fuels prices have skyrocketed as the commodity increasingly becomes scarce. Amnesty International (2019) reports that the evictions in particular, carried out without consultation, without the free, prior, and informed consent of the affected indigenous peoples, and without adequate and culturally appropriate compensation, have led to a failure in ensuring access to justice, including appropriate remedies, and to ensuring adequate and culturally appropriate housing, including the right to security of physical integrity and access to livelihoods (p. 2). For these reasons, the economic, social, and cultural rights of Indigenous peoples have been adversely impacted.

The issue of access to energy is related to an adequate standard of living as articulated in Article 21(5) of the UDHR:

Everyone has a right to standard of living adequate for the health and wellbeing of himself and his family including food, clothing, housing and medical care and necessary social services (UN General Assembly, 1948: Article 21(5)).

The government action to evict IPs from their historical lands infringes their right to housing. Limiting IPs' access to energy sources infringes on their right to an adequate standard of living too. It is also noteworthy that failure to put in place measures (e.g., policies and programmes) that provide IPs with alternative clean energy alternatives is a failure in providing a standard of living adequate for the health and wellbeing of the

individual – especially given the harmful impact of biomass, which is the only accessible option for IPs in the current state of affairs.

The government in its efforts to provide social services should also provide viable alternatives to IPs that rely on biomass. These alternatives should include pro-marginalised viable alternatives such as improved, clean, reliable, and sustainable cooking stoves, which are biomass-based and built with easily available materials. These alternatives should prioritise context and culture specific cook stoves, and should not affect the means and costs through which IPs access energy sources.

The unaffordable cost of alternative clean cooking stoves has been a deterrent to access of IPs to better energy sources and the government should put in place measures, including subsidized costing to enable IPs to access these.

Article 7 of the UDHR provides that:

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination (UN General Assembly, 1948: Article 7).

In this sense and as argued, the governmental actions have had a disproportionately deleterious effect on women's and young girls' rights, demonstrating their discriminatory nature.

Rights failures in reference to energy systems concern two interrelated areas: 1) the lack of recognition of IP women's energy needs, knowledge, and contributions, and 2) the unequal distribution of control over energy resources and benefits from energy services between women and men. These are a result of the underlying cultural and social norms that shape the roles and relationships between IP men and women. Such norms permeate energy system structures and institutions, including their legal and regulatory frameworks, policies, and programmes.

IP women's right to energy fails because there is a lack of recognition of the value of IP women's work (no economic value is attached to biomass collection by women), lack of recognition of the value of IP women's roles (investing in improved cooking technology is neither prioritized at household nor at national levels), and lack of recognition of IP women's multiple roles (their work in agriculture and as entrepreneurs is not sufficiently recognized). More fundamentally, women internalize social norms that place a low value on their worth and contributions, negatively affecting their access to modern energy services.

Relatedly, IP women also face difficulties in benefitting from energy services because of inequitable access to resources. For example, women lack control over land and property (which limits their ability to benefit equally to men from energy facilities – such as solar systems, wind turbines, and biofuel plantations – that require land), lack income (which is a barrier for investing in technology that improves the productivity of IP women's labour), lack access to credit (which limits their ability to pay the up-front costs of improved energy technology or connection fees to the electricity grid), and have limited access to extension services and education (which limits their abilities to become energy entrepreneurs and earn an income).

The government's actions further fail to consider the report of the Intergovernmental Panel on Climate Change (IPCC), which noted that climate change has different impacts on societies, varying among regions, generations, ages, classes, income groups, occupations, and gender lines, and at a number of levels (i.e., economically, socially, psychologically), and in terms of exposure to risk and risk perception. Equity and social justice cannot be achieved without recognizing both the differences in vulnerability and the strengths of women, men, and children (especially indigenous women and girls), besides the various factors contributing to their vulnerability. This recognition is critical for any prospective attempts to address the gendered consequences of climate change on livelihood (Rimait, 2011). In this regard, government efforts must take into consideration the effects of climate change, and any remedial action taken must do so in relation to biomass availability and the resultant effects on biomass reliant livelihoods, including those of indigenous peoples, as well.

Given the clear violation of the economic, social, and cultural rights of IP women, the government has further disregarded provisions of the UDHR, particularly Article 22, which states:

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international cooperation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality (UN General Assembly, 1948: Article 22).

As explained above, the economic, social and cultural rights of these indigenous peoples, particularly hunter-gatherers, have been impacted adversely by these governmental actions. In addition, violation of cultural rights contravenes Article 27 of the UDHR which states: "Everyone has the right freely to participate in the cultural life of the community" (UN General Assembly, 1948: Article 27). The communities are no longer able to access dry biomass for cooking compared to other non-traditional cooking fuels. Furthermore, they are unable to light fires in the evenings, around which storytelling would take place among community members as they keep warm. The IPs are also hindered from communally collecting dry biomass during designated time periods, which is habitual and culturally relevant to them.

Recommendations

This article has highlighted how the government's response to the dwindling forest cover in the country, while in good faith, has resulted in the violation of the rights of indigenous peoples. The response has brought greater threats to the achievement of SDG 7. and has left IP women more vulnerable than they were before. Energy is critical to economic development and poverty reduction, and the decision is in contravention of recommendations of the Intergovernmental Panel on Climate Change, which supports inclusion of all for energy access through gender-aware policy making. There is no doubt that the government must review this decision in light of the needs of the indigenous, marginalized, and other vulnerable communities in the country.

As national level energy policy-makers consider solutions to environmental degradation and forest conservation, this paper proposes a number of gender-aware policy options for consideration, which would serve to balance the need for

environmental conservation with the preservation of rights of indigenous peoples:

- a. Investment in energy infrastructure such as decentralized renewable energy technologies, which directly meet the energy demands of women and makes their labour contribution more productive.
- b. Recognition of IPs as natural resource conservationists and positive contributors to adverse climate change mitigation should inform government responses to environmental conservation and climate change mitigation measures and can be adopted as best practices.
- c. Legal and regulatory reforms such as the creation of market incentives to promote the distribution of modern fuels that respond to IP women's energy demands, and the reform of laws and regulations that prevent women from owning land, controlling productive assets or accessing credit facilities, which can provide a basis for shifts in social expectations about roles of IP women.
- d. National budget reallocation to improve household energy technologies and make them accessible, for instance, through innovative financing.
- e. Institutional strengthening, for example, to support the design of gender-aware management information systems for the energy sector.
- f. Social protection programmes to cushion IP women against the adverse effects of biomass sources of energy, and ease the access of these communities to affordable, clean, reliable, and sustainable sources of energy,
- g. Adherence to energy rights of indigenous peoples as stipulated in national and international law, particularly the UDHR.
- h. Collection of disaggregated data on energy and clean cooking among IPs and marginalized communities, since there is currently insufficient data, which would provide evidence for proper decision making
- i. Development of technical skills of IPs in cook stoves and fuel making in order to encourage entrepreneurship and innovation within their ecosystems

It is clear that there is a conflict between the goals of the Kenyan government to protect forest ecosystems and the obligation to provide sustainable energy to all, without leaving anyone behind. Sensitivity to the energy needs of indigenous people is mandatory if they are to access affordable energy and preserve their rights to energy, and – hence – their livelihoods. The state must, therefore, balance this drive towards protecting the environment and enhancing environmentally friendly policies with the needs of indigenous peoples, who should be encouraged to employ traditional knowledge around conservation, which allows them to only use dry biomass accessible supplies within their habitats. Furthermore, as the Kenya Cooking Sector Study states, the state should provide viable cleaner alternatives to all, especially to the vulnerable.

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The Protection of Cultural Heritage from a Human Rights Perspective

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Image credits: [left] UNESCO & A. Lezine | [right] Wikipedia & Carl Montgomery

Abstract: *The objective of this article is to argue that preserving cultural heritage is a vital element in protecting individuals, their rights, and dignity. In particular, this article shows how the Universal Declaration of Human Rights (UDHR), through its recognition of present-day cultural rights (Article 27) and religious rights (Article 18), extends its umbrella of protection to cultural heritage as well. Here, cultural heritage is considered as living, dynamic and in organic relationship with human beings, representing an important element of their identity. Other international law instruments are also important and bear witness to the attention that the international community has devoted to the safeguarding of cultural heritage. More specifically, the intentional destruction of cultural heritage is read through the lens of the Rome Statute of the International Criminal Court and of the Convention on the Prevention and Punishment of the Crime of Genocide, both of which criminalize the above-mentioned conduct, namely, as a war crime and, under certain circumstances, as a crime against humanity, in addition to considering it as a potential evidence of genocidal intent.*

Keywords: *Cultural rights; cultural heritage; identity; international crimes*

Introduction

The Universal Declaration of Human Rights¹ (UDHR) aimed to set “a common standard of achievement for all people of all nations”², irrespective of distinctions of ethnicity, race, gender, etc.³ (UNGA, 1948). Every human being was for the first time considered to be the holder of universal, indivisible, interdependent, interrelated and – in most cases – irrevocable rights. However, in order for individuals to be able to enjoy the rights and freedoms to which they are entitled by international human rights law (IHL), the context within which they live must allow for the exercise of the rights in question.

This is true for all the fundamental rights enshrined in the Declaration (i.e., economic, social, civil, and political), but is no less true with regards to cultural rights, which often are given less emphasis in discussions. Article 27 of the UDHR proclaims: “Everyone has the right freely to participate in the

cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits” (UNGA, 1948). In a similar way, Art. 15 (para. 1a) of the International Covenant on Economic, Social and Cultural Rights⁴, which was ratified much later, stipulates: “The States [that are] Parties to the present Covenant recognize the right of everyone [...] to take part in cultural life” (UNGA, 1966).

However, what precisely does “freely participate” or “take part in cultural life” mean? And what constitute “the arts” that individuals are entitled to enjoy according to Article 27 of the UDHR? To sum up, what exactly are cultural rights⁵, and what do they grant to individuals?

Content of Cultural Rights: The Right of Access to and Enjoyment of Cultural Heritage⁶

As Avruch (1998) authoritatively stated, culture is never static, but a living entity, reflecting the context within which individuals live. It is even possible to argue that “culture is context”, since it permeates all the dimensions of (human) being(s). Moving from this assumption, we realise how difficult it is to define “culture” in a comprehensive and holistic manner and – therefore – to agree on a shared definition of cultural rights.

⁴ The International Covenant of Economic, Social and Cultural Rights (ICESCR), adopted by the UNGA in 1966, entered into force in 1976. The text of the Covenant is retrievable from <https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx>. Together with the UDHR and the International Covenant on Civil and Political Rights (ICCPR, 1976), the ICESCR forms the so-called “International Bill of Human Rights”.

⁵ For a more comprehensive definition of “cultural rights”, see General Comment n. 21 of the Committee on Economic, Social and Cultural Rights, retrievable from <https://www.refworld.org/docid/4ed35bae2.html>; see the Report of the Independent Expert in the Field of Cultural Rights, Farida Shaheed, submitted pursuant to resolution 10/23 of the United Nations Human Rights Council (UNHRC) on 22th March 2010 (A/HRC/14/36, para. 9), retrievable from <https://undocs.org/A/HRC/14/36>; and, see the Report of the Special Rapporteur in the Field of Cultural Rights to the 67th session of the UNGA on 10th August 2012 (A/67/287, para. 7), retrievable from <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N12/459/30/PDF/N1245930.pdf>

⁶ The definition of “cultural heritage” proposed herein is that provided by the Special Rapporteur in the Field of Cultural Rights, Karima Bennouna, in her Report to the 31st session of the UNHRC on 3rd February 2016 (A/HRC/31/59, para. 49), retrievable from <https://undocs.org/A/HRC/31/59>. This definition is relevant to and consistent with the aim of this article for two main reasons. On the one hand, it encompasses both tangible and intangible cultural heritage; on the other, these two categories are intended in broad and holistic terms, including any form of heritage which is “critical in preserving all aspects of cultural life”. It is worth remembering that religious buildings and spaces fall within this definition of “cultural heritage”, and it is intended that these be considered in such a manner throughout this article.

¹ The UDHR was adopted by the United Nations General Assembly (UNGA) in 1948. The text of the Declaration is retrievable from www.un.org/en/universal-declaration-human-rights.

² Preamble of the UDHR (UNGA, 1948).

³ Specifically, Article 2 of the UDHR states: “Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status” (UNGA, 1948).

The latter is a relational concept that is linked to the individuals' or the group's⁷ activities, and it changes accordingly. In order to restrict the scope of its analysis, this article does not consider the broad category of "culture", but instead that of "cultural heritage", seen as the expression and materialization of culture in a social dimension over time.

Even if the intertwined components of cultural rights cannot be readily separated, the choice made here is that of focusing on a specific entitlement granted to individuals, that is to say, the right of access to and enjoyment of cultural heritage. Although Article 27 does not introduce explicitly the two-fold dimension of heritage, namely the intangible⁸ and tangible⁹ one, its wording ("participate in" and, even more, "enjoy the arts", in plural) implies the recognition of the right to access to cultural heritage in all its forms. As more straightforwardly spelled out later in the International Covenant of Economic, Social and Cultural Rights (ICESCR), cultural rights encompass the right of participating in, among others, the practices, customs, beliefs, and knowledge of the community¹⁰, and also that of enjoying the arts, that is to say, the different expres-

sions of human creativity and forms of cultural heritage.

In view of that, cultural heritage in its broad sweep must be considered an intrinsic part of the life of human beings. Hence, the enjoyment of the rights and freedoms set forth in Article 27 of the UDHR is not possible if the accessibility and integrity of cultural heritage are not adequately preserved. Similarly, the safeguarding of religious buildings and spaces is a necessary precondition for the enjoyment of other rights and freedoms enshrined in the UDHR, such as those recognized by Article 18, which states: "Everyone has the right to freedom of thought, conscience and religion; this right includes [...] freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance" (UNGA, 1948).

An example may help elucidate this linkage. Consider that an individual has a religion whose practice prescribes that she¹¹ goes to an established place, for instance, a religious building, so as to manifest it alone or in community with others, and that the only space where that religion can be adequately practiced is that specific place. Suppose further that, for any reason, someone attacks that religious space, damaging or destroying it, and making it inaccessible. To make the example even more relevant, we can imagine that the believer lives in a village located far away from other sacred spaces of the same faith, and hence her right to freely "manifest her religion in practice or worship" cannot be exercised anymore. Would this example not constitute an instance where her rights and freedoms, as set forth in Article 18, are denied?¹²

The above-mentioned example leads to a fundamental realization: historical, cultural, and religious buildings are not simple constructions, but embodiments of culture(s) – whether these are millenarian or considerably less ancient one(s). It is the individual, alone or in community, who attributes a religious, cultural or spiritual value to spaces, and – consequently – it is her identity that is endangered when heritage is in peril. Moreover, especially in the case where an intangible expression of heritage is tied to a building, the expression of identity attached to that practice is denied if the space itself is made inaccessible¹³.

⁷ Even if Article 27 of the UDHR makes reference to the "cultural life of the community", the Declaration in itself does not contain any provision devoted to the protection of "groups", and does not envisage collective rights as such. The emergence of group rights, in fact, dates to later in the 20th century, and their affirmation is strictly linked with the recognition of the rights of minorities within a broader debate concerning, for instance, indigenous peoples' rights. The text of the UDHR instead strongly emphasizes the individual dimension, and individual are the rights and freedoms enshrined herein. For a more comprehensive analysis of this issue, see (among others): Barsh, R. L. (1987). *Evolving conceptions of group rights in international law*. *Transnational Perspectives*, Volume 13, Number 1, retrievable from http://www.burmalibrary.org/docs07/Barsh-group_rights-ocr.pdf; and, Firestone, J., Lily, J., Torres de Noronha, I. (2005). *Cultural Diversity, Human Rights, and the Emergence of Indigenous Peoples in International and Comparative Environmental Law*. *American University International Law Review* 20, no. 2: 219-292, retrievable from <https://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1135&context=auilr>.

⁸ The definition of "intangible cultural heritage" is enshrined in the Convention for the Safeguarding of the Intangible Cultural Heritage, adopted by the UNESCO General Conference in 2003, and which entered into force in 2006. According to its Article 2, "intangible cultural heritage" means the practices, representations, expressions, knowledge, skills [...] that communities, groups and, in some cases, individuals recognize as part of their cultural heritage". It is essential to note that the definition of what constitutes a manifestation of intangible cultural heritage is demanded to the communities and groups themselves, thereby conferring them primary importance and "power", within a strong community-based perspective. The text of the Convention is retrievable from <https://ich.unesco.org/en/convention>.

⁹ The first international definition of "cultural property" (and, therefore, of the different forms of "tangible cultural heritage") was provided by Article 1 of the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, adopted by the UNESCO General Conference in 1954, and which entered into force in 1956. The text of the Convention is retrievable from http://portal.unesco.org/en/cv.php-URL_ID=13637&URL_DO=DO_TOPIC&URL_SECTION=201.html.

¹⁰ It has to be specified that the term "community" is used in this article in order to be consistent with the wording of the article of the UDHR that is being analysed, but that its meaning can be assimilated to that of the more general term "collectivity". More specifically, the author believes that this is not the venue to explore in depth the potential tension that exists between the cultural (and religious) identity of the individual and that of the "community" to which he/she belongs to. Nevertheless, it is important to bear in mind that the culture of the individual might coincide only partially with that of the community of which he/she is a member, and in this manner that the two dimensions should be kept distinct, since any immediately inferred assimilation should be considered as inappropriate and misleading.

¹¹ In order to better integrate a gender-based perspective in this paper, the author chose to use the pronoun "she" (and its declinations, e.g. the possessive adjective "her") when referring to a generic individual. However, the pronoun "he" (and relevant declinations) could be used as well, without any modification to the meaning and objective of the example(s).

¹² In this specific example, not only the individual freedom to manifest and practice a religion is violated, but potentially – in case of practice or worship to be observed "in community with others" – also the collective right of the religious community as a whole. However, as stated above, addressing the difference between individual and collective rights would require carrying out a much deeper analysis than what is intended in this article.

¹³ As authoritatively explained by the Special Rapporteur in the Field of Cultural Rights, Karima Bennouna, in her Report to the 31st session of the UNHRC on 3 February 2016 (A/HRC/31/59, see ref. above, footnote n. 6) In para. 77 of this document, Bennouna emphasizes the overlaps between tangible and intangible heritage and the interconnectedness of their attacks: "For example, when mausoleums and ancient Islamic manuscripts were being destroyed by armed groups in northern Mali, various forms of cultural practice were also under attack, including religious practices, singing and music. Local populations were greatly affected, in an integrated way, by assaults on both forms of cultural heritage. Meanwhile, ancient languages and religious practices, tied to sacred spaces and structures and cultural landscapes of northern Iraq and the Syrian Arab Republic, are being lost as the populations are displaced and objects, texts and historic structures are destroyed".

Therefore, cultural heritage is important not only in itself – which requires that its integrity and accessibility must be preserved, – but also for the intrinsic symbolic value that it carries. Adopting a human rights approach to cultural heritage means safeguarding both the physical and symbolic aspects.

The first treaty exclusively devoted to the protection of cultural heritage was the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict¹⁴. This instrument of international humanitarian law (IHL) – the so-called “law of armed conflicts” – recognises the special status of cultural heritage, binding States Parties to protect and safeguard it in times of war. Even if it represents a milestone for the recognition of the importance of protecting cultural heritage at all times, it focuses only on the physical embodiments of culture, since no reference is made to the protection of “its practitioners, that is, the people linked to a given culture”¹⁵.

This is one of the main reasons why it is of foundational importance to look at the protection of cultural heritage through the lens of IHRL, as well as vice versa. It is also noteworthy that only attacks on cultural heritage in times of conflict fall within the scope of the 1954 Convention, while the case of intentional destruction of cultural heritage in times of peace is not explicitly covered by this treaty. Thus, establishing a firm linkage between the people involved and their cultural heritage permits to raise the threshold of protection, ensuring a more systematic and coherent coverage by stressing the impact of cultural heritage destruction on individuals and their human rights.

The Intentional Destruction¹⁶ of Cultural Heritage as an International Crime in both Times of Peace and War

In recent times, we have often witnessed events in which cultural heritage has been intentionally targeted, damaged or destroyed, meaning that the attacks have been perpetrated as a tactic of war in order to diminish and undermine the cultural identity of the communities affected. It is important to look at this issue through the lens of other international instruments, in particular, the Rome Statute of the International Criminal Court (ICC Stat-

ute)¹⁷ and the Convention for the Prevention and Punishment of the Crime of Genocide (Genocide Convention)¹⁸, which are two key instruments of international criminal law (ICL).

ICL consists of a set of rules designed to proscribe certain categories of conduct, namely, international crimes (such as war crimes, crimes against humanity and genocide), and to make the persons who engage in such conducts criminally liable. Such rules authorize or, in certain cases, oblige States to prosecute and punish these criminal conducts, as well as regulate international proceedings before international courts and tribunals for prosecuting international crimes. ICL relies upon the concept of individual criminal responsibility¹⁹, and foresees compensation to the victims who have suffered harm as a result of the criminal acts committed.

According to ICL, intentionally directing attacks against cultural heritage may represent, depending on the different circumstances of the commission of the act, three different criminal conducts:

- A war crime, according to Art. 8 of the ICC Statute, if committed in times of conflict of either international or non-international nature, and “as part of a plan or policy or as part of a large-scale commission of such crimes” (ICC Statute, 1998);
- A crime against humanity, according to Art. 7 of the ICC Statute, if committed either in times of peace or of war, and “as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack”. More specifically, to fall within the definition of crime against humanity, the destruction of cultural property must be committed with discriminatory intent, therefore amounting to a form of persecution²⁰ (ICC Statute, 1998);
- An evidence of genocidal intent²¹, irrespectively of whether the conduct is committed in times of peace or of war. As stated in Art. 2 of the Genocide Convention, this international crime implies “the intent to destroy, in

¹⁴ See previous, footnote n. 10.

¹⁵ Boccardi, G., Evers, L. (2019). Safeguarding heritage in armed conflict – how UNESCO protects the human right to culture. In C. Ferstman, T. Gray (Eds.). *Contemporary human rights challenges: The Universal Declaration of Human Rights and its continuing relevance* (pp. 206-218). New York, United States: Routledge.

¹⁶ In the Declaration concerning the Intentional Destruction of Cultural Heritage, adopted by the UNESCO General Conference in 2003, “intentional destruction” is defined as “an act intended to destroy in whole or in part cultural heritage, thus compromising its integrity, in a manner which constitutes a violation of international law or an unjustifiable offence to the principles of humanity and dictates of public conscience”. The development of the Declaration was triggered by the destruction of the monumental Buddhas in Bamiyan, Afghanistan, in 2001. To date, this remains the only UNESCO standard-setting instrument that is directly focused on the deliberate destruction of heritage. With the adoption of this Declaration, UNESCO’s Member States recognized the importance of protecting heritage from deliberate destruction, and committed to continuing their efforts to prevent such events from happening. The Declaration includes suggested measures to protect heritage from destruction, including efforts that can be made during peacetime and during armed conflicts. The text of the Declaration is retrievable from http://portal.unesco.org/en/ev.php-URL_ID=17718&URL_DO=DO_TOPIC&URL_SECTION=201.html.

¹⁷ The ICC Statute, adopted in Rome by the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court on 17 July 1998, entered into force in 2002. The text of the Statute is retrievable from <https://www.icc-cpi.int/resource-library/Documents/RS-Eng.pdf>.

¹⁸ The Convention for the Prevention and Punishment of the Crime of Genocide was adopted by the UNGA in 1948, and entered into force in 1951. The text of the Convention is retrievable from https://www.oas.org/dil/1948_Convention_on_the_Prevention_and_Punishment_of_the_Crime_of_Genocide.pdf.

¹⁹ For a definition of “individual criminal responsibility”, see the ICRC online database, Customary IHL, Rule 102, Individual Criminal Responsibility. Retrievable from https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule102.

²⁰ In accordance with Art. 7 of the ICC Statute, the “persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious [...] or other grounds” (para. 1h) shall be considered a crime against humanity. As specified further in the Statute: “Persecution’ means the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity” (para. 2g).

²¹ It is worth recalling that, in October 2014, the UN Office on Genocide Prevention and Responsibility to Protect developed the “Framework of Analysis for Atrocity Crimes: A Tool for Prevention” to assess the risk of genocide, war crimes, and crimes against humanity. In this framework, attacks against or destruction of property of cultural and religious significance are considered an indicator within Risk Factor 10: “Signs of an intent to destroy in whole or in part a protected group”. The Framework is retrievable from https://www.un.org/en/genocideprevention/documents/about-us/Doc.3_Framework%20of%20Analysis%20for%20Atrocity%20Crimes_EN.pdf.

whole or in part, a national, ethnical, racial or religious group, as such". The deliberate destruction of property of cultural and religious significance may indeed be seen as a conduct "causing serious bodily or mental harm to members of the group" or as an act "deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part" (Genocide Convention, 1948).

Even though international tribunals have punished cases of intentional destruction of cultural heritage only as war crimes²², the doctrinal debate about their consideration as a crime against humanity and as a form of genocide is heated, and a renewed sensibility seems to have arisen²³. A window of opportunity to finally pave the way for the effective establishment of this linkage might be represented by the Al Hassan case²⁴, currently under discussion before the ICC.

Conclusion

The starting thesis of this article is that culture runs through the veins of a society, shaping identities and ways of life through the patterns of human activity and symbolic structures that generate meaning. Therefore, the ultimate objec-

tive of protecting cultural heritage is to safeguard the living essence of humanity, preserving the human rights and dignity of past, present and future generations. Hence, the intentional destruction of cultural properties and the violation of cultural rights are to be considered grave violations of human rights, preventing individuals from fully enjoying the rights and freedoms to which they are entitled by IHRL.

The author hereby calls for a stronger commitment from States towards the protection of cultural heritage, which – reinforced through the adoption of a human rights-based approach – would contribute to stopping the various forms of cultural cleansing that we are witnessing today, increasing accountability and combating impunity, in addition to better fulfilling their duty to protect in relation to their nationals.

22 The most exemplary case before the ICC was the prosecution v. Ahmad Al Faqi Al Mahdi, held responsible for the destruction of 14 mausoleums in Timbuktu, Mali, in June and July 2012. For more information on this case, see: Case No. ICC-01/12-01/15, Al Mahdi Judgment & Sentence (Sept. 27, 2016), retrievable from https://www.icc-cpi.int/CourtRecords/CR2016_07244.PDF; and, Case No. ICC-01/12-01/15, Al Mahdi Reparations Order (Aug. 17, 2017), retrievable from https://www.icc-cpi.int/CourtRecords/CR2017_05117.PDF. This historical judgement by the ICC is a milestone not only because, for the first time, it condemns an individual for the sole reason of having intentionally targeted and destroyed cultural and religious sites, but also because it recognizes the human impact of the destruction. In fact, the Reparation Order issued by the ICC requests that the moral harm suffered by the victims be addressed "by giving compensation to the applicants as individual and collective reparation", and not only by addressing the material loss for the physical destruction of the mausoleums.

23 In the opinion of the author, all genocides have to be considered *de facto* as culture-related, if a holistic definition of culture is adopted. In fact, it seems clear that the overall plan of destruction of a group includes also the denial of its identity, as expressed through – among others – language, customs, traditions, and heritage. Likewise, it is evident how a group can be annihilated if its collective memory (embodied in its cultural heritage) has been erased, even if many of its individual members remain alive. Therefore, the author firmly agrees with the view of the Special Rapporteur in the Field of Cultural Rights, as expressed in her Report on a Human Rights Approach to the Intentional Destruction of Cultural Heritage, in Conflict and Non-Conflict Situations, by States and Non-State Actors on 9th August 2016 (A/71/317, para. 29), retrievable from <https://undocs.org/pdf/symbol=en/A/71/317>. Bennouna here states: "The concept of cultural genocide should be given serious consideration, 'perhaps not to explicitly incorporate it as a form of genocide, but [...] to modify the existing barriers to effective deterrence to the destruction of cultural heritage' (Gerstenblith, 2016). The idea is not to 'set cultural genocide on a par with systematic mass murder' or 'dilute [its] unique nature [...] as the gravest and greatest of crimes against humanity', but rather to recognize 'that the task of destroying a group' also aims at destroying 'identity as expressed through language, customs, art and [...] architecture' (Bevan, 2006). Within a broader context of genocide, as Gerstenblith (2016) has written, destruction of cultural heritage becomes an act of genocide as well as evidence of genocidal intent. This is especially the case, as has been noted in regard to Nazi practices and those of Daesh (also known as ISIL), when destruction and related looting of cultural heritage is carried out to fund the further commission of atrocities rising to the level of genocide".

24 For more information about The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud, consult the Case Information Sheet. Retrievable from <https://www.icc-cpi.int/CaseInformationSheets/al-hassanEng.pdf>.



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Quality Education as a Human Right

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Abstract: *According to the Universal Declaration of Human Rights (UDHR), education is a right for everyone, and it must promote tolerance and the maintenance of peace. Global movements, such as the United Nations Educational, Scientific and Cultural Organization's (UNESCO) Education for All (EFA), pledge to achieve that right by supporting the implementation of quality education for children around the world. However, foreign initiatives that are not aligned with the learners' needs and interests can have serious consequences on education as a human right. In Afghanistan, for example, the restructuring of the educational system during war was constantly under attack as being mainly secular, and was followed by the Taliban's relinquishment of all forms of secular education, the ban on girls' education, and the expansion of religious schools leading to a total decimation of quality education (UNESCO, 2002). Therefore, international stakeholders that sponsor global educational movements in Muslim-majority countries must adopt education systems that are relevant to the learners' needs and interests in order to avoid resistance against educational movements. On that basis, what can quality education mean in Muslim-majority countries? This research investigates the relationship between quality education and Muslim education in order to provide stakeholders of education in the Middle East region with suggestions to avoid potential ramifications of foreign educational initiatives.*

Keywords: *Quality education; Muslim education; United Nations Educational, Scientific and Cultural Organization (UNESCO); Middle East*

Introduction

Ever since its establishment in October 1945, the United Nations (UN) has made a large contribution to the human rights domain. In the 1948 Universal Declaration of Human Rights (UDHR), the United Nations General Assembly (UNGA) proclaimed that, "everyone has the right to education" (Article 26, para. 1). The UNGA also proclaimed that education shall promote tolerance among all nations, and "shall further the activities of the United Nations for the maintenance of peace" (Article 26, para. 2). In November 1945, the United Nations Educational, Scientific and Cultural Organization (UNESCO) was established as an institution dedicated to advancing education and promoting peace (UNESCO, 2011). The right to education proclaimed by the UDHR was the heart of UNESCO's global mission, who plays a major role in education world conferences, and initiated Education for All (EFA) in 1990. Considered one of the leading international movements in education, EFA

emphasized that everyone has the right to education and basic learning needs (UNESCO, 1990). It also indicated that conflict can stand in the way of attaining those rights.

