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The United Nations and the Evolution of Global Values

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1 INTRODUCTION

The promotion of the value of human dignity is one of the success stories of the United Nations. It has profoundly changed the international legal order and led to a shift in focus in the language of international law. In the past, the State was the principal and almost exclusive participant in the international legal order. States made the rules, and these rules also applied almost exclusively to them. Today individuals are also recognized as participants. If international law is approached from the combined perspective of the State and the individual, the foundations of this language will have to be adapted accordingly. It has already been shown how this shift has affected the UN's work on peace and security and social progress and development.¹ Now this shift is examined in more general terms.

This introduction presents the UN organs which are chiefly responsible for the evolution of the value of human dignity. The most important organ is the former United Nations Commission on Human Rights. In view of its success in promoting the value of human dignity in the past, it is surprising that this Commission is the only UN organ that has ever been abolished and replaced by a new organ, the Human Rights Council. The Commission was most successful in its early days, when it drafted the Universal Declaration of Human Rights. Its successor, the Human Rights Council, still has to prove itself.

The resolutions on human dignity adopted by the General Assembly are examined. The responses of the academic community to these resolutions are also analyzed. The UN's determination to promote human dignity is largely based on the terrible experiences of the Second World War, which has often been characterized as a war – or even a crusade – for human dignity and human rights. After the war the United Nations used the value of human dignity as the foundation of all human rights. The actual list of human rights is examined in detail. The focus is not so much on the judicial interpretation of these rights, but on General Assembly resolutions seeking to promote the value of human dignity through the elaboration of the rights enshrined in the Universal Declaration of Human Rights. The universality of human rights, *i.e.* the idea that human rights are to be enjoyed by all, everywhere, and in all circumstances, is also analyzed.

¹ See sections 7 of Chapter IV and 6 of Chapter V, above. For self-determination, see section 6 of Chapter VII.

1.1 The role of the Commission on Human Rights and the Human Rights Council

None of the principal organs of the United Nations has a mandate exclusively devoted to the protection of