In 1996, a mid-decade meeting was held in Amman, Jordan, to assess the outcomes of EFA. The working document published afterwards reported that armed conflict at the time was taking place in over forty countries worldwide as a result of the rising tensions between nations. Despite these problems, four years later, the EFA was adopted by the World Education Forum, and committed to achieving six educational goals: (a) improvement of early childhood education; (b) ensuring access to education for all children by 2015; (c) ensuring equitable access to education for young people and adults; (d) achieving a 50% improvement in literacy; (e) eliminating gender disparities in education; and, (f) improving the quality of education (UNESCO, 2000). A subsequent EFA Monitoring Report published in 2002 indicated the continuation of enormous educational challenges (UNESCO, 2002). Conflict was also indicated to be one of the major barriers against achieving the "right to education" goals of EFA, since it disrupts peace, causes severe damage to schools, and hinders the implementation of teacher training programs. In addition, conflict was responsible for reducing the quality of education, decreasing access to schools, and negatively influencing teachers' proficiency (UNESCO, 2002).

In its last EFA report, published in 2015, UNESCO concluded that despite all its efforts, the movement failed to accomplish its primary goal of increasing school enrollment rates in developing countries (UNESCO, 2015). It recognized as well that although the quality of education had been one of the core goals of EFA, international attention focused primarily on policies and investments in education (UNESCO, 2015). Therefore, in its most recent global initiative, the Education 2030 Agenda, UNESCO (2016) has specified within the Agenda 2030 for Sustainable Development and its Sustainable Development Goals (SDGs) that SDG 4 focus on developing inclusive and equitable quality education by building on lessons learned from EFA. By endorsing the concluding points of the EFA 2015 report, the Education 2030 Agenda focuses on quality education and defines it clearly as a means to improve learning outcomes. UNESCO (2016) states that quality education "develops the skills, values and attitudes that enable citizens to lead healthy and fulfilled lives, make informed decisions, and respond to local and global challenges through education for sustainable development (ESD) and global citizenship education (GCED)" (p. 8). In this article, I briefly ex-

amine how the term “quality education” is used by UNESCO throughout its EFA reports, and offer an insight into how the term can be developed further in order to be implemented in Muslim-majority countries.

Quality Education: A Brief Overview

In the EFA declaration of 1990, UNESCO proposed several dimensions that would support the implementation of education as a right for everyone. Quality education was mentioned within the context of basic education that corresponds with learners’ needs and interests. Literacy, numeracy, and relevance of curricula were also linked to the broad definition of quality education. In 1996, a new EFA report stated that access to education could no longer be considered a measure of good quality learning, and that failure to achieve quality education led to increasing grade retention or repetition and drop-out rates. As a result, UNESCO started paying more attention to quality education, despite the lack of reliable data required to inform quality education practices (UNESCO, 1996). The EFA 2000 report marked the major shift in UNESCO’s concern with quality education and described it as “the heart of education” (p. 17). It also expanded the definition of relevant curriculum in connection with quality education. Relevant curriculum stretched out to also meet the cultural, social, and economic aspect of learners. All of this was to be done in an effort to attract learners and decrease drop-out rates. Finally, the EFA 2015 report included a more detailed approach to quality education and stated that the four aspects to quality education were: a “curriculum that is relevant and inclusive; an effective and appropriate pedagogical approach; the use of children’s mother tongues; and the use of appropriate technology” (UNESCO, 2016: 206).

Despite the several stages through which the definition of “good quality education” has gone in the EFA reports, UNESCO (2015) also addressed the debatable aspects that surround the term. Although the literature on quality education addresses the issue of the lack of a clear definition of the term during the implementation of EFA as well, there is still a need to address quality education in correspondence with culturally relevant curricula in specific contexts.

What Makes A Quality Curriculum?

The International Bureau of Education (IBE) is a UNESCO institute that offers UNESCO’s member states “a global understanding of curriculum issues” (IBE, 2016: para. 1). It defines curriculum as “a political and social agreement that reflects a society’s common vision while taking into account local, national and global needs and expectations” (UNESCO & IBE, 2016: 6). In a paper titled *What Makes a Quality Curriculum?*, IBE and UNESCO state that quality curriculum involves a continuing cycle of: developing, implementing, and evaluating the curriculum (2016). Accordingly, a good quality curriculum “values each child and holds that every child matters equally, is comprised of high quality ‘content’ [...] is well-organized and structured [...] and is underpinned by a set of theoretical and philosophical beliefs about how children learn” (UNESCO & IBE, 2016, p. 17). It also indicates that memorization and retention of information is no longer enough; therefore, the curriculum must increase students’ competency in skills such as critical thinking and problem solving. Thus, an overarching definition of quality education is a curriculum that is socially relevant, inclusive, and that promotes educational competencies and peaceful coexistence.

Religion and Education

Religion is one of the most critical and controversial key issues in inclusive education (UNESCO, 2016). One of the main challenges that the UNESCO faces while negotiating the curriculum in different countries is the local resistance to foreign educational systems, which are often believed to carry within them foreign ideas that contradict the values of the target society (UNESCO, 2002). Such resistance can have serious consequences on human rights principles, including increasing the gender gap and the expansion of particular school systems that serve an agenda of oppression. For example, as a result of foreign interventions in Afghanistan, the so-called “Taliban” group that succeeded the communist government between 1996 to 2001 relinquished all forms of secular education, banned girls’ education, and expanded its religious schools, which led to a decimation of quality education (UNESCO, 2002).

In Muslim countries of the Middle East, religion is one of the major social and cultural values (Abdallah et al., 2006). As the Muslim population grows, Islam has become the fastest-growing religion in the world and, by 2050, there will be a “near parity between Muslims (2.8 billion, or 30% of the population) and Christians (2.9 billion, or 31%), possibly for the first time in history” (Pew Report, 2015, para. 7). According to the Heidelberg Institute for International Conflict Research (2019), the number of conflicts in the Middle East and Maghreb region alone have increased to reach 62 conflicts in 2018. Crisis, such as natural disasters and conflict, is considered a major impediment to implementing quality education, and it has contributed to reversing the progress of global education movements, including EFA (UNESCO, 2016). At the same time, providing quality education is considered one of the pillars of stability that can contribute to the early prevention of conflict (UN & World Bank, 2018). Failure to provide religious literacy can increase the tendency toward violence and for individuals to join extremist groups (UN & World Bank, 2018). Therefore, due to its cultural and social relevance in Muslim-majority countries, Islam can be a game-changer for organizations such as the UNESCO. Considering the Muslim population growth and the increase of conflicts, it has become imperative to deem religion as one of the elements in shaping quality education in Muslim-majority countries.

Quality Muslim Education

Contemporary views on quality Muslim education are similar to the UNESCO’s definition of quality education. Contrary to these views, traditional indoctrinatory educational approaches are considered a means utilized by extremist recruiters that permit “uncritical transmission of a revered set of texts” (Sahin, 2016: para. 2). This traditional approach reflects a concern of the UN and World Bank (2018), which state that religious illiteracy can increase the possibility of individuals joining extremist groups due to low-quality education and the lack of critical thinking skills. It is possible, therefore, to face extremism and conflict in Muslim-majority countries by challenging indoctrinatory practices as an approach through “[integrating] reflective thinking skills and intercultural understanding to help [young Muslims] engage intelligently and confidently with their faith heritage and wider society” (ibidem). In order to face the problem of religious extremism, practitioners and policymakers need to develop intervention and transformative practices (Sahin, 2016). These practices are governed by the necessity to rethink indoctrinatory educational ap-

proaches and instruction-centered pedagogy (idem). In order to achieve educational transformation, Abdullah Sahin (2013) suggests the following:

1. Letting go of practices that aim to transmit and forge young people's identities in an authoritarian manner.
2. Utilizing a Quranic-like style for educational practices. This style is:
 - a. Discursive. That is, it encourages critical dialogue on social and religious problems that face humans.
 - b. Holistic. Through its repeated patterns, the Quran contains many patterns and repetitions that are integrated into a holistic pattern of meaning.
 - c. Communicative. The Quran takes into consideration its audience's reality. Therefore, the Quran is also characterized by a learner-centered strategy that creates interest to the listener.
 - d. Augmentative of participatory pedagogy that encourages self-transformation, collaboration, and awareness. (Sahin, 2013).

The above framework mirrors that of UNESCO's quality education in that it calls for the implementation of critical thinking in a learner-centered environment based on participatory pedagogy. The importance of such a framework lies in the fact that in countries like Afghanistan, where Islamic schools or madrasas play a significant role in providing primary education (UNESCO, 2015), implementing a Muslim education framework can have positive results on increasing religious literacy. In turn, religious literacy can positively increase the quality of education.

In the context of Muslim-majority countries, Muslim educa-

tion can enable quality education as it is able to address issues that are considered highly sensitive from a cultural or social perspective. The framework provided above can help rectify cultural and social values that are inherited by mere transmission of "revered" texts without critical examination. Issues such as girls' right to education and equality between all can be discussed using the Muslim education framework and allowing discussion to take place without using indoctrinatory approaches. In other words, the framework for Muslim education suggested in this article aims to increase religious literacy by encouraging critical thinking and collaboration between individuals, therefore decreasing the rates of individuals joining violent extremist groups, and – eventually – decreasing conflict.

Conclusion

The UDHR played a major role in establishing the grounds for human rights worldwide, including the right to education for all. Beyond advocating for accessible and free education that promotes tolerance among all nations, the current challenges in the educational domain make it necessary to expand the definition of education as a human right. Given the current role of culturally relevant curriculum to quality education in global educational initiatives, those advocating for the right to education enshrined in the UDHR must clearly address quality education as a human right as well as urge organizations such as UNESCO to provide an outline for its partners to implement culturally relevant quality education.

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Empathy as the 'Heartware' of Human Rights: An Examination of Empathy and the Role of the Humanities in Developing it

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Abstract: *The worst human rights abuses of the 20th century hold lessons about the importance of empathy. The recent resurgence of unhinged populism, nativist narratives, and exclusionary nationalism stands as a stark reminder that it is neither merely good laws nor a healthy government system that uphold the core tenets of human rights. Therefore, ensuring that citizens can take the perspectives of others through having the emotional bandwidth to empathize with them is the best safeguard against the erosion of human rights in a society. The onus for ensuring this falls upon the humanities and their educators, who can help develop the core concepts of these disciplines, especially history and philosophy, to develop these capacities for empathy and understanding. Examining the ways in which the humanities are taught in the United States (US), the United Kingdom (UK), and Singapore, this article highlights the nature of empathy and perspective taking as a cognitive task, and outlines the deep structures of empathy that can help scaffold student understanding in a classroom.*

Keywords: *Historical empathy; human rights; 'heartware'*

Introduction

A major protest that took place in 1943 on Berlin's Rosenthalstrasse saw Berliners gather in an unprecedented show of opposition to the Nazi government. At unfathomable risk to their personal safety, they challenged the Gestapo, the Nazi secret police, in order to have their Jewish family members released. These 2,000 Jews were amongst the few in Berlin to survive the war and genocide (Stoltzfus, 2001). The Rosenthalstrasse Protests were driven by the principle of empathy. It was a brief moment of humanity amidst the insanity and inhumanity of the Holocaust. This incident reminds us of the power of empathy. However, most of those protesting were driven by a desire to free their Jewish spouses, further reminding us that the power to sympathize, if undeveloped, is often focused on immediate kin or circles of friends.

The 20th century was no stranger to major human rights abuses and, indeed, was bookended by the Armenian and

Rwandan Genocides. They are poignant reminders that the 'universal' in the Universal Declaration of Human Rights (UDHR) does not mean that these values are universally agreed upon or observed. The American Anthropological Association's (AAA) rejection of the declaration in 1948 was an explicit rejection by this group of any claims of universality of this value system (Executive Board of American Anthropological Association, 1947). Therefore, the UDHR should not be considered as inevitable. Correspondingly, there is a need to engage in education in order to ensure the young can be socialized and inducted into performing these value systems.

When understood in that light, the current deficiency in the human rights regime lies in that fact: it is a regime, with insufficient emphasis on building the cognitive capacities required to ensure the successful implementation of the UDHR in any society. The current emphasis lies in translating human rights into key performance indicators that help administrators understand the state of access to avenues of help for the most vulnerable members within a society (Kennedy, 2001). While these hard systems help to set the agenda and steer public discourse to the manner in which we prioritize rights in our societies, they are not an absolute safeguard against human rights abuses. The painful lessons of the preceding century remind us that good systems are not fail-safe. An enduring question in Holocaust studies was how and why did a society renowned for her cultural and intellectual achievements, that of Germany, commit one of the largest genocides in recent history (Imhoff et al., 2017). It is also a reminder of the limitations of a legalistic approach to human rights.

Even societies that have placed the protection of human rights at the core of their identities, such as Germany and South Korea, struggle in the face of a population that does not empathize with refugees and other marginalized groups. In Germany, the *H. T. vs Lander Baden-Württemberg* case (Lampert, 2017) was a constitutional one over whether states have the right to revoke the refugee status on the grounds of a Turkish refugee's (only identified as "H. T.") continued involvement and support for the Kurdistan Workers' Party (PKK). The

PKK is an organization that was classified as a terrorist group by the German government, and "H. T." was, therefore, seen as a "present danger" to the German public in 2015. This ruling came in the midst of the refugee crisis and continues the trend of weakening refugee protections in the post-9/11 climate (Lampert, 2017). The government of South Korea, one of the few Asian countries with a comprehensive set of human rights laws to help it deal with the influx of refugees from her northern neighbour, faced public disapproval (Hiroka Shoji, 2018) over the arrival of a few hundred Yemeni refugees. The debate centered around whether to afford refugees from a faraway land the same rights as North Korean refugees. Empathy – which functions as 'heartware', in the sense of a human form of software – is an important part of the implementation of the UDHR, and should serve as a core part of any educational system.

This article will explore the problems with the current understanding of empathy, and some of the steps that can be taken in the educational context in order to develop the necessary empathy that a citizenry should possess.

Problems with the Way We Think and Talk about Empathy

Given the importance of empathy in our society, there is a need to reevaluate and rethink how we approach the issue. There are a few misconceptions regarding 'empathy' that hinder the work of developing it through meaningful classroom activities. The first is the assumption that empathy and sympathy are the same thing; the second is the assumption that empathy cannot be proactively developed; and, the third is that empathy is not a cognitive skill. By carefully dissecting the mental processes behind 'empathy', we can start to create meaningful classroom activities and curricula to develop an empathetic citizenry who can uphold various shared values.

First, even though empathy and sympathy are related mental functions, they are not the same thing. The conflation of these two concepts seem to stem from a lay usage of the two words. Sympathy involves an emotional response to the predicament of another person, while empathy refers to the ability to place oneself in another person's shoes. While sympathy represents an affective connection, empathy is a cognitive one. Empathy requires substantial mental work in order to achieve. This relationship is best visualized by the diagram that follows:

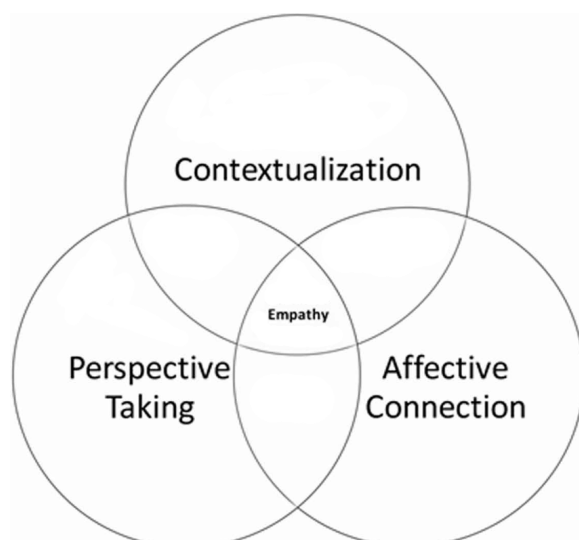


Fig. 1: Breakdown of the cognitive functions within empathy (Endacott, 2013).

Sympathy, an affective connection with the subject of discussion, is only one component of empathy. The other two core components are contextualization and perspective-taking. This means that the ability to empathize is more than simply investing emotions into the joys or tribulations of others, but also being able to contextualize the situation, and taking the perspective of another person through a deep understanding of another person's prior lived experiences, situations, and/or actions. These three aspects interact and reinforce each other to form the ability to empathize.

Second, given that empathy has a significant cognitive element, it can be developed through practice and exposure in the classroom context. As such, third, empathy is a cognitive skill. The development of some level of empathy is already an expressed syllabus outcome of social studies syllabuses in the United States (US) (Endacott and Strutz, 2015) and Singapore (Ministry of Education of Singapore, 2014a), while a similar emphasis on historical empathy is also present in the history syllabuses of the United Kingdom (UK) and Singapore (Ministry of Education of Singapore, 2014b). However, the actual development of it in the classroom remains an elusive goal.

Given that a large part of empathy hinges on contextualization and perspective-taking, there is a need to help students develop the ability to contextualize and take the perspectives of others. This involves exposing students to the deep structures of empathy – as opposed to the surface structures. The surface structure of the problem involves factual knowledge of the situation at hand, while the deeper structures of the cognitive task of empathy involves using that contextual knowledge to generate an understanding of the different stakeholders in the situation. This leap is fundamentally a task in making inferences; assisting students to engage in that process of inductive reasoning is at the core of a humanities classroom (Tan, 2019). It is only when students acquire knowledge of the deep structures that we can then say that they have understood what it means to empathize (Gentner et al., 2003).

In summary, empathy consists of three interlocking mental processes at work, two of these being cognitive tasks that can be trained and honed given the right activities. Understanding this has a real impact on the way we design and select lessons for the classroom that attempt to develop the empathy necessary for the sustainable implementation of the UDHR and other value systems.

Developing Empathy in a Humanities Classroom

History and social studies are two present avenues for students to engage in empathy exercises, since these subjects examine actual historical and current case studies that represent real people making decisions under real-world conditions. These facts add a layer of complexity and credibility to discussions in the classroom. Developing empathy through national curriculums is not new: 'Dowa Education' in Japan from the post-war period is an early example of empathy and compassion education geared towards tackling the discrimination that the Burakumin underclass suffered from (Kitayama and Hashizaki, 2018). Recently, the Council of Europe (2016) also recognizes the centrality of empathy in ensuring a democratic culture (pp. 13-47). However, actualizing these goals in education remains a challenge.

Having a more precise breakdown of the cognitive aspects



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of empathy allows educators to better develop lessons that can build this skill. On the one hand, it is clear that contextual knowledge is an important aspect of empathy: without knowledge of the key issues and fault lines that exist in a society,

empathy cannot take place. Therefore, educators have a role to play in selecting case studies that can better help students contextualize various aspects of the UDHR. For example: :

UDHR Articles	Relevant Contextualization
Article 4: No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.	<ol style="list-style-type: none"> 1. History of slavery and abolitionism. 2. Modern-day slavery, involuntary servitude, and practices similar to slavery. 3. History of discrimination and exclusion (e.g., The Holocaust).
Article 9: No one shall be subjected to arbitrary arrest, detention or exile.	<ol style="list-style-type: none"> 1. History of oppression (e.g., colonialism in a specific geographical area/state).

Every society has a different history and social contract. For instance, given Singapore's history of racial tensions and a social gulf between locals and immigrants stemming from sustained migration over the past 25 years, the origins, advantages, and vulnerabilities of a diverse society features heavily within the Social Studies syllabus (Ministry of Education of Singapore, 2014a). These content materials were selected in order to equip students with the contextualization necessary to perform the inferences that underscores empathy.

On the other hand, the deep structure of empathy is to make inferences about what another person is thinking by means of inductive reasoning (Tan, 2019) – that is to say, the logical process that considers the specifics of observations to find

a pattern and make a probable generalization that explains them. The core question of empathy can ultimately be summarized as: "Based on the evidence presented to me, what do I think this person is thinking or feeling right now?" To help students make better inductive reasoning, there is a need to help students leverage on the contextualization that they have learnt so as to make more cogent inferences. While inferences are often quite intuitive to the teachers in the classroom, it is actually a thought process that is learned and made simple through years of practice. However, to better assist students in the classroom, there is a need to break this process down into finer elements, which are summarized by the following questions and sample responses from a student with regards to empathizing with a poorer member of Singaporean society:

Cognitive Steps	Description	Sample Student Response
Problem Identification	What is it that I am trying to understand about this person / situation?	I wonder why this person needs social welfare.
Gathering Evidence	What about the person / situation can I observe right now?	This person is poor, living on social welfare and housing subsidies.
Exercising Reasoning	What do I know from my knowledge that can help me make sense of this?	My prior understanding of Singapore's social and economic systems tells me that meritocracy is our core principle, and people succeed and fail on their own merits. However, meritocracy is a highly flawed system due to the existence of privileged groups who can propagate their advantages and wealth.
Reflective Thinking	How do my observations and knowledge combine to help me understand what this person is experiencing?	Therefore, I can see why there are people who believe that this person needs help – as a society, we should try to level the playing field to ensure that any possible privileges and advantages of the rich do not cause a meritocracy to malfunction.

Conclusion

The former Chancellor of the University of Berkeley, Clark Kerr, who believed that science is the primary work of a university, strongly supported a humanities education: for Kerr, the scientific workforce that Berkeley was training had to acquire some understanding of the values of their civilization, which their science was supposed to protect and uphold. A part of that grounding was – and continues to be – the ability to empathize (Aronowitz, 2000, 32). In our case today, the UDHR represents many of the shared values of our modern civilization. It is my hope that this article demystifies the notions of empathy, and demonstrates how it is at the core a cognitive operation and, therefore, can be trained, honed, and

meaningfully developed in a classroom through the appropriate selection of content and questioning techniques. This can serve to empower educators in the classrooms, states through the national curriculum, and intergovernmental organizations such as the United Nations Educational, Cultural, and Scientific Organization (UNESCO) (the latter being already engaged in awareness campaigns that utilize empathy as a starting point), so as to begin conceiving human rights and humanities education in a more targeted manner, and to allow better equipping citizenry with the 'heartware' necessary to achieve many of the aspirations captured by the UDHR. into finer elements, which are summarized by the following questions and sample responses from a student with regards to empathizing with a poorer member of Singaporean society:

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United Nations Human Rights Council (UNHCR) Procedures in Light of the Universal Declaration of Human Rights (UDHR)

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Abstract: The Universal Declaration of Human Rights (UDHR) was adopted in 1948 without the inclusion of an implementation mechanism. Throughout the following decades, treaties and covenants have created legally binding human rights obligations, and their own implementation mechanisms. These are, however, not universal in their application, and cannot be considered effective implementation mechanisms for the whole of the UDHR. In 2006 the United Nations Human Rights Council (UNHRC) was formed. The UNHRC includes two separate approaches to the protection of human rights. The first is the Universal Periodic Review (UPR), through which all UN member states are reviewed on their human rights record, thereby promoting a system that ensures the equality and the universality of human rights. The second comes into play in the case of reports of gross human rights violations; here the UNHRC makes use of fact-finding mechanisms to specifically focus on the situation in a particular member state. This article argues that the two approaches comprise an effective implementation mechanism for the UDHR. While both have

deficiencies, it can be considered that with the UNHRC, some implementation mechanisms for the UDHR have finally been provided.

Keywords: United Nations; United Nations Human Rights Council (UNHRC); implementation

The Lack of An Implementation Mechanism in the UDHR

The adoption of the Universal Declaration of Human Rights (UDHR) is still regarded as a pivotal moment in the history of human rights. It was the starting point for subsequent human rights treaties, and remains an integral part of the human rights framework of the United Nations (UN). The UDHR, however, possesses significant weaknesses, owing to the political realities of the time of its ratification. In particular, the declaration itself is not legally binding, and it did not include a mechanism to ensure its implementation.



These limitations were deliberately included by the drafters. The original intention was to make a legally binding Bill of Rights with an implementation mechanism. The political reality of the late 1940s made the drafters decide against this. They acknowledged the fact that if the UDHR included an implementation mechanism, it would not be adopted quickly (Johnson & Symonides, 1998: 34–35; Cheng, 2008: 260–266). The idea was, therefore, to first adopt the UDHR, and then over time create binding treaties as well as an implementation mechanism.

Even though the omission was deliberate, it did create the perception that while the UDHR was an important and influential instrument with significant normative value, it neither had any actual consequences for non-implementation nor any pressure for its implementation (Mazower, 2004: 395–396). The situation improved over time, however, through the adoption of many different human rights treaties: These include the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Cultural and Social Rights (ICESCR), as well as specific treaties for specific topics, such as the United Nations Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women, and the Convention on the Rights of Persons with Disabilities. These treaties have their own implementation mechanisms with respect to the subject matter of each treaty.

It is, however, questionable whether these treaty-specific mechanisms can be considered as an adequate implementation mechanism for the UDHR. These treaties are only binding on those states that have ratified them, and these implementation mechanisms are consequently only applicable to these states. Even a treaty such as the ICCPR has still not been ratified by twenty-five UN member states, meaning that these are not monitored by the United Nations Human Rights Committee (UNHRC). The other consideration is that these treaties all deal with specific human rights, but none of them address the entirety of the aspects that are dealt with in the UDHR. This means that, for example, the implementation mechanism for the Convention on the Rights of the Child, the United Nations Committee on the Rights of the Child, can only consider issues that fall within the subject matter of this treaty. These two issues imply in practice that these implementation mechanisms are neither as universal nor effective as an implementation mechanism for the UDHR ought to be.

United Nations Human Rights Council (UNHRC)

In March 2006, the UNHRC was formed as the successor to the UN Commission on Human Rights. It is the main UN body concerned with the promotion and protection of human rights. The UNHRC was established by UN General Assembly (UNGA) resolution 60/251. One of the main objectives of the UNHRC is the full implementation of human rights obligations undertaken by states and follow up on the goals and commitments related to the protection of human rights (UNGA, 2006). The resolution does not directly reference the UDHR in the operative paragraphs, but the UDHR is explicitly mentioned in the opening paragraphs, where the resolution reaffirms the UDHR. The focus on goals and commitments makes it clear that part of the tasks of the UNHRC is to promote full implementation of the UDHR. For that reason, it is important to consider the implementation mechanisms available to the UNHRC in light of the UDHR, and to determine to what extent they can be considered an implementation mechanism for the UDHR, as was foreseen during its drafting.

Universal Periodic Review (UPR)

The first of these implementation mechanisms is the Universal Periodic Review (UPR), perhaps the most innovative aspect of the UNHRC. The UPR is a peer review system of the human rights situation for all member states. States themselves can show what steps they have taken to improve human rights protection and how they attempt to fulfil their human rights obligations. Other states then discuss these steps as well as the human rights situation in that state. This provides for the possibility of constructive criticism based on equality and universality, leading to a set of recommendations.

The UPR is a truly universal mechanism as it submits all UN member states to a human rights review once every four-and-a-half years (Ramcharan, 2015: 150). Unlike the implementation mechanisms incorporated in human rights treaties, the UPR does not confine itself to specific aspects of human rights, but looks at the whole domain of human rights (Chauville, 2015: 89). This includes the human rights treaties by which a state is bound, but it also seeks to be more comprehensive and includes other aspects. In UNHRC resolution 5/1, which set up the UPR, it specifically states that part of the review process is to be based on the UDHR, specifically on how states implement and adhere to it (UNHRC, 2007). This makes the UPR the first instrument that directly considers an implementation procedure for the UDHR. The UPR can thus consider issues that are not included in treaty obligations, such as the right to own property explained in Article 17 of the UDHR. The application of the UPR has received significant criticism, especially in its first two rounds. As it concerns a peer review process, it has been argued that states are not likely to give harsh criticisms and that many recommendations remain vague (Duggan-Larkin, 2010: 563). Another drawback of the peer review process is that political considerations influence the level of criticism that is being made, with some states receiving much harsher critiques than others for similar human rights issues (Carraro, 2017: 953). There are, however, indications that the UPR does help promote human rights, especially through states' active use of the UPR. While the UPR might not immediately improve the situation in every state, it does allow for an open and serious discussion about human rights protection in all UN member states. The UPR thereby further incorporates states in the broader environment of human rights, and over time this process will allow for better respect of human rights (McMahon and Johnson, 2016: 17; Carraro, 2017: 967).

Human Rights Fact-Finding Missions (FFMs)

The UPR is not the only mechanism available for the UNHRC to assess the implementation of human rights protections in states: there is also the possibility of the UNHRC to do fact-finding. Fact-finding in the context of human rights concerns the investigation and assessment of what are the facts in a situation, and how the situation should be seen from a human rights perspective. Fact-finding has become one of the main efforts for the international protection of human rights, and the UNHRC is the most prolific body in this regard.

The UNHRC conducts fact-finding through independent investigations. The essence of all these mechanisms is the same, to be clear, providing an accurate portrayal of the human rights situation in a state. The UNHRC has often set up mechanisms for fact-finding in states where there have been credible reports of human rights violations, such as North Korea (UNHRC, 2013), Libya (UNHRC, 2015), Côte d'Ivoire (UNHRC, 2011), and many others.

These measures are country-specific and are therefore often criticized for not being universal. This perceived lack of universality is viewed as being based on the politicization of human rights. Much has been written in this regard, and – in some contexts – there appear to be clear political motivations for creating some of the fact-finding missions (FFM). This is perhaps best exemplified by the disproportionately high number of fact-finding missions conducted in the Israel-Palestine conflict¹. It needs to be stated, however, that because these mechanisms can be potentially applied to any state, they could be seen as universally applicable.

There are, however, also clear benefits to fact-finding missions when compared to the UPR. Most importantly, unlike the UPR, once a FFM is set up, it is more likely to be conducted in an impartial and independent manner. This is because FFMs are less reliant on politics than the practice in the UPR has shown itself to be. The main political influence lies in the choice of setting up a FFM and the mandate. Although the mandate is often politically motivated in its formulation, commission members generally interpret it in such a manner as to allow for an impartial investigation without political bias (Boutruche, 2017: 126). Another aspect of importance is that unlike the UPR, a FFM can conduct its own investigations, and thereby access a wider range of sources, such as witness and victim interviews.

Most of the resolutions setting up a FFM include an explicit reference to the UDHR as part of the underlying foundation. This can, for example, be seen in the 2009 Honduras Mission (UNHRC, 2009), the 2014 Sri Lanka Investigation (UNHRC, 2014) and the 2017 Group of Eminent Experts on Yemen (UNHRC, 2017). These missions explicitly cite the UDHR and incorporate it into their investigation. As a result, these FFMs should be considered as part of the implementation mechanisms of the UDHR.

FFMs are generally employed when there are persistent reports of human rights abuses within a state, and they are part of the international response to these situations, in addition to aspects of the attempts to end the human rights abuses. Unlike the UPR, which is done at set intervals, special procedures

can be instituted with more flexibility, hence allowing for a more adequate response to human rights abuses (Ramcharan, 2015: 209). Without the existence of these procedures, there would not be an opportunity to conduct urgent action, and respond to actual and impending threats effectively. For any implementation mechanism to be effective, there needs to be a way to address urgent situations.

Conclusion

Like all human rights instruments, the UNHRC owes a lot to the UDHR. Much of the way it does its work is inspired by both the spirit and practice of the UDHR. The UPR filled a gap within existing human rights instruments by finally providing a universal implementation mechanism for dealing with human rights situations within the UN membership as a whole. It thereby finally accomplishes the promise of the UDHR. While this mechanism certainly is not perfect and its implementation leaves much to be desired, it is an important step toward achieving an implementation of the UDHR as well as toward creating pressure to achieve its goals.

Neither the UPR nor FFMs are perfectly adequate implementation mechanisms for the UDHR, because both have effective political influence through their procedures. They also, of course, have been criticized. When considering the nature of the UN as a political organization, however, both continue to be significant steps towards a comprehensive implementation mechanism. Neither was envisioned at the drafting of the UDHR, but a combination of the two mechanisms allows both for a comprehensive periodical overview of the human rights situation in a country and the possibility of an effective response in specific pressing situations. Neither have legal or direct effects, but neither does the UDHR, which is a statement of principles, of aspiration. As such, it might be more appropriate to not assess its implementation through a purely legal instrument. A significant issue with these mechanisms is that they are reliant on state cooperation and external information. It is here that NGOs can play an important role, providing information to these mechanisms which would give a more comprehensive view on the implementation of the UDHR in individual states.

¹ By the time of writing, eight independent investigations had been conducted within this context, amounting to more than a quarter of the entirety of independent investigations.

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R2P and the UDHR: A Troubled Promise in Troubled Times

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Abstract: *The responsibility to protect (R2P) has been integral to post-Cold War efforts to safeguard human rights and give practical meaning to the Universal Declaration of Human Rights (UDHR), in particular the right to life, liberty, and security of person. R2P, however, remains a contested norm with weak implementation, as the conflicts in Syria, Yemen, and Myanmar attest. This reflects divisions among the major existing and emerging powers, and as important, misgivings about the norm's interventionist pillar amongst not only opponents, but also some advocates of R2P. Yet, R2P is about more than international military action to prevent atrocities, although the ability and willingness to use coercion lies at its contested heart, which has led inevitably to a focus on the challenges of such humanitarian intervention. The harder, and arguably more crucial, question relates to the extent to which the moral commitment to R2P as a whole remains intact today, particularly the extent to which major existing and emerging powers are able and willing to prioritise and provide leadership on human rights, not least with regard to their own avowed primary responsibility to protect those within their borders.*

Keywords: *Responsibility to protect (R2P); humanitarian intervention; prevention; major existing and emerging powers*

Introduction

Adopted by the United Nations General Assembly (UNGA) in 1948, the Universal Declaration of Human Rights (UDHR) codified, for the first time, certain inalienable and universal human rights and freedoms as the basis for realising peace and justice in the world. However, what it did not, and indeed at the time could not, do was specify how its vision was to be realized. Correspondingly, its existence has hardly assured that human rights have been universally upheld. Quite the contrary. Gross violations have occurred – including the 1975–1979 Cambodian and 1994 Rwandan genocides – and continue to be perpetrated in places such as Myanmar, Syria, and Yemen. Nearly 70.8 million people remained forcibly displaced worldwide in 2018 due to violent conflict, human rights violations, and persecution (UNHCR, 2019). Even so, the UDHR has retained moral force and provided impetus for the development



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of varied human rights instruments to translate its ideals into practice.

The evolving norm of responsibility to protect (R2P) has been integral to this effort to give practical meaning to the UDHR, particularly Article 3: “the right to life, liberty and security of person” (UNGA, 1948). At present, R2P focuses narrowly on the prevention of four types of mass atrocity crimes: genocide, war crimes, crimes against humanity, and ethnic cleansing. However, its relevance to the UDHR is considerably broader. This owes to the interrelatedness of human rights, the import of the right to life as a prerequisite for other rights, the norm’s stress on prevention, and the nature of the four specified R2P crimes. These atrocities involve “the deliberate targeting of specific groups, communities or populations” (UNGA, 2013: 3), and “are processes, not singular events”, often involving patterns of abuse, deprivation, discrimination, exclusion, and persecution (UNGA, 2013: 4).

Consider the case of the Rohingya in Myanmar’s Rakhine state. Since the start of “clearance operations” by security forces

in 2017, more than 730,000 Rohingya have fled into neighbouring Bangladesh (HRW, 2019), with thousands estimated to have been killed or injured (UNHRC, 2018). Described by many as an ethnic cleansing campaign (Adams, 2019; HRW, 2019), though denied as such by the Myanmar government, this has constituted a clear violation of UDHR Article 3. In 2018, a Fact-Finding Mission (FFM), established by the UN Human Rights Council (UNHRC), recommended the investigation and prosecution of senior Myanmar military figures for mass atrocity crimes perpetrated against the Rohingya, as well as against other minorities, in Rakhine, Kachin, and Shan states. The FFM further pointed out that the present plight of the Rohingya was a consequence of decades of persecution and human rights violations against them. Contrary to Article 15 of the UDHR, most, if not nearly all, Rohingya have been “de facto stateless, arbitrarily deprived of nationality” since 1982 (UNHRC, 2018: 6)¹. Their freedom of movement, and consequently access to education, healthcare, and employment, has for long been restricted, with arbitrary detention, forced labour, and ill-treatment a common occurrence (UNHRC, 2018) – all in contravention of several articles of the UDHR, and more so, their overarching ethos of dignity, equality, and liberty.

Despite broad acceptance of R2P, the international community has not taken decisive action to protect the Rohingya. Since 2012, the UN Security Council (UNSC) has issued but one presidential statement on the situation, though individual states (e.g., Australia, Canada, and the United States) as well as the European Union (EU) have imposed targeted sanctions on senior Myanmar military leaders. An independent review of the UN’s role in Myanmar from 2010 to 2018 characterised it as a “case of systemic and structural failures” (Rosenthal, 2019: 24). Even so, the point here is not to critique the international response to this country-specific situation, but to underline the relevance and potential usefulness of R2P to talk about, and to mobilise collective action for, human rights protection and, therefore, also the importance of understanding its flaws.

A Brief History of R2P

The term “responsibility to protect” was coined in 2001 by the Canadian-sponsored International Commission on Intervention and State Sovereignty (ICISS), established in response to a debate initiated by then UN Secretary-General Kofi Annan on the principle of humanitarian intervention – on whether, and under what conditions, force could be used to protect human rights within a sovereign state’s borders against its will. The immediate impetus for the debate was the controversial military intervention by the North Atlantic Treaty Organisation (NATO) in Kosovo: acting without UNSC authorisation, NATO justified its actions, in 1999, as an effort to stop the commission of crimes against humanity by the Yugoslav government against its Kosovar Albanian citizens. This intervention came at the tail end of a series of crises that had tested the international community’s will to react to gross human rights violations inside a state, including Rwanda as well as Bosnia and Herzegovina (i.e., Srebrenica), where it failed to prevent tremendous loss of life. An estimated 800,000 people were killed during the 1994 Rwandan genocide, with the UN making the appalling decision to reduce its peacekeeping presence in the country in the midst of the carnage (Des Forges, 1999; ICISS,

2001b). Then, in 1995, the UN-designated “safe area” of Srebrenica was overrun by Bosnian Serb forces, followed by the mass execution of “thousands of men and boys within a matter of days” (UNGA, 1999: 102), with the international community standing accused of failing to do enough to prevent or stop the massacres (Lupis and Pitter, 1995; ICISS, 2001b).

ICISS reframed the debate, which had been traditionally posited in confrontational terms of sovereignty versus intervention. It did so by advocating thinking about sovereignty as responsibility (rather than as autonomy), and by thus recasting the issue of intervention as a matter of human rights protection responsibilities². ICISS further identified the state as the primary bearer of the responsibility to protect, but also argued that the international community had a residual protection responsibility when the state was unable or unwilling to fulfil its duty, or when it was itself perpetrating atrocities. In building this argument, ICISS (2001a) acknowledged the UDHR as a benchmark for state behaviour and as a restriction on “the authority of states to cause harm to their own people within territorial borders” (p. 49), in addition to being a contributing legal source, along with the 1949 Genocide Conventions, for an emerging principle of humanitarian intervention. Conversely, the contribution of R2P to the UDHR has been in lending it specificity, by furthering the development of thought and practice on who is responsible, and under what circumstances, for ensuring the right to life, liberty, and security of person.

In September 2005, the UNGA endorsed R2P. Paragraph 138 of its World Summit Outcome document confirmed the primary responsibility of the state for human rights protection. But the “major breakthrough” (Cater and Malone, 2016: 287) was in Paragraph 139, which conferred a responsibility on the international community:

To take collective action, in a timely and decisive manner, through the Security Council, in accordance with the Charter, including Chapter VII, on a case-by-case basis and in cooperation with relevant regional organizations as appropriate, should peaceful means be inadequate and national authorities are manifestly failing to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity (UNGA, 2005: 30).

R2P: Pillars, Problems, and Prospects

In 2009, then UN Secretary-General Ban Ki-moon outlined a three-pillar approach to R2P. This has since been the main framework for thinking about its implementation. The first pillar reaffirms the primary responsibility of the state to protect its populations from the four specified R2P crimes. The second pillar asserts the international community’s role in encouraging states to meet their protection responsibility, building their capacity for preventing mass atrocities, and providing assistance in crisis situations before these escalate. The first two pillars, thus, are state-centric and stress prevention. The third focuses on response. It asserts the international community’s responsibility to take action, as envisaged under the 2005 World Summit Outcome document, including the deployment of force. Such armed intervention, though, is but one piece in the third pillar toolbox, and it is a measure of last resort (UNGA, 2009). The range of peaceful tools available includes, among others, enquiry, mediation, public advocacy,

¹ Article 15 of the UDHR states: “(1) Everyone has the right to a nationality. (2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality” (UNGA, 1948).

² This built on the notion of sovereignty as responsibility, previously put forward by Francis Deng and others at the Brookings Institution’s Africa Program (Adebajo, Paterson, and Sarkin, 2010).

and regional or sub-regional diplomacy (UNGA, 2012).

In a key moment for R2P, in March 2011, the UNSC authorized force to prevent mass atrocities in Libya. This was the first clear-cut case of a coercive response under the norm's third pillar. However, blowback from the subsequent mission creep to "regime change", as well as NATO's lack of accountability to the UNSC for its use of force, was significant. It generated immense mistrust, sharpening divisions among the Security Council's major members, while reviving post-colonial fears of Western abuse of R2P (Brockmeier, Stuenkel, and Tourinho, 2016). The human rights situation in Syria in 2011–2012 was a notable casualty of the resultant paralysis of the UNSC, with veto-wielding Russia and China firmly opposed to any resolution that risked legitimating coercive action.

At the same time, the Libyan intervention and its consequences also reignited debate on triggers and criteria for the use of force under R2P, yielding proposals such as the Government of Brazil's concept of "responsibility while protecting" (UNGA, 2011). Important questions were raised. For instance, what is the nature of the relationship between R2P's three pillars? Would it be appropriate, or even feasible, for them to be chronologically sequenced, to ensure that armed intervention is a last resort (Bellamy, 2015)? What is the best way to ensure that the authorised use of force reflects the principle of proportionality? Who decides (UNGA, 2016)? Does humanitarian intervention have an in-built pressure to expand and include political change (Paris, 2014)? How can the UNSC ensure the accountability of those that implement its mandate to use force (UNGA, 2011)?

Crucially, the nub of contestation remained implementation, particularly the use of force. What has not come up for renegotiation is the idea of R2P (Bellamy, 2013). Not only is the norm embedded in a broader framework that includes the protection of civilians as well as accountability mechanisms such as the International Criminal Court, but it has also been an adaptable idea with discursive staying power: about 70 UNSC resolutions have referred to R2P since Libya (GCR2P, 2019). Furthermore, since 2009, the UN Secretary-General has produced an annual report on R2P to support the conceptual refinement and operationalisation of the norm, which has been discussed by the UNGA either in formal debate (2009 and 2018–2019) or in informal interactive dialogue (2010–2017). Beyond the UN, the R2P Focal Points initiative is a network of over 60 countries, as well as the EU and the Organisation of American States (OAS), which have undertaken to appoint a senior government official to promote R2P and mass atrocity prevention at home.

R2P is a complex norm. Its implementation faces major challenges. It may even be the case, as Roland Paris (2014) has argued, that there are inherent problems with R2P-based coercive action that make it unlikely for the norm to ever be fully implemented. Even so, as most critics also acknowledge, R2P is not dead – though another clear-cut case of R2P intervention is unlikely in the immediate future. The reasons include varying degrees of wariness and weariness (Rieff, 2018; Chesterman, 2018), and not least, political divisions within the UNSC against a backdrop of rising great power competition and retreating internationalism.

That said, as David Rieff (2018) has suggested, R2P faces an arguably greater test: a generalised decline in the moral concern upon which it rests among influential internation-

al actors. More specifically, the norm's bedrock pillar of the state's primary responsibility to protect its own populations seems to have become fragile. R2P's first pillar has had a taken-for-granted quality, given its well-established legal foundations. Yet, several major existing and emerging powers are exhibiting worrying human rights deficits, amidst an overall decline in political and civil rights worldwide (Freedom House, 2019). This includes countries with a long history of support for human rights. The separation of families of non-citizens at its border with Mexico is but one example of how the US, for instance, has been moving backward on human rights (HRW, 2019). Meanwhile, the EU is confronted with xenophobia and intolerance within its own borders, as populist parties with extremist ideas have gained ground in several member states.

Among emerging powers, political repression in China has risen, with Beijing facing particular opprobrium for the harsh treatment of its Muslim Uyghur minority – about one million Uyghurs are estimated to have been detained in mass internment camps in Xinjiang (HRW, 2019; Shepherd, 2019). In India, freedom of expression and opinion have come under increasing attack, even as militant Hindu nationalism has grown bolder and life for religious minorities, particularly Muslims, has become more oppressive (Griswold, 2019). Meanwhile, in South Africa, rising racism, horrific gender-based violence, and xenophobia and xenophobic violence, amidst a low level of trust in government, are making it difficult to assess the country's recent human rights record as anything but troubling (HRW, 2019; Corruption Watch, 2019; Alence and Pitcher, 2019). Brazil is faring little better, with long-standing human rights problems, including unlawful killings and threats to indigenous peoples' rights, coming under greater scrutiny amid the rise of right-wing populism (HRW, 2019; UNHRC, 2016; Muñoz Acebes, 2019).

One might ask: why does this matter for R2P? There are several reasons. One, foreign policy is sensitive to domestic context. For instance, to varying degrees, Chinese and Indian approaches to R2P have been shaped by wariness of weakening the principle of non-intervention, which owes in some part to their fears about potential external interference in places such as Xinjiang and Kashmir. Conduct at home is further an indicator of the normative impulses and priorities of a state, which also influence its diplomatic approach and conduct abroad. Neither China nor India has obstructed the conceptual development of R2P since 2005 (Foot, 2011; Virk, 2014), but both have taken state-centric approaches to the norm, evident in their emphasis on the state as the primary bearer of protection responsibility (i.e., the first two R2P pillars) – as opposed to an emphasis on human rights as the subject of protection (Brockmeier et al., 2016; Paddon Rhoads and Welsh, 2019). Two, without a strong human rights record at home, these states cannot act decisively against egregious abuses elsewhere, not with credibility or legitimacy (Brookings Institution, 2012). Consider South Africa: for how long can it continue to provide credible regional leadership on human rights, when it is unable to adequately protect its own vulnerable populations? Three, these major and emerging powers are setting a poor example, while contributing to the creation of an enabling environment for human rights violations. Their lapses are, to a significant extent, an expression of failure to manage internal diversity. As these powers (particularly the emerging democratic powers) gain influence within the global South as alternative models to the West, how they treat their minorities and harness their plurality – or not – is under scrutiny not only by critics, but by others facing similar challenges.

A Concluding Reflection

Agree or disagree with its implementation, contest or not its assumptions, R2P has been a resilient norm. So far. And it has contributed to increasing the specificity of the discourse of human rights protection. But, once all is said and done, R2P's potentially transformative promise lies in the appropriateness and feasibility of its tools to move the UDHR beyond words, to closing the gap between principles and praxis. The question is not merely one of political commitment, but also about the moral relevance and practical usefulness of the toolbox. And there are real challenges to using force, in accordance with the principles of necessity and proportionality, in a hierarchi-

cal international society, for the specific purpose of human rights protection as envisaged by R2P. The harsh reality may be that there are instances in which R2P calls for restraint, and that there are hard limits to its implementation (Paris, 2014).

Finally, R2P carries an important reminder: the struggle is also at home. Ensuring respect for human rights, valuing diversity, eliminating discrimination and intolerance, and supporting a politics of inclusion are not only necessary for a state-society to fulfil its primary responsibility to those under its protection, but also for it to credibly influence and act – as a member of the collective of states – in support of the responsibility of the international community to protect human rights everywhere.



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Human Rights and the UN's Responsibility to Protect (R2P)

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Abstract: *Intervention in conflict resolution and the endorsement of human rights by organizations such as the United Nations (UN) is central to maintaining international peace and security. Thus, concepts such as the Responsibility to Protect (R2P) commitment are presently one of the UN flags to justify humanitarian interventions in countries where conflicts occur, since it addresses all phases of a conflict. This concept is intended to call upon the international community to deal with conflicts which, above all, threaten the rights, freedoms and guarantees of civilians whose sovereign state cannot protect them. This concept has been used for the resolution of conflicts around the world and, as such, we see a growing discussion around these concepts, both through reports emanating annually from the Secretary-General of the UN, and through the creation of think-tanks and agencies specialized in the theme. Given the sensitivity of the issue of conflict resolution, the intimacy between what the Universal Declaration of Human Rights (UDHR) stands for and external intervention in a given sovereign state, we understand, therefore, that there is a need to debate the responsibility of the UN to improve the humanitarian interventions that universally defend human rights.*

Keywords: *Human rights; Responsibility to Protect (R2P); humanitarian interventions; United Nations*

The Responsibility to Protect

It is mostly tacitly accepted in the United Nations (UN) that the values conveyed by the concept of Responsibility to Protect (R2P) are closely linked to the defense of human rights. In line with the provisions of the Universal Declaration of Human Rights (UDHR), especially those set out in Article 3 – “everyone has the right to life, liberty and personal security” (UNGA, 1948), – R2P calls upon the responsibility of the international community to protect certain populations. In fact, every day we come across media reports that give accounts of extreme conflict situations, where thousands of innocents are caught in the middle.

Nonetheless, we have several examples in recent history of conflicts that are killing (or have killed) thousands or tens of thousands in many different ways, such as the Rwanda Genocide or what happens almost daily to the Rohingya people in Myanmar.

It should be noted that R2P is not limited to protecting innocents from death in the course of a conflict, but rather that it is transversal to any act that complies with the rights enshrined in the UDHR. In this sense, the creation of refugee camps¹, situations of extreme poverty or the occurrence of crimes as a result of armed conflict are examples of serious violations of human rights.

However, the innocent and neutral people who are at the center of a conflict taking place within a state or region naturally need their rights, enshrined in the UDHR, to be protected because their upholding is unrelated to the reasons of the conflict. Thus, R2P can be the fundamental instrument for raising awareness and, lastly, the materialization of the guaranteeing and safeguarding of human rights throughout the course of an armed conflict.

In fact, there are cases where R2P was materialized, for example, in the Libyan intervention, in which some states argued that this concept was operationalized as a subliminal way to change the regime (Yazbek, 2014; Viana, 2014: 23).

However, it is our understanding that the failure of this operationalization is not synonymous with the failure of the concept itself (Ercan, 2016). As we mentioned in a previous paper, “R2P currently serves [primarily] as a wake-up call to the international community when invoked by any person or organization to intervene in a state” (Thó Monteiro, 2018: 12).

¹ We are talking about refugee camps whose conditions do not meet the minimum hygiene and safety requirements, explicitly jeopardizing the dignity of the people who live there. For examples, see I Volunteered in a Refugee Camp: These Are The Stories You Won't See on TV at the HuffPost (2016): https://www.huffpost.com/entry/life-in-a-refugee-camp-hu_b_10245416; and, see 'I feel like my life is empty': Refugees suffer from mental illness on Greek islands at ABC News (2018): <https://abcnews.go.com/International/feel-life-empty-refugees-suffer-mental-illness-greek/story?id=53724038>



Image credit: UN News | UN Photo & Pascual Gorriz

The materialization of the concept per se is not yet properly defined and it should be considered a mistake to take a tree – e.g., intervention in Libya – for a forest.

In this context, it is important to briefly discuss the history, definition, and operationalization of R2P. As we have seen, in a situation of conflict in a sovereign state, whatever its nature², it is crucial to be able to protect people that are not participating in the conflict. In this sense, R2P is based on three fundamental pillars, according to the report of the United Nations Secretary-General (UNSG) from 2009:

1. The responsibility of the sovereign state to protect its populations from crimes of genocide, war crimes and crimes against humanity and ethnic cleansing, including through preventive strategies
2. The commitment of the international community to support and cooperate with these states to ensure the protection of their populations;
3. The responsibility of the international community to respond collectively to a situation where a state fails or fails to comply with the protection of its population by intervening peacefully, coercively or cooperatively, in accordance with the UN Charter (UNSG, 2009: 8-10).

On the basis of these three pillars, we have witnessed the international community's duty to intervene, concept that had

² We consider, in this article, a conflict as being a humanitarian crisis with a multifaceted character. Hence, a conflict occurs “in a country, region or society where there is a total or considerable breakdown of authority resulting from internal or external conflict and which requires an international response that goes beyond the mandate or capacity of any single agency and/or the ongoing UN country program” (Inter-Agency Standing Committee, 2008: 11).

already been introduced by Francis Deng³ in 1996. He argued that when a nation was unable to ensure respect for the human rights of its population, other nations not only can, but should intervene in safeguarding them (Etzioni, 2006: 71). Thus, debated since the 1990s, R2P has been the subject of various plenary sessions, resolutions, think-tanks, and documents prepared by the highest UN decision makers.

However, it was not until this new century that the concept began to be studied and expanded. As an example, we would like to emphasize the report issued by the International Commission on Intervention and State Sovereignty (2001: 13), which divides R2P into three specific responsibilities: the responsibility to prevent, the responsibility to react and, finally, the responsibility to rebuild.

In the first instance, it is necessary to prevent any conflict in a country from occurring. This can be done through UN observer reports that detail the state of a country that may be in breach of the UDHR, and list immediate measures to be taken so as to prevent the escalation of a conflict⁴. In the case that a conflict has escalated and taking into account when the instruments used for prevention have proved not to be sufficient, there is a need to react – that is to say, to intervene. In this stage, the duty to intervene that Francis Deng forwarded takes action, on the basis of Chapters VI to VII of the UN Char-

³ Francis Deng has served as the UN Special Adviser for the Prevention of Genocide. To consult his biography, see: <https://www.un.org/press/en/2007/sga1070.doc.htm>.

⁴ One example is the United Nations Military Observer Group in India and Pakistan (UNMOGIP), implemented in January 1949, which aims to “supervise the ceasefire between India and Pakistan in the State of Jammu and Kashmir”. See: <http://www.peacekeeping.un.org/en/mission/unmogip>.

ter, in order to protect the population at risk.

Lastly, the responsibility for rebuilding is closely linked to the last stage of a peacekeeping operation (PKO), namely the peacebuilding phase. In other words, in a post-conflict scenario, we are logically faced with a state in which the main institutions that constitute it are non-existent or ineffective as a result of the conflict. It is therefore crucial that the human resources present on site support for the reconstruction of the state as well as provide the population with basic care – e.g., water, electricity, sanitation, etc. – so as to enable sustainable development and a decent standard of living.

Obviously, the concept of R2P and the values that encircle it are universally and tacitly accepted in the international community. However, if we defend the capital gains it brings, we find a particular weakness that should be highlighted. In this sense, the so-called caveats contribute not only to mistrust of R2P, but also to its stagnation in relation to the struggle for the human rights of the populations targeted by a humanitarian conflict.

Strongly condemned by the UN, caveats are the interests of a given state to intervene in another – i.e., when a state, by participating in a PKO, assigns nationally designed tasks/missions to peacekeepers beyond the mandate of the mission, which seriously undermines their performance (High-Level Independent Panel on United Nations Peace Operations, 2015: 28, 57). In line with the foregoing, we can also highlight the reluctance of some countries to intervene in a sovereign state, such as China and Russia's distrust of the application of R2P in the humanitarian intervention in Libya (O'Donnell, 2014: 565-567).

Promoting Human Rights through Peacekeeping

Having analyzed the theory pertaining to R2P, we can realize that the concept serves as a means of enabling humanitarian interventions in states that commit serious violations of their citizens' fundamental rights (Thó Monteiro, 2018). Consequently, the study and development of this concept will always result in an intimate defense of human rights. However, it is important to understand how we actualize R2P in order to safeguard the provisions of the UDHR.

In this sense, intervention in a sovereign state involves an operationalization of R2P in a particular state or territory. Principally, the materialization of R2P happens when a mandate for a PKO is drafted and consequently created. Thus, the practical applications of this concept in a PKO mandate narrows the gap "between its lofty rhetoric and its often less-than-lofty performance" (Bellamy, 2010: 146).

The important question, thus, is how can human rights be promoted by operationalizing R2P in practical terms and on the ground? To this end, it is first necessary to define a set of concrete actions and measures. Hence, a PKO's mandate should be as clear and concise as possible, because the mandate is the instrument that enables peacekeepers to carry out their mission objectively.

Given the multidimensionality of a PKO, which brings together military, police, and civil actors, the safeguarding of human rights in the course of a mission naturally has certain specificities that depend on the actors in question. According to the United Nations Peacekeeping Operations Principles and

Guidelines doctrine (UN, 2008), "all United Nations entities have a responsibility to ensure that human rights are promoted and protected by and within their field operations" (p. 27), so it is considered that even the military, which are mostly deployed and placed at the beginning of the conflict, also play an active role in protecting civilians throughout the performance of their mission.

In addition, the police component in a PKO also plays a crucial role in four distinct areas of activity that contribute, directly or indirectly, to the promotion of human rights, namely: i) police administration; ii) police operations; iii) police command; and, iv) capacity-building. It is important to draw attention to the fact that police operations include joint patrols (i.e., between peacekeepers and state police), criminal investigations and intelligence functions, and public order and peace control. This set of tasks are the most visible regarding the promotion of human rights within the target populations, notwithstanding the other areas of activity.

Regarding civilian personnel in a PKO, it should be noted that these come from the most varied areas related to human rights: health, education, logistics, justice, and others. In this context, civilians perform tasks that "promote and protect human rights, helping strengthen the rule of law, fostering political and reconciliation processes, promoting mine-awareness, and serving as public information officers who explain and build support for the peace processes and the work of the UN" (UN Peacekeeping, 2019). For example, in a state whose core institutions function ineffectively, it is crucial to have teachers to educate children, many of whom are also traumatized by the conflict scenario to which they have been exposed, doctors and nurses to care for and support the sick, and judges to condemn criminals and, thereby, restore an environment of security and peace.

Lastly, it should be highlighted that in March 2018, the UNSG approved the creation of an initiative called Action for Peacekeeping (A4P)⁵, which clearly outlines the path that the UN intends to follow in the development of humanitarian operations that enshrine the UDHR, with an aggregate of increasing efforts by the international community.

Final Considerations

In order to summarize our discussion, it is important to consider that, firstly, we found R2P to be a concept that is closely linked to the defense of human rights enshrined in the UDHR, both theoretically and when operating in a PKO. In fact, R2P, by attributing to each state, under the aegis of the UN, the responsibility to protect the populations that are in a territory subject to a conflict where the responsible state cannot or will not do so, immediately entails a clear concern for the safeguarding of human rights. In this context, when a number of serious human rights violations are continually witnessed during a conflict, R2P emerges as a norm to protect and uphold human rights, especially when it operationalized by means of a PKO. Given the strength that R2P could have as a concept in drafting mission mandates, expressing its constant concern for the preservation and promotion of the human rights of the people involved, it calls for setting a practical path to implement a set of measures and actions to defend them. Since PKOs take a multidimensional character, bringing together various actors (i.e., military, police and civilians), man-

⁵ See: <https://www.un.org/en/A4P/>.

dates when outlined, should take that into account, to ensure that in the future peacekeepers can conduct missions in a more efficient way, safeguarding a decent standard of life to the population. In short, we can clearly state that R2P is a fundamental pillar for the promotion of human rights in a conflict⁶, essentially by raising awareness within the international

community of the responsibility to protect human rights, since its materialization still lacks consensus on what constitutes "the best way to apply it".

⁶ On a note to correspondents, Karen Smith, UN Special Adviser on the R2P, and Adama Dieg, UN Special Adviser on the Prevention of Genocide, recently have "urged the international community, and the Security Council in particular, to do more to uphold the responsibility to protect civilians", referring to the Syrian conflict, in: <https://www.un.org/sg/en/content/sg/note-correspondents/2019-10-15/note-correspondents-joint-statement-adama-dieg-united-nations-special-adviser-the-prevention-of-genocide-and-karen-smith-united-nations-special-adviser-the>

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The Universal Declaration of Human Rights (UDHR) in an Era of Sustainable Development: How the Right to Development (R2D) Integrates Different Streams of Human Rights

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Abstract: *The adoption of the Universal Declaration of Human Rights (UDHR) in 1948 coincided with the onset of the Cold War between the United States of America (US) and its allies, on the one hand, and the Union of Soviet Socialist Republics (USSR) and its respective allies, on the other. This division of the world into a First World in the West and a Second World in the East led to a division in relation to the UDHR as well. The human rights system got differentiated into the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). It meant largely that the Soviet Union and its allies neglected civil and political rights as well as became socialistic in terms of providing either free or subsidised education, healthcare, and others to its citizens; meanwhile, the US and its allies mostly gave freedom to its citizens to choose their governments in the form of multi-party democracy, entrenching capitalistic economies. Despite the end of the Cold War rhetoric, these differences in understanding of human rights have not fully disappeared, and have resulted in developmental deficits in many parts of the world. The world in 2019 must seek to integrate these rights, and one of the ways to do so is to bring the United Nations Declaration on the Right to Development (DRTD) into the mainstream. In the era of the Sustainable Development Goals (SDGs), the DRTD is placed perfectly to integrate different streams of human rights and achieve sustainable development.*

Keywords: *Cold War; Universal Declaration of Human Rights (UDHR), United Nations Declaration on the Right to Development (DRTD), Sustainable Development Goals (SDGs)*

Introduction

The causes and effects of the Second World War have been amply researched and published. From ultra-nationalist, right-wing ideologies to inward-looking trade and economic policies in Europe, these circumstances resulted in the onset of the war that killed an estimated 70–85 million people, including military and civilian deaths, and deaths from war-related diseases (White, 2011). It is disputed whether this number includes the death of 3 million Bengalis in India in 1943 due to famine, which was war-induced in an area with fertile soil and climatic conditions favourable to agriculture (Safi,

2019). To top the misery off, the atomic blasts and mushroom clouds resulted in the annihilation of two Japanese cities, Hiroshima and Nagasaki. Also, one cannot forget the human rights abuses which took place within the Union of Soviet Socialist Republics (USSR) during the 1930s as well as in Mao's China from the end of the 1940s onwards. This article will give a historical account of the evolution of the Universal Declaration of Human Rights (UDHR), the split during the Cold War on its understanding and implementation, the exercise to bring these human rights standpoints together through the Right to Development, and the relevance of the latter in the era of the 2030 Agenda for Sustainable Development.

Repudiation during the post-war period of the dastardly acts and complete disregard for human life evident in the Second World War resulted in the institutionalisation of international organisations (IOs) and the devising of a moral plan that culminated in the form of the Universal Declaration of Human Rights (UDHR) in 1948. The delineation of IOs took place along sectoral lines. Finance and monetary related issues became the domain of the Bretton Woods institutions: the International Monetary Fund (IMF) and the International Bank of Reconstruction and Development (IBRD) – the latter, considered alongside the International Development Association (IDA), is commonly known as the World Bank. The free flow of global trade and the commitment to reducing various trade barriers became the agenda for an institution which, later on, came to be known as the World Trade Organisation (WTO). The United Nations (UN) became the institution devoted to maintaining and spreading peace across the globe, and strengthening and universalising human rights norms.

The US-USSR Human Rights Split

Victor's justice after the Second World War resulted in a negotiated establishment of IOs among the winning parties. The end of the war also led to the emergence of a new conflict, the Cold War, waged between the economic value systems of capitalism, on the one hand, and socialism, on the other, and which was coupled with the political value system of open and multi-party democracy, on the former side, and communist governance, on the side of the latter. The capitalist economy system, with open and free democracy, became the hallmark

of the United States (US) and its allies, while the socialist economic system, with a communist style of governance, came to be associated with the Union of Soviet Socialist Republics (USSR) and its allies. The split was observable in the workings of all IOs as well, and it manifested differently in different IOs.

The much celebrated UDHR was also not left untouched by this ideological schism. Two standpoints regarding the UDHR became differentiated as a capitalist bloc that led the International Covenant on Civil and Political Rights (ICCPR), and a socialist bloc that led the International Covenant on Economic, Social and Cultural Rights (ICESCR) (Felice 2018: 1). In broad terms, these differentiations meant that the USSR and its allies neglected civil and political rights, and became socialist in terms of providing free or subsidised education, healthcare, and other services to its citizens, which responded to their intention of making their countries socially egalitarian, and economically and financially equal. The US and its allies gave their citizens freedom to choose their governments in the form of multi-party democracy, where markets played an overwhelming role in their countries' economic and financial setup and development. It is another matter that such differentiations were a mere distinction on paper and, mostly, rhetorical in nature, since in reality both blocs digressed from their stated principles on various occasions, and committed human rights abuses not only domestically, but also within other countries of the global South, and across Asia, Africa, and Latin America. It is important to state this caveat, although its further discussion is beyond the scope of this article. Noteworthy, however, is that despite the end of Cold War rhetoric, these differences in understanding of human rights have not fully disappeared.

The separation of the understandings of the UDHR into ICCPR and ICESCR was also palpable in its operability by states. In this regard, ICCPR and ICESCR got referred to as negative (i.e., inaction) and positive (i.e., action) rights, respectively, depending upon the action required by the state. This distinction was necessary as the antithetical split between the West and East had almost derailed the negotiation and adoption process of the UDHR. In order to achieve certain levels that comply with the ICESCR, a state needs to have an action-oriented or positive plan and policies to accomplish, say, the provision of health care, educational facilities, food, employment, housing, and others. Whereas by virtue of guarantees of protection by the state, the levels that comply with the ICCPR could be ensured for citizens, say, upholding the rights to freedom of speech, freedom of religion, freedom from violent crimes, and others. Countries like India invoked the negative-positive dichotomy, presenting ICCPR and ICESCR as distinct forms of rights where the plurality of varied understanding, value systems, and (political and economic) leanings could be celebrated. India firmly believed that global harmony could be achieved only through this observance and recognition of diversity, in other words, without trying to erase either one of them (Bhagavan, 2019: 4).

As noted before, even the cessation of the Cold War did not do away with state-specific understandings of the rights enshrined in the UDHR, especially in terms of those specified by either the ICCPR or the ICESCR. In fact, with certain issue areas it manifested against the run of play. For example, exception did exist on both sides of the divide: many southern countries that had – allegedly – followed the socialist model continuing to have lax labour rights law in order to attract foreign investment and assist in the growth of their manufacturing industry; and, conversely, although in theory the capitalist

model is profit driven and has the tendency of impinging upon the worker's rights, that was not always the case. Furthermore, these southern countries cried injustice (i.e., intervention in domestic policy) when countries of the north tried to initiate policy transfers towards strengthening labour protections and rights in the manufacturing intensive countries in question. Southern countries claimed that undertaking labour reforms would result in a loss of market competitiveness. According to a recent study, the cost of an Apple iPhone would be US \$30000 were it to be produced and assembled in the US instead of in China (Tricontinental, 2019: 4). The same study also claims that workers who make iPhones in the 21st century are 25 times more exploited than textile workers of England in the 19th century (ibidem).

United Nations Declaration on the Right to Development (DRTD)

The struggle and pushback of the Third World against the policy at the global level became manifest when the demands of the New International Economic Order (NIEO)¹ took shape in the 1970s, addressing an equitable world order and a legitimate space for southern countries to have their say. Simultaneously, debates that had continued raging ever since the ideological cleavage of UDHR into the ICCPR and the ICESCR were now concerned with the definition and meaning of development. It was later recognised in the academic sphere that an inclusive development can occur only when development is understood to be comprehensive in nature, involving economic, social, cultural, and political processes. Amartya Sen's idea of 'development as freedom' in 1999, and the 'capabilities approach' that Martha Nussbaum and he had developed previously in the 1980s, propounded such ideas. Also, the declaration on the Right to Development in 1986 similarly focused on a comprehensive idea of development. It was also acknowledged by researchers that development must aim at the constant improvement of the well-being of the entire population and of all individuals. It was further upheld that peoples should actively, freely, and meaningfully participate in development as well as in the fair distribution of benefits. (Aginam, 2018: 4)

As a natural progression to NIEO, the idea of the Right to Development (R2D) emerged in 1986 in the form of the United Nations Declaration on the Right to Development (DRTD). While NIEO was based on an outcomes idea of economic development, the DRTD expanded the scope of development to include achieving it through inclusive economic, social, cultural, and political processes (OHCHR, 2019: 2). This understanding of development deviated from the traditional, but still dominant, understanding of development as primarily an economic process, measured in gross domestic product (GDP). DRTD emerged as a more balanced approach to development as well as a response to rising poverty, growing

¹ The 1974 NIEO declaration specifically mentioned that "developing countries, which constitute 70 per cent of the world's population, account for only 30 per cent of the world's income", making it impossible to achieve "even and balanced development of the international community under the existing international economic order". This is the result of gaps between "the developed and the developing countries", which widen in a system established when most of the latter did not even exist as independent states, and "which perpetuates inequality". Furthermore, it mentions that "International co-operation for development is the shared goal and common duty of all countries", and that "the reformed international monetary system" aims to promote "the development of the developing countries and the adequate flow of real resources to them" (UNGA, 1974).

inequalities, and unprecedented economic, social, cultural, political, environmental, and climate crises, which had dented the progress of society.

Article 1 of the DRTD² clearly sets out that it is inclusive of all relevant provisions enshrined in both International Covenants on human rights (i.e., ICCPR and ICESCR). The DRTD also claims that the R2D is neither a “super right” that subsumes all other human rights nor is it an “exclusive human right”, but rather that the R2D is an equal right among universal, inalienable, interrelated, interdependent, and indivisible human rights. The R2D can further be understood as sustainable development in a human rights form, and firmly makes development a human right³. The R2D also insists that a holistic human rights-based approach (HRBA) to development must not merely connect human rights to development objectives but must consider development in itself a human right as well. In fact, the DRTD and its principles were the basis for the conceptualisation of HRBA (OHCHR, 2016: 11).

Ongoing Efforts and Conclusion

Presently, the DRTD is not a legally binding document, but ongoing deliberations at the United Nations Human Rights Council (UNCHR) in an inclusive and multi-stakeholder format is working towards an International Treaty on Right to Development. This treaty will not only be a binding document to states, but will also establish the legal character of the R2D, and will strengthen its justiciability – that is to say, courts will be able to exercise their juridical authority in relation to it.

The international community adopted the Addis Ababa Action Agenda (AAAA) and the Sustainable Development Goals (SDGs) in 2015, both of which have organically grown from a human-centered approach to development. AAAA was the Third Conference on Financing for Development, and its main agenda was to discuss and deliberate on financing for the realisation of the SDGs. It also deliberated on means of implementation (MOI) and domestic resource mobilisation for SDGs. The collective and consensual assertions by nation states that the AAAA and SDGs reaffirm the R2D is also informed by the DRTD. In the era of the Agenda 2030 for Sustainable Development, such a linkage should be seen as a mandate that implementation of AAAA and the SDGs must be essentially founded on operationalisation of the R2D. As mentioned previously, the R2D is a process driven approach which seeks to achieve economic well-being for all in a just and equitable manner, and the outcome-oriented SDGs aspire to achieve a similar objective, thus making the R2D and SDGs natural partners. Similarly, if the global community aspires to realise SDGs, it must internalise the R2D, which emphasizes sustainable means of implementation. With regards to the duty bearers, the R2D places the onus on the states to internally respect, protect, and fulfill human rights, and on IOs so that they externally ensure that economic and other policies promote human rights, and do not undermine them. This means that the duty of states is to ensure the R2D is not limited to their own jurisdictions, but extends beyond borders, and also permeates international decision-making at IOs (OHCHR, 2016: 7). Incorporating principles of the R2D within traditional aid model such as South-South and triangular cooperation⁴ will further the cause of sustainable development. These three distinct models act as a MOI and as a resource mobilisation tool; and, their goal is also captured separately under SDG 17, which aims to revitalize global partnerships for sustainable development by strengthening their means of implementation.

² Article 1 reads: “Right to Development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized. The human right to development also implies the full realization of the right of peoples to self-determination, which includes, subject to the relevant provisions of both International Covenants on Human Rights, the exercise of their inalienable right to full sovereignty over all their natural wealth and resources” (OHCHR, 2019).

³ The UN Commission on Human Rights (UNCHR) first recognised the R2D as a human right in a resolution approved in 1977.

⁴ For details on the link between South-South and triangular cooperation, sustainable development, and the R2D, see the Report of the Special Rapporteur on the Right to Development (A/73/271)

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The Agenda 2030 for Sustainable Development as a Key Instrument to Revitalize the Effective Implementation of the Universal Declaration of Human Rights (UDHR)

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Abstract: *The article reviews the potential role of the 2030 Agenda for Sustainable Development (Agenda 2030) in the political updating of the Universal Declaration of Human Rights (UDHR), especially Articles 2, 22 and 25, which ensure the conditions for a life with dignity that does not leave anyone behind. The main argument is that the implementation of the Agenda 2030 helps to overcome some of the main tensions intrinsic to the UDHR – in this case, those regarding the tensions of reconciling “universal” qualities with the reality of “diversity” and that of values emphasizing the “individual” versus those that focus on the “collective”. Overcoming these tensions transforms the Sustainable Development Goals (SDGs) into political instruments that can change the reactive nature of the traditional human rights agenda into a proactive construction of political environments for sustainable development where human rights are guaranteed. The conclusion is that the Agenda 2030 provides a platform to channel the UDHR into an enabling instrument for revitalizing governance schemes for communities throughout the world.*

Keywords: *Agenda 2030; universality; collective rights; UDHR tensions*

The Human Rights and the Development Agendas: The Genesis of a Common Narrative

The agendas for economic development and enshrining human rights constituted parallel processes to heal the world in the aftermath of the major global crisis caused by World War II (WWII). The scenes of devastating destruction and, in particular, the scenes of the liberated concentration camps showed the world the destructive power of humankind. WWII was a collective trauma, which prompted an ethical search for governance models and rules that could prevent any future kind

of catastrophe that the world had experienced. In particular, this search for a global agreement responded not only to the effects of the two World Wars (during 1914–1919 and 1939–1945), but also to the effects of imperialism, colonialism, and the economic crisis. When the Universal Declaration of Human Rights (UDHR) appeared in 1948 as a document, it surged under the same narrative of the development agenda¹.

In practical terms, one of the main characteristics of the human rights agenda was its reactive quality². It was as a form of condemning violations all over the world, but it was not a mechanism to prevent these violations from occurring³. Hence, the main challenge of the 21st century for the human rights agenda is to overcome that reactive character and confront new forms of authoritarianism that coexist with “demo-

¹ The Western narrative and conceptual construction of “human rights” and “development” is a topic that has been analyzed in depth within the critical analyses of development in the works of John Galtung (2010) and Gilbert Rist (2007). These can be summarized as pointing toward a political discourse that emerges in order to overcome colonial policies with a system where everyone was on the same side: developed, underdeveloped or developing were not confrontative categories (as were, for example, colony and colonial power), but different shades of a single history.

² Reactive refers to the basic meaning of the term, to “react” to something, and is contrary to the preventative aspect of an action. In the specific case of human rights, it refers to an attitude that focuses on reacting to violations of human rights instead of creating structural conditions that can prevent the possibilities of harm and/or threats to human rights.

³ After the Declaration, whether countries were influenced by the capitalist sphere or the socialist one did not have much relevance to major violations of human rights. These cases can be found all over the world. To name but a few, consider: political repression in the USSR, racial oppression in the USA, the 1954 coup d'état in Guatemala, the US Operation Condor and dictatorships in South America, the genocide at the hands of the Khmer Rouge, and the Apartheid regime. Every region across the world showcased systemic conditions for the violation of human rights.

cratic” regimes, creating a proactive⁴ agenda to promote the conditions for societies to realise the objectives of the preamble of the Declaration.

In this sense, the 2030 Agenda for Sustainable Development (Agenda 2030) can generate the impulse needed to establish such a proactive character in the human rights agenda. It aims to do so mainly by enriching Articles 2, 22 and 25 so as to overcome the two conceptual tensions that exist within the UDHR: the first represented by the disparity between the “universal” nature of the Declaration and the local nature of the implementation of the SDGs; and, the second, which is related to reconciling the “individual” conception of rights in the Declaration and the collective rights envisioned in the Agenda 2030.

The Challenges of the Human Rights and the Development Agendas

As a common narrative the human rights agenda and the sustainable development agenda has been analyzed and criticized in similar terms⁵. In practice, two tensions exist that represent an implementation challenge as well as an opportunity to update the effectiveness of the UDHR. The first tension is between the “universal” character of the UDHR and the rise of diversity as a fundamental right with the “locality”, which is the basic unit of political action when pursuing development. The second tension is between the “individual” conception of human rights reflected in the UDHR and the collective rights, which are fundamental in contexts such as that of indigenous communities in some Latin American countries, for example, or on the purposes of multi-stakeholder networks.

– provides an aspirational narrative for the desired future of human development, together with an actionable agenda to be achieved by 2030 (UN, 2015b). The Agenda 2030, considered alongside the 17 Sustainable Development Goals (SDGs), is an enabler of the conditions that sustain societies and can prevent the violation of human rights, placing sustainable development as the core principle of global cooperation and national development.

We can take the contemporary climate crisis as an example that helps to identify some characteristics of the above-mentioned tensions. The climate crisis represents a major threat to humankind and is embedded within some of the more problematic aspects that relate to human rights and development. On 28th March 2008, the United Nations Human Rights Council (UNHRC) adopted the resolution 7/23, which states that climate change “has implications for the full enjoyment of human rights”. The resolution highlighted how climate change affects the rights of food, health, housing, and self-determination. In this regard, the self determination of indigenous peoples and the conceptual diversity of local schemes are highlighted as fundamental implementation instruments for sustainable development that could enrich the universal vision of UDHR. Regarding the individual-collective tension, it is quite clear how the right to land as a condition for human life as well as collective and communitarian management of the water, the rights of Nature, the right to food security, or the right to cultural diversity and to collective health, could employ collective revindications to majorly and positively help fulfil the rights spelled out in the UDHR.

Hence and as can be seen when considering the tensions in question, the Agenda 2030, regarding the local dimension as well as the collective action, could be an instrument to revitalize the UDHR. The SDGs define a proactive roadmap that can ensure the respect of human rights for everyone.

Revitalizing the UDHR through the Agenda 2030

The Agenda 2030, establishes a unique platform of transformation, because:

In no other sociopolitical area is it so important to recognize the possibility of counter-hegemonic conceptions of human rights as in the area of development models. There is where tensions not only between autonomy (individual and collective) and infinite economic growth, but also between democracy and capitalism and, in last instance, between life and death (De Sousa Santos, 2014: 19)⁶.

The Agenda 2030 responds to the grand global challenges of achieving socio-economic development. These challenges imply profound transformations of the existing economic structures of production and consumption and, underlying it all, new conceptualizations and practices of governance. The most paradigmatic and cruel cases of human rights violations coincide with that which sustainable development attempted, from its most integral standpoint, attempted to avert. Solving tensions between the universal and the local, the individual



The 2030 Agenda – which was adopted unanimously on 25th September 2015 by all 193 United Nations (UN) Member States

⁴ A proactive agenda of human rights is contrary to a reactive one, and focuses on the strengthening of systemic conditions and structures that enable freedom as well as civil, cultural, economic, and all other kinds of rights and conditions that allow an individual or a collectivity the pursuit of conditions enabling their development.

⁵ One of the political materializations of the dialectic process would be the origin of the “Right to Development”, which was recognized within the Declaration on Social Progress and Development in 1969, and the African Charter on Human Rights and of the Peoples in 1981, and the United Nations Declaration on the Right to Development in 1986. The first considerations on an epistemology of the South can also be noted if we trace the origins of the Non-Aligned Movement (NAM).

⁶ The translation is the editor’s. The original is in Spanish: “En ninguna otra área sociopolítica es tan importante reconocer la posibilidad de concepciones contrahegemónicas de los derechos humanos como en el área de los modelos de desarrollo. Ahí se deciden hoy las tensiones no sólo entre autonomía (individual y colectiva) y crecimiento económico infinito, sino también entre democracia y capitalismo y, en última instancia, entre vida y muerte”. (De Sousa Santos, 2014: 19).

and the collective, can be positive for updating and facilitating the implementation of the UDHR. As Claude Ake (1996) explains, development is not a technical project, but a process where people create and recreate themselves and their life circumstances so as to reach higher levels of civilization, according to their own decisions and values. From a practical perspective, SDGs such as the eradication of poverty, universal health, gender equality, and fair and clean economic and productive systems are the materialization of effective human rights principles.

Conclusions

The 2030 Agenda provides a global narrative for the desired future of human development, providing specific goals and activities that allow changing the focus of human rights and, specifically, revitalizing the UDHR insofar as a proactive document, instead of a reactive document that is not only used to condemn violations of human rights, but also to create a new governance based on human dignity.

The Agenda 2030 alleviates two of the main tensions of the UDHR and revitalizes Articles 2, 22, and 25. Some transformations are needed for the effective implementation of the Agenda 2030, for instance, concerning: human capacity-ed-

ucation and health care; consumption and production; decarbonizing energy systems, efficient and sustainable food systems, and ecosystemic regeneration. Every one of these have to be based on situating human rights at the centre and heart of the SDGs⁷.

In this sense, we must recognize that the UDHR was conceived from the perspective of individual human rights, but the SDGs embody a perspective of collective human welfare.

A multistakeholder perspective helps to overcome the limitations of the state in fulfilling human rights, and provides the local level with instruments to build a new “universality”, which is based on the connections that exist between countless human diversities.

⁷ The World in 2050 (TWI2050) states that “humanity is at a crossroads. Unbounded growth is endangering planetary support systems and increasing inequalities, the rich are getting richer and the poor even poorer. The transformation towards sustainable futures is an alternative possibility for people and the planet – a just and equitable world for all. This is exactly what the United Nations 2030 Agenda (adopted on 27 September 2015) offers and is thus a great gift to humanity. It presents a new social contract with its 17 Sustainable Development Goals (SDGs). It is an aspirational and ambitious vision for the future betterment of humanity and it gives strong reasoning for fact-based understanding of the interrelationships and synergies among the SDGs.”

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Respect for Human Rights and Civil War Recurrence

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Abstract: Civil war is the predominant form of armed conflict in the world today, and the risk that a civil war will recur is much greater than of a new conflict beginning in a society that has not experienced one. This paper explores the importance of respect for human rights in post-conflict countries as a factor that reduces this risk of recurrence. When governments do not respect the citizens' right to life, liberty, and security, as declared in Article 3 of the Universal Declaration of Human Rights (UDHR), then a country will not be able to re-establish the necessary trust in politics and between former enemies to consolidate a stable peace. An analysis of all civil wars between 1946 and 2013 shows that the risk that peace fails is substantively greater when human rights are violated, and this is consistent across a large range of post-conflict scenarios. The implication of these findings is that the protection of human rights is not only a positive end in itself, but also a means to prevent large-scale violence.

Keywords: Civil war; physical integrity rights; trust; sustainable peace

Introduction

The risk that a civil war will break out is much greater in societies that have recently ended one than where there is no such legacy of violence, a phenomenon that scholars refer to as the conflict trap (Walter, 2004; UN, 2014). Civil wars are the most common and devastating form of political violence in the world today, often pulling in external interveners, creating immense suffering and refugees, and creating a negative long-term impact on health, the economy, and the environment. Thus, if we can identify how to help more countries escape from the conflict trap, this would help protect millions of lives and have positive spin-off effects on almost every aspect of human existence.

Most research on the causes behind civil war has in recent decades focused on either the reasons for individuals' willingness to organize for fighting ("grievances") or the space



available to do so ("opportunity costs"). Both these explanations could help explain the high risk that conflicts resume in post-conflict societies. With regards to grievances, many citizens in such countries have evidently been so unsatisfied with the regime that they were willing to fight them before, and they may easily do so again. In addition, the preceding conflict creates new grievances – such as the demand for justice or revenge due to the abusive and destructive behavior of warring parties, leading to a society where trust and patience is lacking. When it comes to the opportunities to launch armed insurrection, these are also greater in a post-conflict society. Institutions and infrastructure have been destroyed during the preceding conflict, while society is awash with leftover weapons and ex-combatants that have the "know-how" of the practice of warfare. Recent examples include Colombia, where "Ivan Marquez", the chief negotiator for the FARC rebels in the 2015 peace agreement, declared in August 2019 that he is returning to armed struggle together with several of his former commanders (Semana, 2019). Another example is the Philippines, where the lack of parliamentary support for the

¹ This research was supported by the Swedish Research Council (Project 2016-05734).

provisions of the 2014 peace agreement made it possible for ISIL-affiliated groups to recruit ex-combatants and take over the city of Marawi for five months in 2017 (ICG, 2018).

While this is indicative of the difficulty of countries to move from civil conflict to stable peace, we should not forget that there are several successes as well. It is also worth noting that the risk of recurrence decreases substantially for every year of peace that passes, indicating that societies are most vulnerable in the immediate aftermath of active warfare. Thus, the key factor for successful conflict termination may not be how the fighting ended, but how post-conflict societies manage to overcome the challenges that arise during the period in which former soldiers and rebels are returning to civilian life. This interval is where the respect for human rights is of particularly great importance, since these rights are – as noted in the preamble of the Universal Declaration of Human Rights (UDHR) – “the foundation of freedom, justice and peace in the world” (UN, 1948: Article 1).

Post-Conflict Respect for Human Rights as Key to Stability

Besides all the initial problems in a society that led on to civil war in the first place, the effect of the previous conflict will have further polarized political actors, and eroded trust in institutions and fellow citizens. The policymakers and regime representatives are now expected to design and implement policies to help their former opponents rebuild their lives. The ex-rebels, on the other hand, must now trust the government to treat them fairly, and to not renege on promises made during peace talks or demobilization, when the rebels still had the relative security of their armed comrades behind them (Wong, 2016). In effect, members of a post-conflict society need to renegotiate a social contract that only functions through mutual trust in the other acting as he or she has promised.

When it comes to the factors that create interpersonal and political trust, individuals draw conclusions based on previous and witnessed interactions with the other actor. This is because the key feature of trust is the predictability of the others’ behavior (Tilly, 2005). At the end of a civil war, it is likely that previous interactions mainly have been negative and in the form of violence, looting, abuse, and potentially poor discipline. In contrast, the promises made during the end of the war offer another impression, including willingness to compromise and offering rewards for demobilization. However, which is seen as the more reliable predictor as to how the actor is likely to behave in the future?

We contend that in a post-conflict society, the main criteria for judging the quality, policies, and trustworthiness of the government is its respect for human rights, and in particular those enshrined in Articles 3 (i.e., a right to life, liberty and security), and 5 (i.e., no torture or cruel punishment) of the UDHR. To sum up, these relate to directly violent attacks, and are highly relevant to the post-conflict re-establishment of the social contract in at least two ways. First, the violation of rights to physical integrity is exactly the type of behavior that is common in “wartime”, but it is expected to cease after the conflict has been settled, meaning that continued abuse of individuals undermines claims that the country has transitioned into another situation. Second, violations of these rights have spill-over effects beyond the immediate victims by spreading fear that undermines trust in the government. For example, if state forces or affiliated militias kill one individual, this leads to lower trust in the government also among the witnesses of the event, the friends and family of the person killed, and everyone who subsequently hears reports or rumors of the attack. Furthermore, scholars have found that violations of these rights to a large extent overlap with violations of the other articles in the UDHR, making this a suitable measure to investigate (Fariss & Schnakenberg, 2014).



Image credit: Flickr | Stanislav Lvovsky

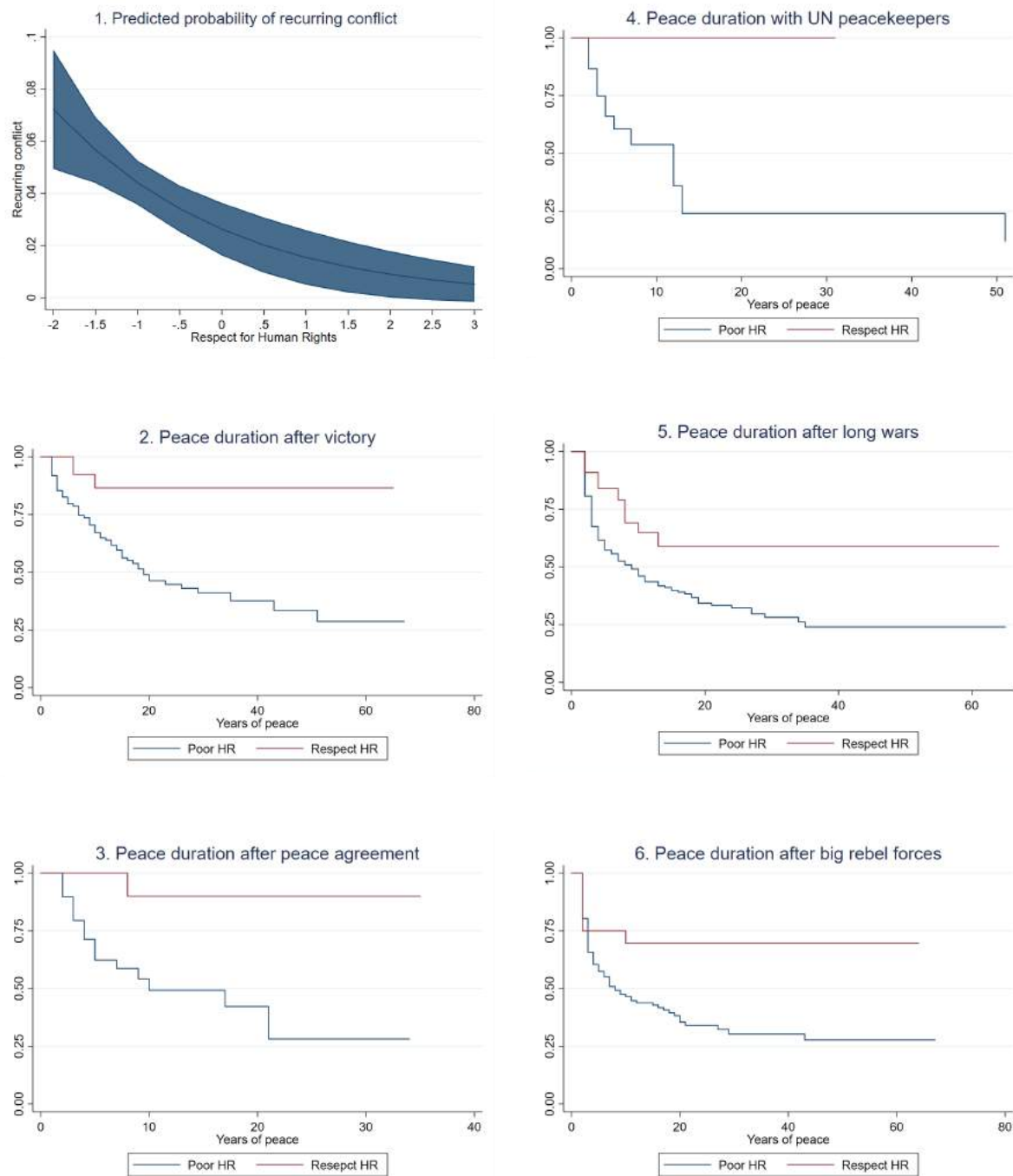


Figure I: Respect for human rights and post-conflict stability, 1946-2013

Empirical Investigation

To empirically assess these claims, some descriptive patterns for the risk of civil war resumption and the respect for human physical integrity rights are presented. Panels 1–6 of Figure I shows the findings after an analysis of the duration of peace after all civil conflicts that have ended between 1946 and 2013². The first panel shows the predicted probability of civil

war recurrence in post-conflict countries depending on how much human rights are respected³, while panels 2–6 show how human rights practices change the duration of peace in different more or less difficult scenarios⁴. All panels consistently show that countries that do not respect physical

² Data on respect for human rights from Farriss (2014), civil war duration and outcome from Kreutz (2010), the presence of UN peacekeepers from Mullenbach (2013), population and GDP/capita from Gleditsch (2002), and conflict characteristics from Kreutz (2018).

³ These results are from a logistic – or logit – regression with controls for victory, peace agreement, conflict issue, war duration, rebel force size and external support, the presence of multiple rebel groups, presence of peacekeepers, GDP/capita, country population, and time trends. For more specification details, see Kreutz (2018).

⁴ The graphs present Kaplan-Meier survival estimates, with “respect for human rights” defined as at least one standard deviation over the mean value of these post-conflict countries.

integrity rights are at greater risk of civil war recurrence. Panel 1 shows that there is a 5% annual risk of civil war recurrence in countries with the worst human rights offenders (with a 95% confidence interval), while the risk is virtually non-existent for countries that fully respect human rights. What this means is that countries where human rights are respected less or at the contemporary level of Turkey, Zimbabwe, and Thailand, then there is substantial risk that a civil war will resume even if a settlement is found. However, for countries with similar high respect of human rights to that seen in Panama, Costa Rica, or Bosnia and Herzegovina, a renewed civil war is very unlikely.

There are of course many other factors that influence the transition to successful peace, but our investigation shows that respect for human rights increases post-conflict stability regardless of context. Even if we limit the sample to just cases where previous conflict ended with a military victory (panel 2) or a peace agreement (panel 3), more respect for human rights means a longer peace⁵. The deployment of UN peacekeepers is recognized as having a positive impact on peace duration, but panel 3 shows that this has to be accompanied by a respect for human rights, since otherwise there remains a high risk of conflict recurrence. Finally, panels 5 and 6 show that even in scenarios where post-conflict stability is difficult to achieve, such as after more than 3 years of war or when the rebel forces consisted of more than 2500 troops, societies where human rights are respected are at less risk of recurrence.

Discussion and Conclusions

Most policy and scholarly debate on the respect for human rights address the issue as an end-result, rather than as a means, which can bring about other positive effects. This implies that efforts to advance the protection of human rights have occasionally been viewed as competing with the

“peacebuilding” efforts in different ways. This includes the competition over the use of limited resources in the post-conflict society, as well as the possibility that those perpetrating human rights abuse are included in the political process to stabilize the country. However, this brief analysis indicates that such factors, which supposedly create short-term stability, are likely to increase the risk that full-scale war resumes.

To return to the example of Colombia mentioned before, the post-conflict human rights situation in the country largely corresponds with the findings of this analysis. Despite the conclusion of a comprehensive peace agreement with the Revolutionary Armed Forces of Colombia (FARC) in 2015, an achievement that was recognized by the Nobel Peace Prize, the implementation of the terms have been slow and uneven (UN, 2017). One problem was that implementation relied on the creation of completely new institutions, which took resources from and co-operated poorly with existing human rights bodies, while offering new opportunities for corruption (Kreutz, 2017; Puerta, 2018). The effect has been that neither ex-combatants nor ex-victims have experienced improved security or growing confidence in the state. For example, from 2016 to the time of writing, 738 local human rights activists have been killed as either “guerrilla sympathizers” or “traitors” by extremist groups without substantive government response. Consequently, thousands of ex-combatants have left the demobilization zones tempted to join other armed militias or to reorganize into a new insurgency (Janetsky, 2019).

This research adds to the debate about the trade-off between amnesties and the importance of transitional justice. Rather than focusing on atrocities during the war (see Dancy, 2018), however, this article emphasizes the importance of respect for human rights after the fighting has ceased. There, in a post-conflict society, the implications are clear: where and when human rights are not respected, the risk of civil war recurrence is much higher and, conversely, where and when they are, the chances of war resumption are reduced.

⁵ Human rights are in general better after peace agreements than after victories (Keels & Nichols, 2018).

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Sexual Violence: Unpunished Weapon of War and Patriarchy¹

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Abstract: *Sexual violence is a lamentably frequent, indeed universal, accompaniment of war. It is not only a gross violation of human rights, but it also leads to weakened governance and destabilized communities. Sexual violence has transpired during armed conflicts at all times and on every continent. It is sometimes used as a strategy or tactic: a currency in which women and girls are treated as wages of war, as a form of compensation, or as a reward. In the context of the Universal Declaration of Human Rights (UDHR), it is clear that rape and other forms of sexual violence violate a number of Articles. Human rights abuses in Myanmar (previously Burma) are prevalent because the army continues to use rape as a weapon of war against ethnic groups and enjoys impunity for its crimes. This sexual violence is neither random nor opportunistic, but is rather part of a systematic attack. Ten community leaders from Myanmar, working in their respective regions, were interviewed on sexual violence against women and girls through open-ended questions. They considered lack of perpetrators' accountability and prosecution as well as ineffective legal services along with stigmatization of rape survivors as causes of a great ordeal. Sexual violence is one of the most serious forms of violation of international humanitarian law (IHL) and international human rights law (IHRL).*

Keywords: *Sexual violence; human rights; conflict*

Introduction

According to Neil Mitchell (2004), "rape is not done by mistake" (p. 50). It is not a 'by-product' of war, but a targeted pol-

icy (Buss, 2009). Sexual violence has transpired during armed conflicts at all times and on every continent (Maurer, 2014). Sexual violence as defined by the Rome Statute of the International Criminal Court includes “[r]ape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity” (International Criminal Court, 1998). It is not only a gross violation of human rights, but sexual violence in conflict also leads to weakened governance and destabilized communities, thereby impeding post-conflict reconciliation and long-term stability (Puechguirbal, 2012; Bigio & Vogelstein, 2017). While women and girls are particularly vulnerable, men and boys are also victims of sexual violence (Gaggioli, 2014).

United Nations (UN) agencies estimated that during the conflict in Sierra Leone more than 60000 women were raped, over 40000 in Liberia, and approximately 60000 in the former Yugoslavia (UN, 2014). In the Democratic Republic of the Congo (DRC), known as the heart of darkness where the alarmingly vast amount of sexual violence has accompanied armed conflict, over 200000 women have been raped since 1998 (UN, 2014; Baaz & Stern, 2013). During the 1945 Battle for Berlin, approximately one in three Berlin women were raped by Allied soldiers, mostly from the Red Army, while 10000 women died from sexual violence (Teo, 1996).

We limit the discussion here to three key points, which are not exhaustive: first, the history of sexual violence in conflict and its deep-rooted cause; second, the relevance of the Universal Declaration of Human Rights (UDHR) in connection to a case study of ongoing sexual violence in Myanmar (previously Burma); and, thirdly, the urgent need to hold perpetrators of such human rights abuses accountable.

Sexual Violence as a Strategy of War

Sexual violence in armed conflicts drew the attention of the global community in the early 1990s, when Serbian militias, during the dissolution of Yugoslavia, raped tens of thousands of Bosnian Muslim women systematically and/or sexually enslaved them to terrorize and enforce impregnation policy. Equally abhorrent was the genocide against the Tutsi in Rwanda where, as part of their broader campaign of ethnic cleansing, Interahamwe militias raped and sexually tortured at least 100000 women (Alcorn, 2014). Sexual violence is still prevalent during armed conflicts in the Central African Republic, Colombia, the Democratic Republic of the Congo, Mali, South Sudan, Syria, and Myanmar (Gaggioli, 2014).

Sexual violence in conflict is sometimes used as a strategy or a tactic, where it is used as a currency in which women and girls are treated as wages of war, as a form of compensation, or as a reward (Wood, 2012). An example is when pro-government militias in South Sudan were allowed to rape women in place of payment (UNHRC, 2016a). Another example is when the Imperial Japanese Army forced women and girls into sexual slavery as ‘comfort women’ in occupied territories before and during World War II (Yoshimi, 2000). Here, sexual violence was also intended to show that the husbands, fathers and/or brothers had failed to protect the women in their family, which is considered the ultimate failure of a man in a patriarchal culture (Watanabe, 1999).

A report by the UN Independent International Fact-Finding Mission (the Mission) on Myanmar states that sexual violence has been deliberately used as “tactics of war” against civilians,

citing some of the worst incidences globally. It also noted that the State Counsellor, Aung San Suu Kyi, a Nobel Peace Prize laureate, who was once seen as a beacon for universal human rights, has not used her position nor her moral authority to stem or prevent human rights violations. The report further states that “Impunity is deeply entrenched in Myanmar’s political and legal system, effectively placing the Tatmadaw above the law”. Therefore, justice remains difficult for victims in the country for decades (UNHRC, 2019).

According to Brownmiller (1975), sexual violence is a weapon used against women by men in both peace and war. However, during war, rape is an attack on women (as women) and part of an attack against ‘the enemy’. It “is a message passed between men – vivid proof of victory for one and loss and defeat for the other” (p. 17). Sexual violence, including in conflict, is linked to power, dominance, and abuse of authority. A complex pattern of pre-existing gendered structural inequalities, identities, and institutions give rise to sexual violence during conflict when protective mechanisms fail (Mazurana and Proctor, 2013). These human rights violations have devastating physical, psychological, social, and economic consequences (Gaggioli, 2014).

The available data is only the tip of the iceberg. Sexual violence is considered taboo in many societies, and often remains invisible due to feelings of guilt and shame or fear of retaliation, preventing survivors from coming forward (Palmeri et al., 2012). Moreover, data on sexual violence in conflict is sporadic, often difficult to track, and under-reported (Wood, 2009).

Sexual violence including multiple perpetrators has occurred in the context of campaigns of ethnic cleansing or genocide (or torture) that were clearly ordered. The perpetrators were and are seldom punished. To name but a few instances, this has occurred in Myanmar, Bosnia and Herzegovina, Guatemala, and Rwanda (Wood, 2013). As Urteaga Villanueva, NORCAP expert said: “That’s why it’s called ‘rape as a weapon of war’; because this type of war is fought through the women’s bodies and has enormous consequences for the survival of their communities” (Grønhaug, n.d.).

Sexual Violence as Human Rights Violations

Sexual violence is adequately prohibited under international law, and – more precisely – under international humanitarian law (IHL) and international human rights law (IHRL). However, the implementation of these rules needs to be strengthened to eliminate or at least reduce the incidents of sexual violence (Gaggioli, 2014). The Mission reaffirmed that rape and other forms of sexual and gender-based violence constitute gross violations of international human rights law (UNHRC, 2019).

In 1948, the United Nations General Assembly adopted the UDHR. This document, although originally not binding on member states, received wide acceptance as an outline of foundational human rights principles, and was later recognized as a binding expression of customary law, and an authoritative interpretation of the UN Charter itself (UN General Assembly, 1948). While the Articles of the UDHR may not specifically address sexual violence, Articles 1 and 5 provide the necessary protection against rape and other forms of sexual violence. In terms of sexual violence, different international law branches reinforce each other and provide a necessary complementarity (Gaggioli, 2014).

In terms of rape used as a weapon of war, UN Security Council resolution 1820 (2008) noted that “rape and other forms of sexual violence can constitute war crimes, crimes against humanity or a constitutive act with respect to genocide”. Furthermore, it is understood that women and girls are targeted by the use of sexual violence in some cases as “a tactic of war to humiliate, dominate, instill fear in, disperse and/or forcibly relocate civilian members of a community or ethnic group” (UN Security Council, 2008). From such a statement, in the context of the UDHR, it is clear that rape and other forms of sexual violence violate a number of Articles. According to Article 1, all humans should be treated with dignity and equality (UN General Assembly, 1948). Since sexual violence is used to humiliate and dominate individuals there is, therefore, no evidence of dignified treatment. Being born with equal dignity points towards every human being treated with such dignity. Sexual violence is not a dignified treatment and, hence, constitutes a violation of basic human rights (Gerlach, n.d.). Sexual violence also violates Article 5, which sets forth civil and political rights. Sexual violence can be classified as cruel and degrading treatment, and referring back to the UN Security Council resolution 1820, humiliation is a method used to degrade. Inhumane treatment means that one is not treated with either dignity or equality, the standard that all humans should enjoy. Therefore, inhumane treatment is a violation of any individual’s human rights (UN General Assembly, 1948; UN Security Council, 2008; Gerlach, n.d.).

Myanmar: A Case Study

Myanmar (previously Burma) has one of the longest-running civil conflicts worldwide, and that conflict illustrates how women mobilized in civil society understand sexual violence in a patriarchal context. Myanmar, like all states, has duties under international human rights law to protect, respect, and fulfill the human rights of everyone in its territory without discrimination on any grounds. Many of the rights reflected in the UDHR form part of general international law and customary international law, and hence are also applicable in Myanmar (UNHRC, 2016b).

Human rights abuses in Myanmar are prevalent because the army continues to use rape as a weapon of war against ethnic groups and enjoys impunity for its crimes. The army has immunity from the country’s laws. Correspondingly, the government has continuously failed to investigate human rights abuses committed by its army and, instead, categorically denies the possibility that abuses are taking place. This immunity is an infringement of international law (Network for Human Rights Documentation, 2016; ICJ, 2017).

In recent years, government forces reportedly have committed ethnically motivated rape amid escalating conflict in the Rakhine state. This sexual violence is neither random nor opportunistic, but is rather part of a systematic attack against the Rohingya minority. The perpetrators in many cases threatened or insulted victims using language derogatory to Rohingya Muslims (Bigio and Vogelstein, 2017). Myanmar, which at the UN Security Council’s open debate in 2015 stated its “universal condemnation of all forms of violence against women” (UN, 2015 as cited in True and Wiener, 2019), has signed the United Kingdom’s declaration on its Preventing Sexual Violence in Conflict Initiative (PSVI), and claims to have carried out training for its military, though it has not used the documentation protocol to investigate sexual violence crimes in accordance with international law (True and Wiener, 2019).

Ten community leaders from Myanmar, working in their respective regions, were interviewed about sexual violence against women and girls through open-ended questions. The interviews were conducted anonymously due to safety concerns. The interviewees agreed unanimously that the violence against women is getting worse, and that the risk of rape, torture or even being killed is high. Most of the women consider it unsafe to walk alone, especially at night, in an active conflict zone. The community leaders explained that the perpetrator is often a person in authority.

Sexual violence in conflict is usually not related to sexual desire, but is linked to power and abuse of authority (Gaggioli, 2014). The same purpose of sexual violence is often repeated as a means to affirm domination and power inside the home and within relationships. It is also indicative of the pre-existing gender relations that are often exacerbated in conflict (McWilliams & Aoláin, 2013). Furthermore, the Mission stated: “There is a direct correlation between gender inequality and gender violence. Women are more likely to experience violence in countries with high gender inequality. But the extent of gender inequality in Myanmar makes it especially prone to sexual and gender-based violence” (UNHRC, 2019).

Relatedly, the interviewees noted that due to the lack of political will, the state is complicit in reproducing patriarchal culture. They also considered lack of perpetrators’ accountability and prosecution as well as ineffective legal services along with stigmatization of rape survivors as sources of this great ordeal for women caught up in this conflict. One community leader stated: “Many of the rape survivors become sex workers or suffer mental illness due to stigma associated with any sexual violence”. Another interviewee mentioned the difficulties in receiving humanitarian aid and how the entry of journalists or researchers to the location is often prohibited by the state. This was also evident when the Mission was not granted access to Myanmar (UNHRC, 2019). The community leaders recommended greater participation of women in politics and peace dialogue, and deemed important to improve access to legal and health services, and ensure greater accountability for the perpetrators of human rights violations.

Upholding Human Rights

Although the international community has been very active in recent years in its efforts to combat sexual violence in conflict, the reality on the ground continues to be appalling. Improving global efforts is vital to meet the challenge, since sexual violence in armed conflict is one of the most serious forms of violation of international humanitarian law and international human rights law (G8, 2013). To address ongoing sexual violence and impunity, and to improve access to justice, a shift in focus and priorities is needed. Although humanitarian assistance and support to customary structures are vital, they are not sufficient to address these complex issues (Fiske and Shackel, 2014). Therefore, there is an urgent need of strategies aimed towards strengthening the implementation of the international prohibition and prosecution of sexual violence, both at the domestic and international levels (Gaggioli, 2014). Greater coordination is also needed in support of the work of the UN and other relevant multilateral organizations to prevent sexual violence in conflict. It is a matter of both upholding universal human rights and of maintaining international security, and would keep faith with the UN Security Council resolution 1820 (G8, 2013). It should be noted that peacekeepers, whose task is to protect civilians, have committed

sexual abuse against vulnerable people under their protection. In 2017 there were approximately two thousand allegations of sexual abuse against peacekeepers. Sexual violence conducted by peacekeepers is a gross human rights violation as well as a security threat as it undermines the credibility of peacekeeping operations. Increasing the number of women participants in peacekeeping units reduces the risk of sexual violence and improves reporting of cases (Bigio and Vogelstein, 2017).

During the G8 Declaration on Preventing Sexual Violence in Conflict, the member states' "ministers recognized that the effective investigation and documentation of sexual violence in armed conflict is instrumental both in bringing perpetrators to justice and ensuring access to justice for survivors while protecting their safety, dignity, and human rights". Moreover, it is necessary to improve the participation of women in the

decision-making process, and to explicitly recognize the need to prevent sexual violence in armed conflict (G8, 2013). Furthermore, the international community can organize a name-and-shame campaign to highlight sexual violence incidences in conflict. This approach has proven to restrain and limit the severity of state-sponsored genocide and other gross human rights violations (Bigio and Vogelstein, 2017).

The campaign against sexual violence in conflict, which began in the 1990s, was instrumental in the international criminalization of sexual crimes as well as the adoption of a series of UN Security Council resolutions. Eliminating sexual violence in armed conflicts is ambitious, but it is hardly impossible, as these violations can be prevented. (Wood, 2014). Hence, it is to be hoped that the collective efforts of the international community to hold perpetrators of sexual violence accountable will come to bear fruit.

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Terrorism and Counter-Terrorism Through a Human Rights Lens

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Abstract: *This article explores the role that human rights play in the contexts of terrorism and counter-terrorism. First and foremost, terrorism constitutes a very serious human rights violation, with devastating impact on the rights of its direct victims and that of the society suffering from it. And yet, it remains questionable whether international human rights law (IHRL) applies to terrorist acts committed by non-state actors, and how terrorist groups could be held accountable for human rights violations not covered by international criminal law (ICL). It is submitted that the rights of terrorism victims should be recognized and protected by the international justice system just as those of victims of other heinous crimes. On another front, the global “war on terror” waged in the aftermath of the 2001 attacks in the United States has been used as a pretext to justify equally disturbing abuses of IHRL – including targeted killings, torture, abduction and extrajudicial*

transfer of persons, denial of due process-related rights, racial profiling, and massive invasions of privacy. Paradoxically, violent extremism and radicalization often stem from a lack of respect for IHRL¹. It is therefore concluded that effective counter-terrorism measures and the promotion of human rights are not conflicting goals, but rather complementary and mutually reinforcing.

Keywords: *Human rights; terrorism; counter-terrorism; victims*

Introduction

Since the 11th September 2001 (also known as 9/11) terrorist

¹ As human rights violations committed in the name of fighting terrorism can be a main generator of terrorist violence themselves, as well as increasing local support for this crime, counter-terrorism tactics that allow human rights abuses will always backfire.



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attacks on New York and Washington, terrorism has become a significant and permanent feature of our everyday lives. Nearly two decades after, terrorism continues to pose an exceptional threat to human development and international peace and security, affecting the human rights of victims and their families across the world. Al-Qaeda – considered the highest expression of terror back in 2001 – has fragmented into a number of disparate regional franchises, while new – even more indiscriminate and brutal – terrorist actors have sprung up, reshaping the jihadist landscape through the use of groundbreaking terrorist tactics and strategies. Extremist groups like the Islamic State in Iraq and the Levant (ISIL) in the Middle East or Boko Haram in West Africa have managed to seize control of large portions of territory, develop governance infrastructures and independent sources of finance, and wage full-scale wars against governments and international coalitions (Nowak & Charbord, 2018). These groups have conducted devastating attacks and practiced savage atrocities in areas under their control and beyond. The widespread and systematic breaches of international humanitarian law (IHL) and international human rights law (IHRL) committed by ISIL and Boko Haram clearly constitute war crimes, and also some of the most horrific crimes imaginable, including genocide, crimes against humanity, and human trafficking. The destructive and direct impact of terrorist activity in the enjoyment of human rights is, thus, undisputable. The United Nations General Assembly (UNGA) has gone as far as to declare that “terrorism has a detrimental effect on the full enjoyment of *all human rights and fundamental freedoms*, and impedes the full enjoyment of political, civil, economic, social and cultural rights” (UNGA, 2019; emphasis is ours).

At the same time, some of the counter-terrorism measures and practices adopted by states in the wake of 9/11 have themselves threatened the rule of law, good governance, and – most importantly – the very core of the IHRL framework², arguably constituting one of the greatest challenges ever posed to the integrity of a system carefully founded upon the adoption of the Universal Declaration of Human Rights (UDHR) in 1948 (International Commission of Jurists, 2009).

This article aims to enhance understanding of the complex and multifaceted relationship between IHRL, terrorism, and counter-terrorism. The main argument advanced is that any implied dichotomy between human rights and security is wrong: lack of respect for IHRL not only hinders national and international efforts to combat terrorism, but in fact also perpetuates the problem.

The Impact of Terrorism on Human Rights and the Need to Provide Comprehensive Protection to Victims

Terrorist acts have a very direct and destructive impact on the enjoyment of a number of essential human rights recognized in the UDHR, notably on the supreme value, the right to life³, and on the rights of liberty and physical integrity, all of which are enshrined in Article 3. In addition to its devastating hu-

man cost, terrorism can further “destabilize governments, undermine civil society, jeopardize peace and security, threaten social and economic development, and may especially negatively affect certain groups” (Office of the United Nations High Commissioner for Human Rights (OHCHR), 2008). Therefore, terrorism affects almost every sphere of human life – be it economic, political or social – and touches all aspects of IHRL defined by the UDHR (United Nations, 2019).

How does IHRL protect the rights of victims of terrorism? And, who can be held responsible for the impact of terrorism in the enjoyment of human rights? The IHRL system is, in essence, a state-based system: since the states sign the treaties and covenants pertaining to human rights, they are the primary duty bearers. In other words, IHRL governs the responsibilities of states with regard to the individual, not the criminal responsibility of non-state actors (United Nations Office on Drugs and Crime (UNODC), 2009). Under IHRL, states have a general duty to protect individuals and groups against human rights abuses – including acts of terrorism. In particular, states have a right and a duty to take “effective counter terrorism-measures, to prevent and deter future terrorist attacks and to prosecute those responsible for carrying out such acts” (OHCHR, 2008).

On the contrary, IHRL, for all its diversity and size, does not foresee the accountability of non-state actors (Bedi, 2014). As a result, non-state actors, including terrorists, would only be accountable under international law when their actions encompass the elements of crimes prohibited by ICL – that is, when they amount to genocide, crimes against humanity or war crimes. In all other instances, states have a duty to investigate and prosecute those responsible for human rights violations. However, the reality is that there is a vast amount of IHRL abuses by non-state actors who are not under the control of the state (McCorquodale, 2002). Even though the political debate concerning the suitability of expanding human rights scrutiny to non-state actors goes beyond the scope of this contribution, with the increase in the violations of human rights by groups like ISIL and Boko Haram in the arena of terrorism (as well as by other non-state actors like intergovernmental organizations, transnational corporations and armed opposition groups), it becomes imperative to re-define the status of IHRL in order to enhance the protection of human beings against any threat to their rights. This contention is supported by the Preamble of the UDHR, when it proclaims that “every individual and every organ of society” has an obligation to promote respect for human rights (UNGA, 1948). For this not to remain an empty statement, we need to extend and translate certain norms so that they clearly denote the obligations of non-state actors; create and adapt specific institutions to ensure greater accountability; and, adjust our assumptions about who are the duty-bearers in the IHRL regime (CLAPHAM, 2016).

The “War on Terror” and Human Rights

Since September 2001, countering terrorism has become one of the top priorities for most governments as well as for the international community. Immediately following the attacks, the United States (US) administration declared a “war on terror”, which treats the entire world as a battlefield. Former US President George W. Bush stated then: “Every nation, in every region, now has a decision to make. Either you are with us, or you are with the terrorists” (CNN, 2001). As introduced above,

² As will be explored in more depth later in the article, these practices include: deliberate or targeted killings, violations of the absolute prohibition of torture, abduction and extrajudicial transfer of suspects in violation of the absolute principle of non-refoulement (i.e., extraordinary or forced rendition), denial and limitations of due process-related rights and fundamental freedoms, racial profiling, and massive invasions of privacy.

³ The right to life is said to be the “supreme right” because its effective protection is the prerequisite for the enjoyment of all other rights.

the way this “war”⁴ is being waged represents in itself an ongoing threat to the rule of law, good governance, international humanitarian law standards, and the IHRL framework. With a disturbing consistency and regularity, overarching and basic principles of the UDHR are being ignored:

- from drone strikes to the assassination of Osama bin Laden, the founder of Al-Qaeda, “deliberate” or “targeted killings” to eliminate specific individuals – as an alternative to arresting them and bringing them to justice – have become a frequent tactic employed by the US government under the pretext of operating in a war against terrorists of global reach (Melzer, 2008). However, targeted killings are a deprivation of life that – in most circumstances – violates the right to life recognized in Article 3 of the UDHR. In addition, attacks aimed at terrorists often inflict collateral harm on innocent bystanders, resulting in further violations of IHRL.

- states have increasingly implemented practices and policies to counter terrorism that, admittedly, circumvent and undermine the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment. In addition, individuals suspected of terrorist activity have been abducted and transferred – without legal process – from one country to another for the purposes of detention, interrogation, and torture – a practice known as “extraordinary rendition”. Such renditions have been conducted predominantly by the US, with the consent of at least other 54 governments involved (Horowitz and Cammarano, 2013). States have also extradited, expelled, deported or otherwise transferred foreign nationals suspected of terrorism – including asylum-seekers – to their country of origin or others, where they face a real risk of being subjected to torture or forms of ill-treatment, in violation of the principle of *non-refoulement*⁵. All of the above represent clear violations of Articles 5 (freedom from torture), 9 (freedom from arbitrary arrest and detention), 10 (right to a fair trial), and 11 (presumption of innocence) of the UDHR.

- a number of counter-terrorism measures adopted by states in the context of criminal procedures have had a serious impact on the liberty of suspected terrorists (i.e., arbitrary, discriminatory or disproportionate pretrial or administrative detention for security purposes), a right protected by Article 3 of the UDHR (Cassel, 2008).

Other measures have had a corrosive effect on due-process related rights for individuals suspected of terrorism and their families (i.e., the right to presumption of innocence, to public and fair hearing conducted impartially and without delay, or the right to have a conviction and sentence reviewed by a higher tribunal), often constituting violations of the aforementioned Articles 9, 10, and 11 (Dotti, 2005).

⁴ The fight against terrorism may take various forms, including armed conflict. However, as repeatedly asserted by the International Committee of the Red Cross, from a legal perspective, there is no such thing as a “war against terrorism”.

⁵ This fundamental principle of international law forbids states from transferring or removing individuals from their jurisdiction or effective control to a country in which they would be in likely danger of irreparable harm, including persecution, torture, ill-treatment or other serious human rights violations. The prohibition of refoulement forms an essential protection under international human rights, refugee, humanitarian and customary law, and is explicitly included in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment as well as the International Convention for the Protection of All Persons from Enforced Disappearance

- far too often, Arabs and Muslims have become the primary targets for profiling by law enforcement agents (Harris, 2017). Racial and religious profiling represents a clear breach of the principle of non-discrimination enshrined in Article 2 of the UDHR, while raising serious issues in relation to the right to privacy, which is protected in Article 12.

- states have unlawfully restricted and denied fundamental freedoms that constitute the essential foundations for a democratic society, including those of freedom of opinion and expression, and freedom of peaceful assembly and association, proclaimed in Articles 19 and 20 of the UDHR, resulting in “the criminalization of protest and the stifling of public debate” (Organization for Security and Cooperation in Europe, 2007).

- the fight against terrorism has been used to justify the establishment of intrusive methods of surveillance and investigation that have resulted in massive invasions of privacy (Gross, 2004), a right protected in Article 12 of the UDHR.

- certain counter-terrorism measures – i.e., targeted sanctions – have also had a severe and detrimental impact on the enjoyment of many of the economic, social, and cultural rights embodied in the UDHR (Miller, 2003).

This impulse to abandon IHRL, as seen in this multitude of responses to counter terrorism, is short-sighted and self-defeating. As stated by the former United Nations High Commissioner for Human Rights (UNHCHR) Zeid Ra’ad Al Hussein:

Counter-terrorism must be prosecuted intelligently: that is, while preserving the human rights of all. Please remember this: for every citizen wrongfully detained under a vague anti-terrorism law, and humiliated, abused, or tortured, it is not simply one individual who then nurses a grievance against the authorities, but most of their family too. Send one innocent person to prison, and you may deliver six or seven family members into the hands of those who oppose the government, with a few who may even go further than that (UNHCHR, 2017).

Special and careful attention should be devoted, thus, to the linkage between a lack of respect for IHRL, and the conditions conducive to violent extremism, radicalization and the spread of terrorism.

Concluding Remarks

It is clear that the terrorist threat is likely to be a long-term one, and solid long-term responses are needed. The human rights vision of the UDHR, and the body of norms it spawned, must be the bedrock on which this strategy is built. Any implied dichotomy between human rights and security is wrong: lack of respect for IHRL not only hinders national and international efforts to combat terrorism, but in fact also perpetuates the problem. IHRL was developed precisely to guarantee people’s safety and security. Only a long-term and multi-pronged strategy that promotes IHRL as well as socioeconomic development will successfully counter the threat of terrorism while safeguarding the human rights enshrined in the UDHR and its Articles.

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Climate Change, Refugees, Human Rights, and You

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Abstract: *This article discusses why the link between climate change and people being forced from their homes due to natural disaster, famine or war is not being sufficiently acknowledged or addressed effectively by governments, the media, and the general public. This situation, in turn, leads to the erosion of human rights. The article also argues that everyone can play a role in reducing the problems caused by climate change. It adds to the debate on the linkages between climate change and forced migration by challenging citizens of the world to take individual actions in order to reduce climate change, and by demanding that governments, policy makers, and media outlets do more to recognise and effectively address the linkages in question. This article establishes that the role of the Universal Declaration of Human Rights (UDHR) has never been more relevant to protect those displaced, and that it has found new life as the world turns to the Sustainable Development Goals (SDGs) as a framework for meeting the world's starkest challenges before 2030.*

Keywords: *Refugees; climate change; human rights, Sustainable Development Goals (SDGs)*

Introduction

When taking a long haul flight on holiday, driving your car or heating and lighting your home, you probably don't realise you can be adding to the misery of human displacement thousands of miles away. You probably are aware that your actions do contribute to climate change in some way, and as a good citizen you might attempt to reduce your "carbon footprint". As television images show boats filled with migrants heading for safer shores, your brain might be filled with sympathy for the humanitarian relief effort as they arrive. Or, you might have a different response: that these people are heading to your country to steal your job, wealth, and happiness, and that you see the arrival of these human beings as an affront to your identity and liberty. Either way, it is unlikely that you will see climate change as a cause of their displacement. This article does not seek to argue the morality or righteousness of how people view refugees. In fact, it tries to unify the most liberal of thinkers with their right-wing counterparts by pointing

out that if everyone considered how changing their personal actions can contribute toward helping to reduce the growing numbers of people forced from their homes, and enable them to live safer and peaceful lives.

Climate Refugees

While it is recognised that natural disasters, wars caused by famines, and poverty through economic vulnerability from high exposure to weather hazards are causes of human displacement, few clearly equate these problems back to climate change. Yet the United Nations High Commissioner for Refugees (UNHCR) has discussed this issue, and has started raising awareness about climate change and its impact on human welfare and human rights (UNHCR, 2019). While climate change is acknowledged by experts as a key contributor to forced migration, calling someone a "climate refugee" is rare, since it is steeped in complexity, and currently has no recognition in international law. An example of this complex issue is how a family can be forced to flee from their home due to war. In this case, the family would be seen as a victim of the conflict, and most likely reported as such throughout the world. It would be unlikely that the role of climate change would even be acknowledged, even though the cause of the conflict might have been tensions arising from food shortages due to famine as a result of extreme weather conditions. Scientists and relief agencies have identified a clear link between climate change and conflict. An obvious example is Syria, where the worsening environmental conditions, including droughts, that began in the mid-2000s were one of the root causes of the conflict that began in 2012, and which led to the displacement of millions of people (Gleick, 2014). The civil war in Yemen is motivated by many actors, including rival parties attempting to secure access to the dwindling water supplies that have been affected by climate change (Mohamed et al., 2017). The prevalence of warfare in countries with vulnerable infrastructures is likely to grow as climate change worsens (Notoras, 2009; Upton, 2016; World Economic Forum, 2018).

The impacts of climate change are immediately recognisable, and are likely to worsen until a concerted global effort starts to

reduce its effects. Areas with limited natural resources, some as fundamental as water, are likely to struggle further. Farms cannot prosper in developing countries where conditions are notorious for becoming too extreme. Poor harvests and famines threaten livelihoods, can create food insecurity, and can lead to conflict. A World Development Report for the World Bank, an international organisation that seeks to find sustainable solutions for developing countries, concluded:

The root cause of conflict is often to be found in competition over the factors of food production, primarily land and water, exacerbated by other troubling trends. Having more people to feed, with less land and water, more variable climate, and greater food price volatility increases stress on livelihoods and food systems. Yet countries under the greatest stress in this sense are often the least able to respond (Bora et al., 2010: 2).

People are being forcibly displaced from their homes at a catastrophic scale as a result of climate change. Relief agencies like UNHCR are recording new displacement patterns (Goodwin-Gill and McAdam, 2017). Alexandra Bilak, Director of the Internal Displacement Monitoring Centre, emphasised that environmental factors were now a key contributor to new global migrant crises. She said: "The number of people living in internal displacement is now the highest it has ever been. Unresolved conflicts, new waves of violence and extreme weather events were responsible for most of the new displacement we saw in 2018" (IDMC, 2019).



People displaced across borders in the context of climate change and disasters may be in need of international protection. The UNHCR is providing protection and assistance for many people forcibly displaced by the effects of climate change and disasters, but this must be strengthened by the rule of law. Typically, it is the least resilient or vulnerable communities that are forced into migration. Sometimes communities are forced overseas, sometimes they are displaced in their homeland. With lack of drinking water, poor yields of crops, and low-incomes or poverty often a result of extreme weather, it might be useful to bring a new conversation to the fore: one that focuses on how interventions can reduce the risk of creating climate refugees, as well as on validating the status of those found homeless by natural disasters, famine, flood or conflict caused by rising global temperatures.

The Real World Versus the Political World

Despite being major actors in how society works, politicians do not always think, make decisions, or act logically or scientifically. They have voters to appease or win over, budgets to balance, and manifestos to uphold. In central Europe, the many migrants who risk their lives to arrive by boat are often portrayed as the problem itself, both in political rhetoric and in the free press, rather than clarifying that their flight is the reflection of problems in their countries. Refugees are not often portrayed as victims of circumstance. Rather, it is more likely that they are painted as the masters of their own destiny, choosing to seek a better life in a rich western democracy as if they were choosing a new car. Questions are raised as to why they would not rather than stay at home and fight for their lives in war, or rebuild a new community from scratch after losing everything due to disaster – as if these were the more obvious and easier options. Elected politicians rarely seek to challenge these viewpoints. In a number of countries, party leaders have often portrayed refugees and migrants as a risk to society to swell support for nationalism in order to strengthen their popularity and secure their political positions.

These prejudices do not help the cause of those wishing to work towards global peace and security. They also create challenges in safeguarding many of the Articles of the Universal Declaration of Human Rights (UDHR). From Article 1, which sets forth "all human beings are born free and equal in dignity and rights", through Article 30, which declares that "nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein" (UNGA, 1948), the need for these protections is vital to climate refugees, yet not always adhered to. In some cases, unsympathetic political views to migrants are coupled with climate change denial. Scientific views that challenge own political views are dismissed, and public trust is eroded in any research that does not fit policy-led narratives. Examples of these lie in leaders of two of the world's superpowers. Critics of the United States (US) President Donald Trump say his administration "takes climate denial to new heights" (Waldman, 2019) while repeatedly attacking refugees by claiming they are a threat and a drain on the economy (Solnit, 2019). Meanwhile, Russian President Vladimir Putin has expressed views that climate change is not man-made, and that we should not try to stop it (South China Morning Post, 2017), and has shared views on the global stage such as that policies of welcoming migrants have had a negative impact on society (Isachenkov, 2019). The media, who cover the words and deeds of the world's leaders, often find themselves promoting the negative rhetoric by reporting on it in an uncritical way that further contributes to dehumanising or demonising migrant communities (Greenslade, 2019).

A study by Bradimore and Bauder (2011) on media coverage relating to Tamil refugees in Canada found that government representatives' opinions were the first voices reported on regarding the issue, while the last voices reported, if at all, were advocates of refugees. Research by the International Organization for Migration (IOM, 2018) found many people have encountered the subject of migration in the media. It noted people's perceptions, attitudes or beliefs about migration were based on both direct experiences and those channelled through the lens of the media, although the precise mixture likely depends on our individual situations. It concluded that the media's largely negative coverage of migration – and the

extent of its influence – raised questions of how media should talk about such a complicated and diverse issue so as to give it fair representation.

Against this challenging backdrop, public debate struggles to find the connection between climate change as a cause of natural disaster and conflict that creates the forced migration of millions of people. While such positions remain the case, and it is likely to remain so in many countries, human rights will continue to be impeded. If some governments flatly ignore the advice of the world's scientific community, are they likely to follow the UDHR? When the United Nations General Assembly (UNGA) adopted the document more than 70 years ago, it did so without enforcement mechanisms. Why then should a president or prime minister in a renewed age of populist and nationalist politics care for its contents?

A New Era for the Universal Declaration of Human Rights?

All of these issues, from media reporting to political rhetoric and, ultimately, to personal apathy, shift people's thinking away from the fundamental causes of forced migration to merely worrying about the "problem" at their doorstep. A shift in how people talk about forced migration will be challenging. Newspapers and television mostly report on "here and now" issues. War, death, and destruction are headlines, but the complexity of a conflict's actual causes, often far removed by time or human logic, can be a difficult message with which to relate. Our responsibility as good citizens of the world is to understand this message and promote acting upon it. One opportunity to do so lies in the United Nations Sustainable Development Goals (SDGs), the set of 17 global goals set by the UNGA in 2015 to be achieved by the year 2030. These have been widely recognised as a call to action, enjoy a high profile in society as the agenda for 2030 (2030 Agenda for Sustainable Development or Agenda 2030), and have human rights at the heart of its targets and indicators.

Sustainable Development Goal 16 (SDG 16) seeks the ending of violence, the promotion of the rule of law, strengthening institutions through the reduction of corruption, and aims to increase access to justice. The goal is concerned with the safety of people forced from their homes by climate change or other forms of displacement, so as to ensure their future security, rights, and opportunities. Attacks on civil society are holding back development progress, as NGOs, charities, and relief agencies that operate outside of government controls face issues of public vilification through aggressive smear campaigns to discredit them or are hit by restrictive legal measures to disrupt their work. This is undertaken by regimes that do not want to be seen to support displaced communities in their countries (Brenchenmacher, 2017).

To put it bluntly, SDG 16 must be achieved in order to ensure that other global goals are achieved. For example, reducing poverty cannot be achieved during war, good education cannot be delivered in corrupt states, and agencies cannot eradicate hunger without peace in society. Therefore, peace and the elimination of violent conflict are essential to development. The inclusion of SDG 16 reflects the fact that conflict and instability are significant impediments and can undermine previous development gains (Ackman et al, 2018).

The SDGs, as a global call to action, are sharpening people's minds and acknowledging the challenges the global community faces. Achieving the SDGs will be impossible without a

greater commitment to the principles enshrined in the UDHR. Fortunately, as commitments to tackling the challenges of the global goal targets for 2030 multiply, the significance of the UDHR is predicted to endure (Brown, 2016; İlgü Özler, 2018). A recent study by the Danish Institute for Human Rights found that more than 90 per cent of the 169 SDG targets reflect core international human rights and labour standards. Correspondingly, it references the UDHR and other international human rights treaties throughout the study (Danish Institute for Human Rights, 2018).

It's All About You

This article started with the controversial idea that wherever you stand on the political spectrum and no matter how different your opinion on the needs of refugees and migrants might be compared to that of others, we can all unite behind the need to reduce climate change. For the liberal humanitarians, reducing climate change will lead to fewer climate disaster emergencies, famines, and wars, and enable better responses to relief efforts. To the hard-line nationalists, the reduction of climate change can be seen as leading to a fall in the numbers of those seeking refuge in other countries due to displacement. Climate change cannot be stopped, but it can be prevented from getting worse (NASA, 2019; UCSUSA, 2019).

There is a collective responsibility to make our politicians listen to our concerns and take notice of scientists. Closer to home, there are also things we can do to reduce our carbon footprint: from limiting our daily intake of meat, walking rather than driving, and switching to a green energy provider to fuel your home, there are a lot of options. Changing our personal actions to contribute to these efforts at climate change mitigation can stem the growing numbers of people forced from their homes, and enable them to live safer and more peaceful lives.

Closing Remarks

More than 70 years on, the need for the UDHR has never been greater. The 2030 Agenda for Sustainable Development and its SDGs give it new life, and its framework gives strength to those efforts at accomplishing its global goals within the next decade. Hope can be drawn from the current activism, promotion of sustainable development, and dialogue centred on reducing climate change, which are increasing their profile around the world. Refugee crises are not a new phenomenon, but the consequences of climate change are new, becoming more prevalent, and adding to these challenges. Now is not the time to debate the addition of the rights of the climate refugee into a future reconsideration of the UDHR. Energy is better spent fulfilling the targets of the SDGs and making personal commitments to change our individual and social behaviours. The SDGs are significantly distinguished from the UDHR through a clear template of indicators for governments, organizations, and civil society to follow. Success in achieving these targets could lead ultimately to countries collectively reducing the impacts of climate change and stemming the need for forced migration. The ultimate goal would be to see a marked fall in people fleeing their homes. Those who have no choice should still be offered safety, dignity, and respect through the extraordinary vision of the contents of the UDHR, which considered alongside efforts to reach the SDGs, remains as relevant today as it once was in 1948

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Image credit: Massimo Sestini & Polaris

Colonialism's Lingering Effects: The Human Right to Life and the Migration Crisis across the Mediterranean Sea

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Abstract: *This article addresses Article 3 of the Universal Declaration of Human Rights (UDHR), which states that "everyone has the right to life, liberty and security of person". We shall initially examine the background and the scope of Article 3 in brief. By taking a recent example pertaining to the right to life – the case of Sea-Watch 3, a rescue boat from a non-governmental organization (NGO) that rescued 53 refugees in distress in the Mediterranean Sea – and considering the legal disputes around this case, involving the European Court of Human Rights (ECHR) and the Italian authorities, the article will investigate the underlying conscious and unconscious psychological motives that possibly govern these types of acts of human rights violations. In particular, we will examine how colonialist thinking and practices have led to the establishment of societal, economic, and political power structures that still prevail in today's post-colonial era and continue to diminish human rights. The reasons for the failure to implement the right to life will be analysed both at the political as well as at the individual or citizen level. Finally, we shall address the question of how Western countries' domestic and foreign policies need to be altered to bring about a long-lasting change in perspective, reaffirming the notions set out in Article 3 of the UDHR.*

Keywords: *Migration; Mediterranean Sea; right to life; colonialism*

Introduction

The Universal Declaration of Human Rights (UDHR), with its Preamble and 30 Articles, each describing a specific area of human rights, reflected ideas that had developed during the course of many centuries. Taking their origin in ancient Greek and Roman thought, carried on by early Christianity into the Age of Enlightenment and codified for the first time in the 1776 United States Bill of Rights, these ideas were soon after adopted by the United States Declaration of Independence and culminated in the 1789 French Declaration of the Rights of Man and of the Citizen.

The United Nations General Assembly proclaimed the UDHR on 10th December 1948, after the world had witnessed both the deadliest war and largest state-organised genocide in history. In line with its ideological development described above, the UDHR's primary focus lay on affirming the rights of the individual as opposed to those of collectivities.

A fundamental prerequisite for the enjoyment of all other human rights, Article 3 states that "everyone has the right to life, liberty and security of person". It was seen as a clear step away from the state supremacy predominant during Hitler's rule in Nazi Germany, which, with its discriminatory practices, had severely interfered in and ended the lives of millions of people, abrogating their most basic human rights and violating their personal dignity.

Although initially bearing the status of a resolution rather than being of legally binding international law, Article 3 has come to be included in more than three quarters of today's world's constitutions, compared to only 27 percent in 1945 (OHCHR, 2018). The great majority of states across the world thus regard it as their legal obligation to safeguard the life, liberty, and security of individuals. Yet, we frequently witness cases in which Article 3 is not enforced.

The Question of Non-Adherence to Article 3

As stated by Antônio Augusto Cançado Trindade, former President of the Inter-American Court of Human Rights, "the arbitrary deprivation of life is not limited to the illicit act of homicide; it extends itself to the deprivation of the right to live with dignity" (OHCHR, 2018: 2). Article 3, in its fundamental essence, can thus be understood as the right to live a dignified human existence.

In the following sections, we seek to investigate the various psychological mechanisms – conscious and unconscious – that are at work when the right to life is not protected. In this regard, no distinction shall be drawn between either the denial of a dignified life or the taking of life, whether by direct or indirect means, as all of these cases imply a failure to adhere to Article 3. The only distinction that will be made is that between the political level and the citizen or individual level, in the light of individuals' decisions having the potential for a small or a large global impact. It is important to note at this point that both the political and citizen or individual levels are not independent, but interlinked. As such, these need to be addressed because neither politicians nor citizens are likely to adopt extremely diverging opinions and, rather, interact and influence each other in an ongoing process.

We will focus on the question of why countries of the West, and the European Union in particular, although largely the driving force behind the UDHR, themselves fail to honour and observe the right to life as prescribed in Article 3. For this, we

will illustrate the situation by examining the recent example of a case that by its nature pertained to the Article in question: this was the refusal of Italian authorities to allow *Sea-Watch 3*, a rescue boat from a non-governmental organization (NGO) with 53 refugees onboard, to disembark at the Italian port of Lampedusa. The situation was exacerbated by the subsequent denial of interim measures protecting the right to life by the European Court of Human Rights (ECHR), and further complicated by the legal proceedings that followed when the boat's captain decided to dock without Italian permission.

The Effects of Colonial Ideas on Contemporary Western Society

Here, we cannot include a full theoretical discussion on the complex origins of discriminatory practices, which have existed in cultural contexts for millennia. Taken to modern history, racism can be defined as a phenomenon by which differences are emphasised in order to establish a border between oneself and others, provided that this emphasis on differences serves the purpose of justifying social, political, and economic actions that exclude certain groups from access to material or symbolic goods, thereby securing the excluding group privileged access (Hall, 2004). In this sense, not the mere fact that human beings are divided into different groups is of importance, but rather the motivation for this act (Rommelspacher, 2009).

With respect to Western discriminatory practices, we can state that racism initially arose to justify Western domination and exploration of the world through imperialism, colonial rule and, often, slavery. By constructing the idea of a cultural opposite, the identity of the self (*the West*) was strengthened and gained a positive connotation in contrast with foreign cultures (*the Other*), which in turn were perceived as inferior and primitive (Said, 2003). The process of *Othering*, by creating perceived differences and racist stereotypes, and homogeneously applying them to the native populations of colonised societies, thus manifested itself in the Western sphere's conviction of owning "the right way" to be human.

It must be observed that many Western countries still had colonial possessions, and were violently refusing to let go of their colonies, during the time when the UDHR was adopted. In view of continued Western world domination – economic as well as ideological – even after decolonisation, we can note that attitudes originating from the colonial world order continue to govern collective Western notions of the world. Although the concept of race is no longer used to scientifically justify hegemonic ambition, a system of classification remains in place that legitimises social, political, and economic practices, which exclude certain groups of people from accessing material or symbolic resources (Hall, 2000). Eurocentric notions affecting actions both at a political and at an individual or citizen level are additionally aided and reinforced by a media discourse that not only shapes European societies and establishes social order, but which also constructs a certain understanding of reality and a sense of what is taken to be truth within society (Foucault, 2013).

When the classification into different groups and their ranking by perceived racial characteristics is not expressed openly – be it through populist rhetoric, biased media or online hate speech – it may take on more subtle forms, conscious or unconscious, inherent in the mindsets of a large majority of the population. Tests like Harvard University's Implicit Associa-

tion Test (IAT), for instance, have shown that more than 70% of over one million participants from the US preferred White individuals over Black individuals (Nosak et al., 2007).

The Case of *Sea-Watch 3*

By international maritime law (IMO, 2004), Captain Carola Rackete of *Sea-Watch 3* was obligated to rescue the 53 refugees picked up in distress at sea near the Libyan coast on 12th June 2019 as well as to bring them to a place of safety. Libya, their country of departure, currently does not qualify as such a safe place. As there was no obligation for any specific coastal state to be appointed as that safe place, the Italian side was legally justified in claiming their right to territorial waters and denying entry to the port of Lampedusa.

After 11 passengers were permitted to disembark on medical grounds, 36 of the remaining filed a "Rule 39"¹ appeal for interim measures at the ECHR. This appeal was subsequently denied on 25th June as "there were no exceptionally serious and urgent reasons justifying the application of the urgent measures" (ECHR, 2019). The court ruling further stated that it was relying on the Italian authorities to provide all necessary assistance, but that the Italian government was not obligated to let the boat's passenger disembark.

Under emergency law, entry into the port could be forced as a last option to ensure the safety of passengers in the case of an emergency onboard – such as food and water scarcity, or diseases. On 28th June, after a two-week standoff at sea, Captain Rackete thus decided to enter Lampedusa harbour. Prior to this, other EU states had expressed their willingness to accept the migrants aboard the ship.

The criminal allegations against Captain Rackete by the Italian government, leading to her immediate arrest upon landing, have since been dropped in an Italian court ruling, which stated that she acted out of her responsibility to protect human life.

Attempts at an Interpretation

It is under the light of the aforementioned regional and nationalistic power structures, in which the European Union devalues outsiders by ascribing subhuman qualities to them, while simultaneously maintaining an exaggerated image of superiority and desirability (Fanon, 1967), that we must analyse this case, and investigate the role of European countries in it.

The issue of economically or politically motivated migration across the Mediterranean Sea remains deadlocked. Until today, no EU-wide solution has been found. Estimates by the International Organization of Migration (IOM) speak of more than 37000 deaths since 2000, making the Mediterranean Sea the "world's most lethal border" (Fargues, 2017).

As the legal regulations around the case of *Sea-Watch 3* were unclear, neither national nor European authorities took responsibility for the migrants in order to safeguard their right to life, liberty, and security of person as stated in Article 3. Symbolically, Captain Rackete, an individual, acted in place of superordinate Italian and European authorities, which failed

¹ "Application of Rule 39 usually concerns the right to life [...] and the right not to be subjected to torture or inhuman or degrading treatment or punishment" (UNHCR, 2012).

to enforce Article 3. Her decision can be seen as an act of human solidarity in the face of the present political situation.

At the political level, we may suppose that wholesale rejection of migrants takes place primarily to pursue election related objectives, reflecting the wishes of the majority of the population. In the case of *Sea-Watch 3* specifically, a poll conducted by the populist Italian newspaper *Il Giornale* showed that 61% of Italians were opposed to allowing the boat to land (Franccone, 2019).

Concerning the European public, we can see a lack of genuine interest and empathy for the cultural contexts and living conditions of migrants' countries of origin. There is little to no real understanding of the global realities and circumstances leading to migration: migrants are merely perceived in their attempt to enter the European Union, without consideration of either what initially motivated them or what a failed attempt or a rejection by European authorities will entail.

In both public and political discourse, the causal correlation between (post-)colonial hegemonial behaviour and present situations of poverty, war, exploitation, slavery, humanitarian crises, and migration is largely ignored. Instead, attempting to cross the Mediterranean Sea to enter European Union territory is equated with committing a potentially illegal act that does not entitle an individual to the rights stated in Article 3. The conscious or unconscious projection of inferior qualities onto such a human being again serves the purpose of strengthening European identity and legitimising current power dynamics and practices.

Ways of Reaffirming Article 3

The question that arises from these observations, then, is: how can the lingering effects of colonialism be alleviated so as to reduce the severity of the current situation on the Mediterranean Sea and strengthen European countries' commitment to human rights?

As a short-term solution, concrete responsibilities need to be agreed upon. The legal framework for the enforcement of Article 3 needs to be outlined in such a way that the hierarchies of jurisdiction are well-defined and that the responsibility to protect the right to life does not solely lie on the countries bordering the Mediterranean Sea. It must also be mentioned that at the time of writing, the EU had made attempts at proposing a permanent solution for refugees rescued by boats on the Mediterranean Sea, which has thus far failed (Riegert, 2019).

Clearly, the long-term psychological legacy of imperialism and colonialism, having unfolded in very complex processes during the course of several centuries, cannot be reversed over a short period of time. It will require dedicated efforts for a significant change in attitudes to become visible. Although it is

not meaningful to speak of guilt for acts of European nations of past centuries, it is the responsibility of new generations to show awareness of previous generations' actions and their consequences – both at a political and at an individual or citizen level.

At the political level, today's governments need to make a shift in leadership attitudes. Admitting to and paying reparations for colonial crimes would be an important signal to the public towards a change in attitude. Further steps in this direction could be returning treasures of cultural heritage from museums to their places of origin, as well as conveying colonial history through neutral language in all school curricula, particularly in countries with an extended colonial history. Generating wealth and promoting well-being in formerly colonised countries through adequate programmes without the expectations that these countries adopt Western infrastructure, forms of governance, and values should be of paramount importance.

At an individual or citizen level, a change in collective consciousness would mean taking on a shared responsibility, supporting social initiatives and trade systems that are based on the willingness to share and to strengthen a fair economy. Boycotting companies and banks that take part in the arms trade as well as increased public protests opposing Western governments' participation in armed conflicts – such as the Yemen war, which has caused the biggest humanitarian crisis of our time (OCHA, 2019) – could effect a significant shift. This change in thinking can be accelerated by unconscious bias and counter-stereotype training programs in schools and workplaces to create awareness and to reduce stereotypical labelling, and the resulting degradation of specific groups of people.

Summary and Outlook

A common, though mostly unverballed consensus that the West, along with its culture, customs, and set of values, is superior to other countries and cultures, still prevails today in Europe and North America, as well as in many other regions of the world. Although mainly Western countries developed and enacted the UDHR as a groundwork for their values and constitutions, we often witness the same countries breaching these rights by adopting exploitative foreign policies and attitudes, which directly or indirectly diminish the right to a dignified life of individuals outside the Western sphere.

In our present era with its divisive tendencies, humanistic values are exceedingly under threat. We need to overcome cultural, religious, and social differences by questioning prevalent beliefs and stereotypes, and learn to focus on the similarities that bring us together rather than on the differences. Only if we strive for global unity and solidarity can we succeed in maintaining an awareness of what it means to be human, and to value the life, liberty and security of all.

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The Universal Declaration of Human Rights (UDHR) and Discrimination Based on Sexual Orientation and Gender Identity

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Abstract: *The Universal Declaration of Human Rights (UDHR) adopted by the UN General Assembly in 1948 did not explicitly mention the rights of the lesbian, gay, bisexual, and transgender (LGBT) people. After decades of neglect, relevant progress has been made due to an effective global LGBT advocacy. In 2011, the United Nations Human Rights Council (UNHCR) adopted for the first time a resolution on human rights, sexual orientation, and gender identity; in 2013, the campaign 'Free and Equal' was launched by the High Commissioner of Human Rights; and, in 2016, an Independent Expert (IE) was appointed. This article reviews some key aspects behind the process that extended the principles of equality and non-discrimination enshrined in the UDHR to ensure that people may not be discriminated against in the enjoyment of their fundamental rights on the basis of their sexual orientation or gender identity, and in its conclusion presents the current challenges that global LGBT activism faces.*

Keywords: *Lesbian, gay, bisexual and transgender (LGBT); human rights; advocacy; politics*

Introduction

The 1948 Universal Declaration of Human Rights (UDHR) is formally silent about lesbian, gay, bisexual, and transgender (LGBT) people's rights. However, the Declaration is a dynamic non-binding instrument, whose content has been clarified subsequently according to changing historical context and cultural transformation to address uncovered discriminatory situations. By the 1990s, the issue of sexual orientation and

gender identity (SOGI) was included within the United Nations (UN) human rights discourse. This happened thanks to the mobilization and advocacy of global LGBT activists and other mainstreaming human rights non-governmental organizations (NGOs), such as Amnesty International and Human Rights Watch (Aylward, 2019).

In the last three decades, advancements in many parts of the world have been registered, but the situation of risk experienced by LGBT persons is still strong and varies depending on each country's level of 'state-sponsored homophobia'. According to a recent report (ILGA, 2019), as of March 2019, 70 UN member states – de jure or de facto, that is to say, by law or in fact – criminalise consensual same-sex sexual acts and, in these countries, LGBT people face imprisonment, political persecution, violence, marginalization, and discrimination. Hence, LGBT issues have emerged as an increasingly salient area of global advocacy of human rights.

This article overviews the main achievements in making effective for everybody the content of Article 1 of the UDHR, which states that "all human beings are born free and equal in dignity and rights", and of Article 2, which enshrines the principles of equal treatment and non-discrimination. LGBT advocacy has proved to be crucial in the adoption of strong positions at the UN about the status of LGBT people as right-holders and the definition of LGBT rights as human rights. This article is organized in three sections: the first section presents the features and initiatives of global LGBT advocacy; the second examines the crucial developments achieved within the UN system; and, the third concludes with a discussion of the current challenges that LGBT activism faces.



Image credit: Flickr | Alisdar Hickson

Global LGBT Advocacy and Human Rights

For a long time, homosexuality has been considered an immoral, pathological, unnatural or criminal practice (Borrillo, 2001). Hence, LGBT people were (and often still are) treated as a danger to the good, healthy and normal (heterosexual) society. During the 19th century, the process of de-criminalization of same sex relations in Western democratic countries and the decision of the World Health Organization (WHO) in 1992 to remove homosexuality from its list of mental diseases brought about a slow, but constant, process of recognition of LGBT rights and condemnation of homophobic practices. For instance, over the past 30 years, western European countries adopted anti-discrimination legislation that protects from discrimination on the ground of sexual orientation and/or gender identity and that recognizes same-sex unions – legalizing civil partnership or equal marriage (Kollman, 2009). The same developments have been registered in the United States, South Africa, and Argentina (Hollar, 2019). A key role in this process has been played by LGBT activism, which has promoted cultural and legal transformation in the name of equality and liberation for all. This firstly happened in Western democratic countries, starting with the historically-significant “Stonewall riots” in New York in 1969 – the event that signalled the launch of LGBT mobilization. Since then, LGBT actors mobilized to claim equal rights for LGBT people around the world, and to lobby national and international institutions.

Furthermore, thanks to a fruitful dialogue between the feminist movement and academia, the concept of ‘gender’¹ has been elaborated in recent decades as a research and activism tool, which reveals how the ideas of femininity and masculinity, gender identities, and gender roles are socially constructed (Connell, 2009). The significance is that it has broadened general understanding of the fact that the person’s gender identity is not given at birth, but is the result of complex and interacting processes influenced by norms, legislations, conventions, habits, education, and individual traits. Hence, LGBT

¹ The concept of gender refers to the social and cultural construction of the differences between men and women; these differences may vary over time and space. Gender is not synonymous of sex, which refers to the biological characteristics that differentiate men and women. Sexual orientation refers to the sexual desires, feelings, affection, and practices of an individual.

people’s vulnerability is not inevitable, but the result of political, social, and cultural processes, linked to heteronormativity and homophobia², and often promoted by the state (Weiss and Bosia, 2013). To quote Judith Butler (21st January 2019), a major scholar in this area:

The idea of gender opens toward a form of political freedom that would allow people to live with their ‘given’ or ‘chosen’ gender without discrimination and fear [...]. The world of gender diversity and sexual complexity is not going away. It will only demand greater recognition for all those who seek to live out their gender or sexuality without stigma and the threat of violence. Those who fall outside the norm deserve to live in this world without fear, to love and to exist, and to seek to create a world more equitable and free of violence (Butler, 21st January 2019).

Prior to 1993, no international instrument relevant to human rights made any reference whatsoever to sexuality or sexual rights. An important turning point came that year with the UN World Conference on Human Rights in Vienna, where – responding to the intensive activity of the women’s human rights lobby – the Vienna Declaration and Programme of Action (VDPA) called for eliminating gender-based violence, sexual harassment, and exploitation. This concern was addressed later the same year in the Declaration on the Elimination of Violence Against Women³, through an even more explicit condemnation of physical, sexual, and psychological violence against women (Parker, 1997). Since then the words ‘sexuality’ and ‘gender’ have become part of the rights discussion, and LGBT associations have demanded that the well-established principles of human rights law be applied beyond the heteronormative manner in which these categories are often received, and that they be applied to all those of diverse sexuality and gender (Petchesky, 2000).

In advocating LGBT rights, a critically important group is the

² Heteronormativity is the belief that heterosexuality is the “acceptable and natural” sexual orientation of society (i.e., the norm). This belief may be reinforced by the state through the adoption of legislation promoting only heterosexual families. Homophobia is the irrational fear and the negative attitude towards homosexuality and LGBT people; it can be institutionalized by the state in anti-LGBT laws and practices.

³ Adopted by the UN General Assembly in its resolution 48/104 of 20th December 1993

International Lesbians and Gay Associations (ILGA), founded in 1978, and which by the 1990s became the main professional organization focused on human rights discourse and international lobbying⁴. Another relevant NGO is the International Gay and Lesbian Human Rights Commission (IGLHRC), founded in 1990, and which subsequently changed its name to OutRight Action International⁵ (Thoreson, 2014). Together with other transnationally linked national LGBT groups and other more mainstream organizations, they built a global network of human rights LGBT activists and gained consultative status within UN bodies (Aylward, 2019).

In global campaigning, two documents were particularly successful: the 2006 Declaration of Montreal at the International Conference on LGBT Human Rights (Kollman and Waites, 2009), and the 2007 Yogyakarta Principle on the Application of Human Rights Law in Relation to Sexual Orientation and Gender Identity – the latter abbreviated as SOGI. The Declaration of Montreal⁶ included a list of proposals, among which were the drafting of an international convention on SOGI, the establishment of an international day against homophobia, and the extension of recognized human rights to LGBT people. The Yogyakarta Principles – drafted and signed by experts in a meeting held in November 2006 in Indonesia – specifically address the recognition, promotion, and protection of the rights of LGBT people. The 29 Principles listed (later expanded to 39⁷) represent a soft law measure (i.e., a shared, non-binding norm) designed to promote state policies that combat discrimination based on SOGI, and since then have become an authoritative reference for standards at the UN (O’Flaherty, 2015).

Human Rights and LGBT Issues at the UN

The issues addressed by LGBT activism have contributed to the advancement of the human rights agenda within UN political bodies. The United Nations Human Rights Council (UNHRC) adopted relevant resolutions⁸ to address human rights abuses against LGBT people, despite extreme international polarization on the issue (D’Amico, 2015). Specifically, in the first resolution, 17/19, on “human rights, sexual orientation and gender identity” adopted in 2011, the UNHRC expressed “grave concern at acts of violence and discrimination, in all regions of the world, committed against individuals because of their sexual orientation and gender”, and called for a High Commissioner’s report and a panel discussion thereof. The resolution was adopted by a recorded vote of 23 to 19, with 3 abstentions. The 2011 report, titled *Discriminatory laws and practices and acts of violence against individuals based on their SOGI*, described patterns of discrimination and violence directed at people in all regions on the basis of their sexual orientation and gender identity. It was followed by a global multimedia campaign called ‘Free and Equal’, run by the UN since 2013. For the first time ever, issues cross-cutting gen-

der, sexuality, and human rights were part of UN institutional communications⁹.

Almost three years on, in its resolution 27/32, adopted by a vote of 25 to 14, with 7 abstentions, the UNHRC requested that the High Commissioner update the above-mentioned report, with a view to sharing good practices and ways to overcome violence and discrimination in application of existing international human rights law and standards. In the conclusions of the 2015 second report, the High Commissioner stated that despite some positive developments in the last years:

The overall picture remains one of continuing, pervasive, violent abuse, harassment and discrimination affecting LGBT and intersex persons in all regions. These constitute serious human rights violations, often perpetrated with impunity, indicating that current arrangements to protect the human rights of LGBT and intersex persons are inadequate. There is as yet no dedicated human rights mechanism at the international level that has a systematic and comprehensive approach to the human rights situation of LGBT and intersex persons (Report of the Office of the United Nations High Commissioner for Human Rights, 2015: 20).

A major achievement for LGBT organizations was the UNHRC Resolution adopted in June 2016. The resolution 32/2, titled *Protection against violence and discrimination based on sexual orientation and gender identity*, established an Independent Expert (IE) on protection against violence and discrimination based on sexual orientation and gender identity¹⁰. Despite several attempts to block such an advancement through the proposition of “hostile amendments”¹¹, resolution 32/2 passed by a close vote of 23 to 18 (and 6 abstentions), establishing a three-year mandate for the IE. The IE is part of the UN special procedures mechanism, and to fulfill their objective the special procedures mandate-holders employ a range of tools, such as communications, country visits, and annual reports. Supported by a global campaign, the mandate of IE was renewed for a further three years by a new UNHRC resolution in July 2019¹².

Taken together, these UN resolutions were important in legitimizing the claims of LGBT persons. Despite being soft law measures and being supported by a particular (and growing) community of states, they represent the clear commitment of UN institutions to strengthen international norms in support of LGBT rights (Langlois, 2019). In the short run, they might be transformed into hard law measures (e.g., treaties or conventions).

Conclusion

In spite of the absence of any mention of sexuality and gender non-conformity from earlier human rights conventions and discourses (Petchesky, 2000), LGBT rights have been embedded into UN human rights institutions and processes in the past three decades, and are today part of the international human rights discourse.

⁴ The organization created six regional branches: ILGA-Africa, ILGA-Asia, ILGA-ANZAPI (Australia, New Zealand, Aotearoa and Pacific Islands), ILGA Europe, ILGA-North America, and ILGA-LAC (Latin America and the Caribbean). For more information, see the organization’s website: <https://ilga.org/>

⁵ For more information, see the organization’s website: <https://outrightinternational.org/about-us>

⁶ The text of the Declaration can be found here: <http://www.declarationofmontreal.org/DeclarationofMontreal.pdf>

⁷ For more details, see the official website: <https://yogyakartaprinciples.org/principles-en/>

⁸ For the text of the Resolutions, see the institutional website: <https://www.ohchr.org/EN/Issues/Discrimination/Pages/LGBT-UNResolutions.aspx>

⁹ See the institutional website: <https://www.ohchr.org/EN/Issues/Discrimination/Pages/LGBT.aspx>

¹⁰ For more information, see the institutional website: <https://www.ohchr.org/en/issues/sexualorientationgender/pages/index.aspx>

¹¹ See ARC International press release: <http://arc-international.net/press-release/sogi-mandate-safeguarded-in-face-of-hostility/>, 21 November 2016

¹² See the resolution: <https://tgeu.org/un-renews-mandate-of-independent-expert-on-sogi/>

And yet, LGBT rights remain fragile, contested or denied around the world in many countries and for many reasons. First, because they are often perceived as a form of “Western imperialism” against the cultural traditions of developing countries. Second, because they are considered as a threat to the natural heterosexual order of the nation in countries where fundamentalist religion plays a significant role in domestic politics, even in countries that claim to be democratic. For instance, in Poland, the Catholic Church acted as a moral authority to resist LGBT claims (Ayoub 2014), and today supports the Law and Justice (Pis) Party’s campaign against ‘LGBT ideology’, which – according to the ruling party in question – poses a threat to the national Polish identity (The Independent, 20th July 2019). Moreover, in many countries of Southern Asia, a religiously based homophobia is growing, and senior government officials deny or criminalize homosexual practices – for example, Brunei adopted in 2018 new sharia laws

with the aim of introducing the death penalty for gay sex and adultery. What is more worrying is that, after years of progress towards equality, LGBT rights have been recently contested in Europe on two fronts at once. First, the radical far-right populist parties have diffused a “politics of fear” (Wodak, 2015), based on hostility against sexual minorities for deviating from “accepted” (i.e., majoritarian) gender and sexual norms. Second, conservative groups and Catholic fundamentalist actors have promoted anti-gender campaigns (Kuhar and Paternotte, 2017) against the artificial notion of ‘gender ideology’ so as to defend the traditional gender binary and declare the primacy of the “natural (i.e., heterosexual) family”. To conclude, 50 years after the Stonewall riots, LGBT people remain subjects of oppression, violence, and discrimination, and there continues to lack a strong international commitment to recognize, promote, and protect their human rights.

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Digital Rights and the Universal Declaration of Human Rights (UDHR): Principles and Protections in the Digital Realm

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Abstract: *The Internet and other digital technologies play an increasingly relevant role in the day to day lives of billions of people. In the past decade, new tools, tactics, and strategies by governments have increasingly turned the Internet and digital realm against their own citizens. There have been recent calls to reenergize the Universal Declaration of Human Rights (UDHR) to be relevant for the 21st century digital world. This article tackles some of the issues and principles that are under threat, how those threats are manifesting themselves, and what is currently under development to address them. The article argues that any new mechanism or document should center around the core UDHR principles, and that there is a need to include the private sector in our thinking about any new digital rights regime.*

Keywords: *Digital rights; privacy; technology; conflict*

Introduction

Seven decades ago, the Universal Declaration of Human Rights (UDHR) was endorsed by the United Nations (UN) General Assembly and ushered in an era of rights and principles that were to be endowed unto every human being on the planet, regardless of race, religion, gender, sex, or nationality. The framers of the document believed that these sets of rights and principles were necessary for human progress as the world looked to recover from the destructive effects of the Second World War. The 30-article document set out crucial rights such as freedom of expression and of privacy, freedom from torture and from slavery, and proclaimed the “right to life,



liberty and security of person” (UN General Assembly, 1948). 70 years later, progress in human rights has been achieved in numerous areas. Former colonies have been freed and became independent states, freedom and rights of individuals have spread throughout the globe, massive strides towards education have been achieved, and human progress has been on the march since December 1948. In recent years, however, the world entered into a new era, which has raised some troubling issues and challenges to some of the key principles of the UDHR. Not least, the arrival of the digital age and with it the evolution of technology and the Internet have raised serious concerns about the status of Articles 12, 18, 19, and 20. This article examines those challenges and the role these principles can play as we move forward.

Digital Threats to Principles

Humans everywhere are endowed with fundamental and inalienable right. Article 12 of the UDHR ensures the right of privacy and protection from unlawful interference. Articles 18 and 19 articulate the rights of freedom of thought, opinion, and expressions, be it privately or in public, and to freely use any medium available for expression. Article 20 builds on the preceding two articles to uphold the right of individuals and groups to peacefully assemble and associate, in essence also enshrining the right of peaceful protest (UN General Assembly, 1948).

The fundamental rights of privacy and freedom of expression have come under threat as a result of the evolution of information and communication technologies (ICTs). At their core, these technologies allow humans to interact with one another, to expand their reach, and to have access to the wealth of knowledge that humankind has to offer. However, these technologies have increasingly been used to serve harmful or even perverse motivations. No longer simply a tool to connect with individuals around the globe, these technologies are now used to track, document, and in some cases assign a social credit score to individuals (Campbell, 2019). The 2016 elections in the United States as well as the Brexit referendum in the United Kingdom have also pointed to a new form of technological perversion, which uses bots and other technological methods to spread hatred, misinformation, and lies in order to shift election debates and swing elections. The issue of misinformation that is spread online has been a critical ongoing debate about the role of political advertisement on social media networks (Wong, 2019).

This level of pervasiveness and intrusiveness into the daily lives of individuals would have been undreamt of when the framers of the UDHR were alive. These technologies have the capacity to monitor individuals' every move, every purchase, and every interaction, as they engage digitally with the world. Today, the Internet boasts over 4.3 billion users, 4 billion mobile Internet users, and approximately 3.5 billion social media users (Clement, 2019). Half of the world's population is online and growing, and though there remains a digital divide between the North and the South, and crucially a digital divide that falls along gender lines, the digital world is increasingly relevant and no longer optional (Canaret et al., 2018).

With the increasing ease of use and access to high resolution satellite imagery, there is no corner of the planet where an individual or society can truly escape the reach of data collection. Due to advances in high resolution satellite imagery and computer vision, companies such as Facebook are undergoing an endeavor to map the world's population. These efforts are not without their potential benefits for humanitarian response, but they fundamentally reflect business opportunities for those companies involved to monetize the data that they extract (Bonafilia et al., 2019).

These new technologies, however, can work for good ends. For example, they can empower civil society groups to document and publicize atrocities or to shed light on corruption. They can be powerful tools in the face of injustice and disenfranchisement. We have witnessed groups using ICTs to gather evidence of human rights violations, to organize protests, to facilitate disaster response, or to track electoral fraud and violations. On the other hand, these tools allow powerful entities like governments and private sector actors to manipu-

late individuals' emotions (Goel, 2014), to alter their behaviors (Reczek et al., 2016), and in some extreme, but not too uncommon cases, to censor, silence, and target individuals who are dissenting (Human Rights Watch, 2017).

These powerful technologies, which were believed to have emancipatory powers, are in essence a double-edged sword, and in the hands of those who wield it lies tremendous power. A feature of the double-edged nature of digital technologies is what Mirca Madianou (2019) has defined as "technocolonialism". At its roots, technocolonialism highlights inequalities between market forces and organizations, and those of users. Technocolonialism is rooted in extraction, and in particular the extraction of data and personal information from local users, often times within vulnerable populations. These types of practice allow companies to gain valuable insights, which are shared and sold to other companies for a profit, but with the local user not gaining from the sale. Such practices are rooted in colonial behaviors, since these extract resources, in many cases personal data, from the local populations without a mechanism for feedback or involvement from the communities in question. As a result, tools that are meant to be emancipatory end up reinforcing a system of oppression and a cycle of exploitation.

A key dilemma that arises from engaging with the private sector is that those companies that are the biggest contributors to the development of surveillance technologies are also responsible for selling and trading users' data for their profit. Privacy International's last count identified over 500 companies across the globe that are developing surveillance technologies and exporting them to countries around the world. These tools provide governments the ability to monitor their citizens, be it through audio, video, location tracking, Internet-based behavior, and/or other means (Privacy International, 2017). Recently in Hong Kong, protesters have begun to hide their faces as a means to undermine the police's use of cameras and facial recognition software, which are used to target the protestors and identify leaders in order to arrest them (Mozur, 2019). These tools, while not designed for military or police purposes, often end up used in those manners. As a result, we have witnessed a rise in "digital authoritarianism" and repressive regimes trying to control their citizens through technology (Shabaz, 2018).

Increasingly, these tools and tactics are used by governments to either block access to websites and applications, or effectively shut down the Internet and cut off their citizens from the world and each other. By one account, there have been incidents of intentional Internet cut-off in a quarter of the world's countries in the last 4 years (Washington Post, 2019). In Myanmar, for example, Rohingya refugees have had their Internet cut off for months, raising worries about potential abuses to follow suit (Beech & Hang, 2019). The Bangladesh government took further steps to forbid the sale of SIM cards to these refugees and to essentially cut off their access to mobile services (Emont, 2019). This is but one example of a trend that is growing around the world (Flamini, 2019). Moreover, research is increasingly linking the refugees' inability to access the Internet, and thereby connect with distant family members and their community, with depression. Access to the Internet and other communications technologies is proving to be increasingly important to combat mental health issues within refugee populations (Poole et al., 2018). These violations are happening at an increasing rate and challenge core UDHR principles.

Current Steps to Thwart Digital Threats to Principles

These are important societal problems, which require an international effort from civil society groups, governments, and non-governmental organizations to solve. There is an increasing need to ensure that the fundamental rights of individuals are not impeded. Rethinking how we look at the UDHR in light of digital problems will also require tremendous effort and collaboration from private sector companies, which are at the forefront of the development of these technologies.

The UN Human Rights Council (UNHCR) has taken one of the first steps to address this by tackling the issues of promotion and protection of human rights on the Internet. In the UN General Assembly resolution A/HRC/32/L.20, the UNHCR moved to reaffirm that human rights apply equally online as they do offline. The resolution continues to condemn human rights violations that are committed by states against individuals who have expressed their opinions freely on the Internet (UN General Assembly, 27th June 2016). Tim Berners, the founder of what we know today as the World Wide Web, has echoed similar thoughts towards the need to fix the internet. Berners is a key player in advocating for what has been called a "Magna Carta for the Internet", a document that lists nine major responsibilities divided equally between governments, companies, and citizens (World Wide Web Foundation, 2018). However, there are also ongoing debates around the World Trade Organization (WTO) e-commerce treaty which focus on data localization. Countries are looking to impose limits on how data can be used, stored, and transferred across its borders as well. Consequently, these debates and potential new regulations risks hindering the free flow of information that has been a central tenet of the Internet (Monicken, 2019).

The last decade has shown that large technology actors are increasingly aware of these problems and the responsibilities they face as a result. Nevertheless, they are pushing back against any type of regulation, seemingly in the belief that government-imposed regulations would have a negative impact on their core business models and operations. As partial compensation for that resistance, tech companies are actively hiring tens of thousands of content moderators to support their algorithms in flagging and removing content they deem inappropriate or in violation of their terms of use. Those jobs are, nonetheless, reported to take a huge psychological toll on the people involved (Glaser, 2018). The problem here is twofold: one is the scale and speed at which new content is created, since even with algorithms that have a 99% success rate in detecting problematic content, tens of millions of posts that are deemed hazardous, offensive, or threatening will slip through the cracks, and some of the content that is valid will be mistakenly censored; the other is one of empowerment, and the concern that making these organizations chief censors could have huge consequences.

Moving Ahead

The UDHR was originally envisioned to tackle issues that were primarily under the purview of states and governments. Today, this approach needs to expand and include private sector actors who are a major part of the digital realm. There are important questions that will need to be examined as we move forward towards either a set of digital guidelines or reassessing how existing principles apply. For example, what are the expectations of rights when individuals use a private company's software or platform to share an opinion, to plan a protest, or simply exchange a message with a loved one? How does the UDHR in its current form apply to some of these issues or are these issues outside its scope? And if the latter is the case, does that call for a new set of guidelines and foundational principles that can help bolster the existing Preamble and Articles?

There are no easy answers to these questions, and there are those who will challenge the need to create a new document or to force new requirements and new regulations upon corporations. There are important and valid concerns about developing sets of guidelines and new principles that focus too narrowly on the Internet, and that ignore the potential for other technologies that may have yet to be created. A. T. Nuyen (2010) warns about making the mistake of legislating or developing new frameworks that focus on tools and specific technologies; rather, he correctly points out, we should focus on the broader concepts and systems, the digital realm in this case, which is where the value and impact of the work lies. This is well encapsulated in the success of the UDHR and other documents of the same nature, showcasing their ability to remain relevant many decades after being drafted.

Any potential new document or reformulation and interpretation of existing principles into the digital world will also require a truly global effort, and the "new" framers will have to contend with differing perspectives and competing interests that will come as a result of this. Nonetheless, 70 years onwards from the ratification of the UDHR, the future of the freedoms of speech, of privacy, and of expression will depend on how we embrace and adapt the foundational principles of the UDHR to our digital world. It is vitally important that we reaffirm those principles enshrined in it with an eye towards the implications of these new technologies. Fortunately, we do not need to reinvent the wheel in this case, for the UDHR offers an important foundation of rights and principles that can be used to build from and to expand into the digital realm. What is important now is that UN bodies take charge of addressing these concerns, and lead a serious effort to tackle the challenges of governing the digital realm and, thereby, protect the rights of individuals online as well as offline.

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Exploring the Implications of the Universal Declaration of Human Rights (UDHR) for Digital Identity Technologies

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Abstract: According to the World Bank, over 1.1 billion people do not currently possess a legally recognized form of identification. Without identity verification, these individuals struggle to assert their basic rights as outlined in the Universal Declaration of Human Rights (UDHR), including the right to recognition as a person before the law (Article 6). Such exclusion not only perpetuates cycles of poverty, but violates the notions of equality and universality upheld by the Declaration. A number of digital identity initiatives have emerged in recent years to tackle this problem. But while digital identities can foster economic, social, and political inclusion, they also come with significant risks.

These developments raise important questions around the impact of emerging technologies on human rights, particularly aspects of Article 12 – “No one shall be subjected to arbitrary interference with his privacy.” What does “privacy” mean in an increasingly digitalized world? Does it encompass informational privacy, or individual control over personal data? How do the notions of protection, consent, and choice fit into broader paradigms around human dignity and security? Exploring the UDHR through the lens of digital identities, this article delves into these questions, revealing the necessity of expanding our analysis of digital identities to consider these crucial human rights implications.

Keywords: Digital identity; privacy; legal identity; human rights

Introduction

Since its ratification in 1948, the Universal Declaration of Human Rights (UDHR) has served as the foundation for international human rights law. Applying to everyone regardless of sex, race, language, religion, political opinion, national origin, and others attributes, its 30 Articles have enshrined a generalized conceptualization of human dignity and fundamental

rights independent of our individual differences and inherent to the equal status we share as human beings. Although the UDHR is not legally binding in and of itself, its underlying principles have informed and been elaborated upon in subsequent international treaties, state constitutions, regional human rights instruments, and national, customary, and case law (Latorero, 2018). The resultant human rights framework comprises a diverse network of actors who drive the protection and promotion of the Declaration’s ideals. In recent years, this system has contended with emerging technologies, record population displacement, and intensifying xenophobic sentiments. Using digital identities (DIDs)¹ as a case study, this article explores how these developments and challenges have shaped our understanding and implementation of these ideals. In doing so, it demonstrates the necessity of going beyond discussing the technology to better incorporate human rights considerations, particularly the UDHR and its Articles, when analyzing these initiatives.

Digital Identities: Mechanisms for Dignity or Control?

According to the UDHR (United Nations General Assembly, 1948), everyone has the right to recognition as a person before the law (Article 6). Over 1.1 billion people, however, do not possess a legally recognized form of identification (World Bank, 2018). These individuals struggle not only to access formal financial systems (UDHR, 1948: Article 23) and critical services like healthcare (Article 25) and education (Article 26), but to participate in basic governance functions (Article 21). Such exclusion perpetuates cycles of poverty, while the lack of documentation facilitates exploitation. Thus, in reality, the notion of equality encapsulated in the UDHR is compromised as individuals are unable to exercise their rights due to their

¹ This article defines digital identities as technological conventions that bind electronically captured and stored attributes and identifiers to a person within a given context.

lack of proof of identity (Beduschi, 2019; Manby, 2016). Unsurprisingly, the United Nations High Commissioner for Refugees (UNHCR) (2018) claims “being able to verify identities is [...] a matter of human dignity.” This narrative has similarly been espoused by Sustainable Development Goal (SDG) 16.9, the ID2020 and Identification for Development (ID4D) initiatives, and others in the “identification revolution” who view DIDs as tools for development (Gelb & Metz, 2018).²

Driven by the United Nations High Commissioner for Refugees (UNHCR), the International Committee of the Red Cross (ICRC), Microsoft, Accenture, IBM, and other organizations, a range of DIDs have emerged. As displaced populations typically reside outside conventional identity systems, they have been specifically targeted by these solutions, particularly those incorporating cutting-edge technologies like biometrics and/or blockchain. In developing contexts, such systems can lack the robustness necessary to withstand humanitarian crises, which, consequently, often exacerbate identification issues as official records are destroyed and/or abandoned. For example, an estimated 70% of Syrian refugees lack basic identity documents (Norwegian Refugee Council, 2017). With crises becoming more complex, frequent, and protracted – as evidenced by the 70.8 million people currently displaced worldwide (UNHCR, 2019) – identification-related problems and, by extension, the number of DID projects are only expected to grow. These DIDs can foster economic, social, and political inclusion, build capacity to deliver aid/public services, and protect rights through formal legal recognition (White et al., 2019; Maitland, 2018). They can also mitigate the impact on host communities and support the realization of durable solutions.

But innovation can have unintended consequences, and experimenting with vulnerable populations poses both ethical questions and risks. In the case of DIDs, these risks include mass surveillance, further exclusion, system failures, cybersecurity breaches, and privacy violations (White et al., 2019). History provides multiple examples (e.g., the Holocaust) where identification programs have been misused to monitor and/or control individuals³. Long connected to processes of racialization (Maguire, 2012) and criminal investigations (Curran, 2018) – especially within colonial contexts (Ajana, 2013) – biometrics has repeatedly been utilized by authorities to reproduce and solidify power relations. Meanwhile, blockchain technology is relatively new and untested with little empirical data on its usage for DID creation.

Highlighting the ability of malicious actors to exploit poorly designed and/or implemented projects, some critics warn against rushing to apply these highly-hyped technologies (Hempel, 2018; Lock, 2019; Greenfield IV, 2017). As information becomes increasingly easy to collect and digitize, analytic advancements may enable unprecedented surveillance capabilities (Pierce, 2007; White et al., 2019). Even seemingly innocuous data may provide unintentional information that can be further manipulated and abused (including retroactively). These concerns have been compounded by improving biom-



etric capture technology that can identify individuals without their consent or knowledge, thus not only blurring the lines between active authentication and passive surveillance, but challenging individual choice and autonomy as well (United States Agency for International Development, 2017).

What is Privacy?

These potential vulnerabilities and power asymmetries emphasize the importance of having robust legal frameworks around data protection and privacy. Stating “no one shall be subjected to arbitrary interference with his privacy, family, home or correspondence” (United Nations General Assembly, 1948: 4), Article 12 of the UDHR is one of two major international human rights mechanisms that protect the right to privacy – the other being Article 17 of the International Covenant on Civil and Political Rights (ICCPR) (Kaurin, 2019). This right has been incorporated in various forms into other human rights documents as well as the national constitutions of more than 100 countries (Latonero, 2018; Nyst et al., 2016). But the right to privacy remains difficult to define due both to its roots in cultural norms and its responsiveness to changing societal, political, and technological environments (Klitou, 2014; Kaurin, 2019)⁴.

By introducing new means of undermining and preserving privacy, technological advancements have reshaped our understanding of the concept. For instance, there is a clear correlation between the invention and widespread adoption of computers and the first pieces of legislation relating to the protection of personal information (Nyst et al., 2016). As the right to privacy has increasingly encompassed the notion of informational privacy in which individuals have control over their personal data, a number of countries have adopted data protection laws to regulate the collection, usage, sharing, storage, and destruction of personal information. Various rulings have further explored the limits of this protection, including several (e.g., *S. and Marper v. the United Kingdom*)⁵ which have determined its inclusion of biometric and electronic data (Beduschi, 2019). Ultimately, these data protection laws and

² SDG 16.9 advocates for “legal identity for all” by 2030 (United Nations, 2015), while ID2020 and ID4D are cross-sector alliances comprising United Nations (UN) agencies, non-governmental organizations (NGOs), governments, donors, and the private sector.

³ See literature linking identification systems to the consolidation of power (Manby, 2018; Szreter, 2007; Caplan & Torpey, 2001) and surveillance and control (Torpey, 2018; Bennett & Lyon, 2008).

⁴ 168 states are parties to the ICCPR, which is one of two binding treaties that complement the UDHR (Nyst et al., 2016).

⁵ For more on this specific case, see GeneWatch UK, 2013.

precedents act as important instruments for not only defending informational privacy rights (Nyst et al., 2016), but defining the boundaries of privacy in a rapidly digitalizing world.

In practice, however, these protections have been unevenly applied. As it stands, there are no internationally accepted and enforced technical, ethical, and regulatory standards for digital identities (Raymond, Scarnecchia, & Campo, 2019). Various challenges (e.g., corruption, corporate influence, poor enforcement mechanisms, weak separation of powers, lack of infrastructure, resources, and/or capacity) frequently subvert data protection measures in emerging economies and democracies (Nyst et al., 2016). This weak regulatory landscape helps explain why less developed countries have become popular settings to pilot DID technologies that citizens in countries with more effective democratic processes have repeatedly challenged and rolled back (Currion, 2015). The contrast not only recalls past experimentations at humanitarian sites (Jacobsen, 2015), but reflects the hierarchy prescribed in the dominant security paradigm.

Privacy Protections, Data Ownership, and Consent in the Global Security Paradigm

Necessitating proactive surveillance interventions, the risk posed by terrorism has been used to justify “watered-down safeguards for individual privacy” (Nyst et al., 2016: 15) and resulted in an unprecedented classification, compilation, and analysis of data (Amoore & Goede, 2008). These measures have particularly targeted refugees and migrants, who in the wake of 9/11 have been increasingly framed as existential threats to national security and economic well-being (Betts, Milner, & Loescher, 2012; Agier, 2011). As non-nationals, these individuals frequently lack the same privacy and data protection rights as citizens of their host country and, thus, must rely on international and regional legal mechanisms, like the UDHR (Kaurin, 2019). In basing the right to privacy on nationality, these practices are inconsistent with the notions of equality and universality entrenched in the UDHR.

Concurrently, competitive pressures and financial uncertainty have made multiple actors responsible for safeguarding human rights increasingly accountable to donors⁶. These donors have actively pushed for DIDs, particularly biometrics, due to security concerns. With virtually no overlap between donor and refugee/migrant countries, these systems protect powerful populations while controlling, filtering, confining, and delegitimizing marginalized groups. The United States’ use of Iraqi refugee data for “homeland security” objectives demonstrates how information collected via these DIDs can be coopted for purposes other than those originally intended (Jacobsen, 2015). The centralized design of many DID systems has fueled arguments that beneficiary data is the property of the collecting institution and can, therefore, be sold and/or shared with third parties⁷. Commonly referred to as the “new oil,” data has been increasingly commodified, a development which challenges recent conceptualizations of informational privacy as a right.

Blockchain technology has the potential to change how we approach data ownership and rebalance the power unequal-

ities prevalent in conventional, centralized identity management systems. This possibility has inspired the self-sovereign identity (SSID) movement, which envisions users having full control over their identifying information through the creation of identities independent of any state authority. SSIDs, however, are a “scarcely developed resource, accessible only by a tech-savvy few in mostly developed countries” (Greenfield IV, 2017). In humanitarian and developing contexts, most DID projects have opted for permissioned, or private, blockchains where a central authority governs network participants and transaction histories. The sharp contrast between these permissioned systems, which continue to deny individual agency and control over data, and SSIDs have introduced apprehensions that the turn to blockchain-based DIDs may exacerbate the digital divide and reinforce the power of the technological elite.

This huge power differential between those collecting and supplying data within humanitarian and developing settings has also ignited doubts around the ability of DIDs to achieve informed and meaningful consent. For consent to be meaningful, it must be an ongoing process, revocable, and adaptable to different digital abilities. Most importantly, people must be able to opt in and out. But with proof of identity so deeply tied to the assertion of other basic rights, do people truly have a choice? What about in humanitarian crises where the decision whether or not to register with a digital identification scheme may dictate access to life-sustaining goods, services, and protection? Most recently these questions have arisen in Yemen, where the World Food Program (WFP) has threatened to suspend its operations in rebel-held areas of the country if the Houthi rebels do not agree to implement the organization’s biometrics system (Parker & Slemrod, 2019). With dignity and personal agency inherently tied to choice, actual DID procedures often appear to contradict the empowerment/dignity narrative they promote.

Conclusion

While DIDs have the potential to help individuals realize their basic human rights, these technologies are not without risks. These risks extend beyond technical specifications to include the legal, political, and socio-economic environments in which such systems are being implemented. A complete analysis of DIDs, thus, requires us to consider these contexts and their human rights implications. With the UDHR acting as the cornerstone of international human rights law, its inclusion in the discussion is especially critical. Examining the UDHR’s relevant Articles, we see how these emerging technologies contest our understandings of privacy and legal identity as fundamental rights, and raise vital questions around where dignity, protection, risk, and security fit into these definitions. Ultimately, developing “a common understanding of these rights and freedoms is of the greatest importance for [their] full realization” (UN General Assembly, 1948: 1).

⁶ Hoffman and Weiss (2006) theorize that the proliferation of humanitarian actors has increasingly politicized and militarized humanitarianism.

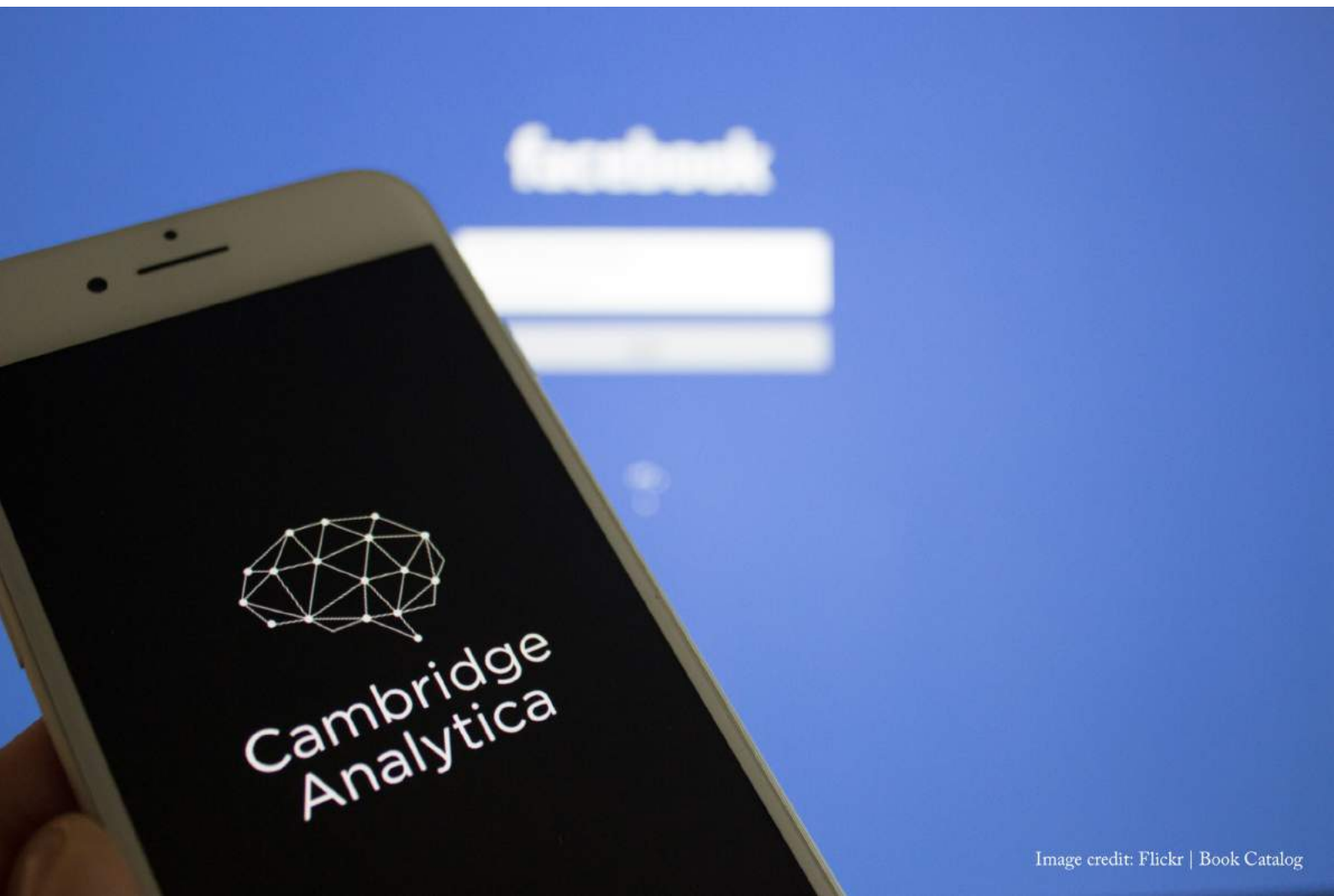
⁷ In some cases, UNHCR has shared refugee information with oppressive regimes (Thomas, 2018).

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Human Rights in the Era of Fake News: A Challenge for the Universal Declaration of Human Rights (UDHR)?

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Abstract: *Society is currently undergoing a paradigm shift from consuming information from broadcast television and newspapers to doing so on the Internet and, more specifically, on social media platforms. The Internet, often described as a network of networks, enables users to replicate and remix images, text, and videos. This property makes it very difficult to determine where a particular image, video, idea or 'meme' has originated. Comparably, the word 'fake news' has now become a buzzword, but unaccompanied by the criterion to distinguish fake from genuine news. The digitization of news has also ushered in an era of citizen journalism. Social media platforms provide spaces for users who are not professional journalists to reach a mass audience through text, photos, videos, and media. To participate in the online sphere, individuals often use social media platforms such as Google or Facebook, and rely on them for exercising rights such as freedom of speech and expression as well as the right to privacy. Traditionally, international human rights law, including the Universal Declaration of Human Rights (UDHR), applies to the activities of states only. Despite an increasing take-up of human rights discourse by social media companies, their commitment remains mostly voluntary and non-binding. There are genuine concerns that fake news has assumed a pernicious character, which is harmful to citizens and society at large. In the latest report by the UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, David Kaye has emphatically recommended that companies apply human rights standards at all stages of their operations. In this context, this article seeks to employ critical legal methodology to put under the scanner the cutting-edge issue of the responsibility of social media platforms to ensure that they do not interfere with the human rights guaranteed under the UDHR.*

Keywords: *Technology; human rights; elections; online; political micro-targeting (PMT); fake news*

The Quest for the Protection of Human Rights

It is often stated that new technologies are changing what it means to be human. It is not far-fetched to say that we are delegating more and more decisions to machines that are considered to be more intelligent when performing specific tasks than humans. These can range from selecting military targets for "elimination" to day-to-day activities – for instance, deciding what food to cook and how, knowing directions while traveling, discovering trending news and, at times, finding medical remedies for diseases on the Internet. The so-called

digital revolution has taken a firm grip on each and everybody, rapidly transforming society, and allowing new capacities and benefits. At the same time, it has given rise to profound new challenges and it has been rightly stated that "digital dividends co-exist with digital divides" (World Development Report, 2016).

The founding document of international human rights law, the Universal Declaration of Human Rights (UDHR), mentions in its Preamble and Article 1 the rights and freedoms that human beings enjoy by virtue of their humanity: i.e., inherent rights. These rights are based on the principles of dignity, equality, and liberty, and are underpinned by notions of solidarity. At the core of human rights lie fundamental questions about the nature of human beings and their relationship with each other as members of societies. In this context, human rights address the relationship of individuals, including participation in the governance of countries. Notably, Article 21 of the UDHR states that:

- (1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.
- (2) Everyone has the right to equal access to public service in his country.
- (3) The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures (UDHR, 1948: Article 21).

The above-enumerated rights have, however, been challenged due to a flood of (dis)information. Popularly called "fake news", it represents risks for democratic processes, national security, the social fabric, and can undermine trust in the government and vital social institutions. In the past few years, at the most extreme level, there have been several incidents of mob-lynching reported due to fake news (Gowen, 2018). For instance, in India, data released by the governmental agency National Crimes Record Bureau (NCRB) for the year 2017 highlighted that 257 crimes were perpetrated due to fake news (Shakil, 2019). WhatsApp, having more than 200 million user base in India, came up with an ad hoc solution that restricts forwarding a message to only five times. Importantly, fake news is often intertwined with the related issue of online political micro-targeting (PMT hereinafter), in other words, the "use of different communications (mail, phone, canvassing, direct mail, social media advertising, etc.) to communicate and build a relationship with prospective voters" (Bodó,

Helberger & de Vreese, 2017). PMT is, thus, a type of electoral campaigning where political actors send targeted personal messages to individual voters by making use of data analytics to forecast voter preferences and boost their success ratio. In a way, what drives the entire matter is the data of individual users available online on social media platforms, which is frequently stolen, leading to loss of privacy (Doffman, 2019). In addition, it facilitates 'profiling', where information about users, such as academic or professional background, memberships of societies, preferences, opinions, and others, is collected to construct their virtual user profile (Hasan et al., 2013).

The election campaign rallies of modern-day are not only confined to physical toiling by politicians to address a mass gathering of people, but also extend to sending specific targeted messages that aim to modify the behaviour of voters sitting. The oft-quoted episode of Cambridge Analytica and the Robert Mueller investigation has lifted the lid off Russian intervention in the 2016 US presidential elections (Wong, 2018). The Electoral Commission in the UK is grappling with online PMT advertising being opaque and unaccountable (Oakes, 2018). Some of the risks associated with PMT include violation of privacy rights, and targeted messages that could be misleading and leave the door open for potential manipulation. Hence, the looming threat of PMT in a democracy has accentuated the need for robust policy and legal frameworks worldwide. The challenge demands innovative solutions where modern technology interacts with traditional concepts such as elections and governance.

The 'Black Box' of Fake News

The digitization of news has ushered an era of citizen journalism. Social media platforms provide spaces for users who are not professional journalists to reach a mass audience through text, photos, videos, and other media. It can be a double-edged sword when non-journalists turn to journalism. There are genuine concerns that fake news has assumed a pernicious character that is harmful to citizens and society at large. The danger of harm includes "threats to democratic political processes, including the integrity of elections, and to democratic values that shape public policies in a variety of sectors, such as health, science, finance and more" (European Commission, 2018: 3).

The term fake news does not have a straightforward meaning, and covers a wide ambit of different types of information. It can range from the honest mistakes made by journalistic reporters to hyper-partisan political discourses to minting money through the use of clickbait headlines. A 2018 United Nations Educational, Scientific and Cultural Organization (UNESCO) report highlighted that fake news "is an oxymoron which lends itself to undermining the credibility of information which does indeed meet the threshold of verifiability and public interest – i.e. real news" (Ireton and Posetti, 2018: 46). This rightly captures the ambiguity arising out of this complex phenomenon, which can involve fake content, but also content that is not actually or entirely fake – for instance, blending fabricated information with facts by means of manipulated or fabricated videos as well as through targeted advertising, organized trolling, visual memes, and much more. Their distribution can assume alarming proportions, especially when organized by foreign states or domestic groups that would try to undermine the political process in other countries, and which use various forms of malicious fabrications, infiltration of grassroots groups, and automated amplification techniques

(Bump, 2017). In a submission by Facebook before the UK's Digital, Culture, Media and Sports Committee, it accepted the use of targeted advertising to campaign for Brexit (Griffin, 2018).

Stifling Electoral Freedom?

The use of fake news through social media during election campaigning has critical consequences, as was particularly evident during the run-up to the 2019 Indian general elections (Mohan, 2019). The use of online microtargeting in political campaigns has now come to stay worldwide. The Election Commission of India (ECI) is responsible for regulating and enforcing rules that govern political campaigns as well as attempting to tighten the noose on social media platforms. In March 2019, social media platforms including Facebook, Twitter, WhatsApp, Google, TikTok, ShareChat, etc., and the Internet and Mobile Association of India (IAMA) submitted to the ECI a self-regulatory code called as 'Voluntary Code of Ethics for the General Elections 2019' (Code hereinafter). They undertook the commitment to provide ECI with a dedicated mechanism and with trained personnel to report violations of electoral laws on their platforms, particularly the prohibition on political campaigning 48 hours before the completion of the poll (i.e., as per sec. 126 of the Representation of the People Act of 1951). After receiving legal notice from ECI, the social media platforms will take action on reported violations within 3 hours.

As a corollary, another ill that is eroding the trust in the electoral system are paid political advertisements on social media platforms. The Code pledged to make paid political advertisements transparent by allowing only pre-certified advertisers, who have obtained a certificate from the Media Certification and Monitoring Committee of the ECI, to use these companies' digital infrastructure for political campaigning.

The efficacy of these measures is still to be assessed. This kind of ad hoc, sometimes knee-jerk, solutions, which often come too late and from private, non-state actors, does not obviate the need to amend the laws in India to reflect the increasing use of digital technologies. In fact, the growing concerns regarding fake news has prompted many countries to legislate on it. At the same time, there has been a fair amount of criticism that such laws enable government censorship. Recently, Singapore passed a law called the Protection from Online Falsehoods and Manipulation Act 2019, which categorically deals with disinformation spread online, to much public concern. Interestingly, Malaysia repealed its Anti-Fake News Act of 2018 after there has been regime change, explaining that said legislation impeded upon freedom of speech and expression (Latiff, 2019).

Concerning elections, any future legislation should address changes in campaign techniques – for instance, the move from physical leaflets and billboards to online as well as PMT campaigning. Further, it should address the disruptive aspect of techniques such as PMT, which also pose a tough challenge to the resilience of institutions, especially those that look after the integrity of election processes. Such legislation will be required to have built-in rules and procedures mitigating the possible effects of PMT, and protecting the underlying values of democratic elections: fairness, transparency, and openness. The social media platforms need to pull up their socks and work more closely with governments and civil society groups in order to address concerns about existing – or potential –

human rights violations arising due to fake news.

Technology for Human Rights

The global rise of the Internet has increased not only connectivity among the masses, but created a new medium for social interaction as well. In the wake of this, we are increasingly encircled by a menagerie of digital paraphernalia in the form of mobile phones, personal laptops, sensors, and others, which are in turn generating streams of new information. With the use of powerful analytics, companies conduct data mining studies on massive stores of personal information.

Technologies such as big data analytics have now made it possible for researchers to use advanced correlation techniques in order to flesh out useful patterns of information that would otherwise not be tapped. From a human rights angle, consumer group profiling and predictive policing applications are some of the evident challenges. These reflect the manner in which rapid developments in technology have demonstrated that while human rights law has a well-developed body of standards, on many occasions it can fall short of providing adequate protections. The emergence of a 'big data society' and its predictive regime is accompanied by disruptive developments such as online PMT, bringing to the fore the fragility of those protective measures adopted to safeguard electoral democracy.

Technology has an enormous impact on our daily lives, for both good and evil, and can be used as well for the protection of human rights. It could help usher in an era for human rights protection, promoting productivity, justice, and customer ser-

vice, and heightening national security. And yet, few governments around the world are applying new technologies to:

Predict and prevent crime, to develop profiles of potential terrorists, and to make better informed policy choices in the social and economic domains, the legal and the healthcare sectors, and the fields of mobility and infrastructure (Devnisi et al., 2017: 362).

It is true that the complexity of these matters and the fast pace of developments in our digital environment is growing. That fact, however, only emphasizes the need for action. Any legal, as well as voluntary policy responses, should be comprehensive and continuously assess the phenomenon of fake news, adjusting its objectives in light of its evolution. The rights and duties mentioned in the UDHR need to be given protection by using technology, particularly in the area of social media, for the benefit of all.

Conclusions

The age of fake news erodes trust throughout society and hampers the protection of human rights. In the near future, fake news phenomena may be sinisterly overtaken by another technology development called 'deepfakes', where audio and visual content featuring a person, object or environment is manipulated through advanced software. It goes without saying that technology can already wreak havoc when implemented by humans. Regardless of these challenges, promoting respect for human rights is fundamental. For this reason, there is an urgent need to work on and devise operational guidelines for the implementation of the rights enshrined under UDHR in view of new and emerging digital technologies.

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Business Enterprises and the Universal Declaration of Human Rights (UDHR): A Hybrid Approach¹

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Abstract: *The Universal Declaration of Human Rights (UDHR), and the human rights regime it initiated, continues to raise matters of debate and controversy. One of the central challenges is the question as to how business enterprises are or should be responsible for human rights. This article examines the role of business enterprises, which can consist of private as well as public elements. Given the fact that the power and agency of companies constantly increase, the question arises whether these private actors should resume apparently public responsibilities for human rights. This article suggests that companies have hybrid roles between and beyond the private-public divide. This allows a hybrid responsibility approach that keeps up differences between companies and states, while at the same time acknowledging the extent and quality of business power and legitimacy.*

Keywords: *Business; Universal Declaration of Human Rights (UDHR); human rights; private and public actors; hybrid responsibilities*

Introduction

The Universal Declaration of Human Rights (UDHR) from 1948, together with the United Nations Charter from 1945, set into motion an unprecedented process of establishing and universalizing human rights. More than 70 years later, an international human rights regime has developed that puts the UDHR on solid ground – in terms of its legal juridification, its practical implementation, its specification, and also its extension. On the one hand, the human rights regime builds a global framework that is hardly being contested, at least not explicitly (Kumm, 2013; Mende, 2019; Sikkink, 2017):

In the twenty-first century, there is not a single state left in the international system that has not ratified at least one international human rights treaty [...]. Moreover, there is universal agreement that fundamental human rights constitute

ius cogens, i.e. that part of international law to which states commit irrespective of whether or not they are party to individual treaties (Risse & Ropp, 2013: 9).

On the other hand, the human rights regime still suffers from gaps. The precise concept of human rights remains a matter of discussion, and human rights violations occur on a daily basis in virtually every region of the world. This is not only due to a lack of capacity or willingness to implement human rights. Additionally, political, economic, and social developments come with new challenges for human rights that need new answers. For these reasons, further debates and developments concerning the UDHR as part of the international human rights regime are necessary.

Globalization and global governance have been shaping and changing the global order over the past decades tremendously. These political, social, and economic processes affect the character and scope of human rights as well as the UDHR. One of the effects in point is the growing relevance of business enterprises for human rights, due to their rising agency, and their power to violate or to protect human rights.

This article discusses how the role of business enterprises challenges the human rights regime, which can no longer only consider states as major actors. At the same time, it cannot treat companies just as if they were states. Therefore, the article proposes the model of a hybrid business responsibility for human rights. This hybrid form of responsibility can complement the state's duties to respect, protect, and fulfill human rights.

Public Human Rights and Private Power

In plenty of countries worldwide, lawsuits, civil society campaigns, political and legislative initiatives address companies' involvement in human rights violations². Just one out of nu-

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² The following passages draw on the author's text "A New Responsibility in the Making: Business Companies and Human Rights", published in the WZB (Wissenschaftszentrum Berlin für Sozialforschung; Berlin Social Science Center) blog Orders Beyond Borders in June 2018.

merous examples is the case of a fatal fire at a textile industry in Pakistan which killed 258 people in 2012. The German retailer KiK, as the factory's main client, has been sued for liability in front of a German court. While the lawsuit failed in 2019 due to procedural issues, the underlying question of corporate responsibility remains³.

This question is also being addressed in the United Nations (UN). While most actors share the perspective that something needs to be done in order to hold companies responsible for human rights, there is a lot of disagreement on the forms and scope of such business responsibilities for human rights. One of the major disagreements concerns the divide between states and non-state actors – or public and private actors – in international human rights law. In the classic human rights regime that was initiated with the UDHR, only states are held responsible for the respect, protection, and fulfillment of human rights, which includes the prevention and sanctioning of human rights violations by third-party actors in their jurisdiction. Private actors, in contrast, only have the responsibility to respect human rights, that is to say, to not violate them.

With the rise of power and agency of business actors, this classic notion is increasingly being put into question. Ultimately, this triggers the examination of whether private actors should assume apparently public responsibilities for human rights. Stakeholders discuss this question openly, but also very carefully, as companies cannot simply be equated with states. Accordingly, companies cannot simply be expected to assume state responsibilities for human rights. The reason for this is that companies differ from states in important regards. Companies are neither subjects of international law nor are they democratically legitimated; in addition, their purpose is not the common good or the public interest. Rather, they are perceived to legitimately pursue their private self-interest. Moreover, the extension of human rights responsibilities further strengthens the power and agency of companies as norm-setters. Furthermore, if companies were just to assume state-like responsibilities for human rights, this might enable states to withdraw from their responsibilities. For these reasons, an extension of human rights obligations unto companies urges caution.

³ See KiK: Paying the price for clothing production in South Asia at: <https://www.ecchr.eu/en/case/kik-paying-the-price-for-clothing-production-in-south-asia/>.

Then again, human rights activists have made it abundantly clear that the classic private responsibilities of companies do not suffice to strengthen human rights, or to prevent or remedy human rights violations. This is because companies are not just private actors. Their activities cannot be discussed independently from questions of common interests. This is most apparent in companies' involvement in providing public goods such as water, electricity, infrastructure, health, education or housing, but also with matters of climate change, peace, and war (Atal, 2019; Bernhagen & Mitchell, 2010; Best & Gheciu, 2014: 18ff; Graz & Nölke, 2008; Leibfried & Zürn, 2005; Moon & Knudsen, 2018).

The involvement of companies in public affairs has risen tremendously over the past decades with the political course of privatization and global governance. But even as early as 1953, the economist Howard Bowen (2013) emphasized the extent to which business activities shape lives and society (p. 8ff). Not only, he argued, does the behavior of companies contribute to the standard of living, economic stability and economic progress, but also to societal order, national security, justice, freedom, communities, and the development of individual persons: "it comprises so large an element of human time, of human interrelationship, and of personality expression. It is not only a means to human life and human ends but a large part of human life, and an end in itself" (idem: 11).

Binding and Non-Binding Responsibilities for Human Rights

The divide between public and private actors is still characterizing international law. It strongly resonates with another divide inherent to international human rights law. This is the divide between, on the one hand, non-binding, voluntary principles, norms, and soft law, and, on the other hand, binding principles, and hard law. The question of whether business responsibilities for human rights should be binding or non-binding sharply marks the current discussions in the UN.

Opponents of binding international law to regulate business responsibility for human rights fear that companies will come to be equated with states. They refer to the state-based character of international human rights law, which can only be violated by states, and which must be protected and fulfilled by states. As states are responsible for the actions of non-state



actors, including companies, companies can be held responsible by law on the national level. According to this view, only incentives and norms should guide companies' behavior on the global level, not international law. A popular proponent of this approach, which favors non-binding principles, is John Ruggie (2017), who authored the state-of-the-art 2011 United Nations Guiding Principles on Business and Human Rights, which are non-binding, and yet politically and normatively highly relevant (Deva & Bilchitz, 2013; Mende, 2018).

Proponents of binding international law, however, are in favor of a more encompassing, effective, and obligatory global business responsibility, so that it balances companies' global power. They argue that the power of transnational companies has outgrown the power of certain states, and done so without the corresponding duties and obligations when it comes to human rights. Furthermore, due to globalization, the rise of transnational business agency partly escapes the legal and political realm of individual states, and enables companies to benefit from different levels of human rights implementation in different states (Andreopoulos, Arat, & Juviler, 2006; Clapham, 2006). Additionally, major companies are participating in global governance mechanisms, and are thereby able to form, interpret, implement, and monitor global norms and rules that apply to themselves and to others (Peters, Koechlin, Förster, & Zinkernagel, 2009). These companies are not only endowed with global agency, but also with the authority and legitimacy to act accordingly (Mende, 2020).

Faced with these challenges, the United Nations Human Rights Council (UNHRC) launched a new initiative in 2014, set in motion by Ecuador, South Africa, and other states, mainly from the global South, and supported by a high number of non-governmental organizations (NGOs) from around the world. They established the *open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights*, which is currently working on a draft for a binding international treaty delineating business responsibilities for human rights.

Hybrid Business Responsibilities for Human Rights

The demand for global business responsibilities for human rights does not only relate to companies as potential violators of human rights, but also to their ability to positively contribute to human rights. Yet again, this touches the most controversial point: to what extent and in which form can private companies be responsible for human rights in the *public* international human rights regime, without simply treating the two realms as equivalent?

One solution is to take the roles of business companies seriously, noting that they transcend the dual constellation of public (state) and private (non-state). An extensive piece of scholarship in political science, philosophy, law, and economics is dedicated to defining this hybrid role⁴. Business compa-

nies can be said to assume a hybrid role between and beyond the public and the private (Mende, 2017a, 2017b). They exhibit public as well as private dimensions – for example, when contributing to the public well-being while pursuing their self-interest. What is more, they boost characteristics that transcend this duality at the outset. Cases in point are their participation in global governance, their capability to regulate themselves and others, and their perceived legitimacy to do so. This legitimacy and authority exceeds that of private actors by far: it is not private. At the same time, due to the absence of mechanisms of democratic accountability (among other factors), their role does not simply mirror state legitimacy and authority: it is not public. Rather, it is hybrid. It does not simply blend, but it transcends the dual relation between public and private. It is situated between and beyond (Mende, 2020).

The hybrid role of business companies can lay the groundwork for the development of an equally hybrid responsibility for human rights. The task of shaping such a hybrid responsibility comes with several challenges and questions. In particular, it needs to define which types of companies shall

resume responsibility, to what extent, and with which duties. It also has to address the diverse spectrum of transnational, state-owned, small and medium-sized companies as well as their complex formal and informal relations (including contracts, liability, and complicity). Another task is to specify the relations between business responsibilities, international law, and state jurisdiction. While there are no easy answers to these questions, the hybrid model offers a way out dichotomous solutions. It suggests the possibility of keeping up a difference between companies and states, while at the same time acknowledging the extent and quality of business power and legitimacy. It takes into account business agency beyond the private sphere, without simply reallocating it in the public.

The United Nations Guiding Principles on Business and Human Rights lay the groundwork for the further development of a hybrid model. Most importantly, they establish the concept of complementary responsibility: the responsibilities of states and companies supplement each other. Thus, the Guiding Principles neither entail a shift of responsibility from states to businesses (or vice versa) nor do they replace one actor's responsibility with the other actor's responsibility. While this framework prevents a sheer transfer of human rights responsibilities from states to companies, it leaves room for gaps and loopholes, especially due to the slow progress of its implementation into binding law. In contrast, a hybrid model does not abstain from looking for binding forms of business responsibilities, both on a national and a global level. The draft from the open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights can provide a way forward. Additionally, a hybrid model can search for new constellations of binding and non-binding responsibilities, again complementing and reinforcing each other.

Some say that the 2011 United Nations Guiding Principles on Business and Human Rights are the equivalent in their importance to the Universal Declaration of Human Rights (Deva, 2013: 78). If that is the case, then it is in need of further juridification, implementation, specification, and extension – just as the Declaration has been since 1948.

⁴ See the concepts of: political corporate social responsibility in Scherer, Rasche, Palazzo, and Spicer (2016), and in Scherer and Palazzo (2007); global corporate social responsibility in Stohl, Stohl, and Townsley (2007); democratic corporate social responsibility in Levy and Kaplan (2008, 439ff.); extended corporate citizenship in Crane, Matten, and Moon (2008); corporations as quasi-governmental institutions in Wettstein (2009), and in Ciepley (2013); private government in Anderson (2017); companies as social actors in Brühl and Hofferberth (2013); and, the political power and authority of companies in Fuchs (2013: 87), and in Atal (2019).

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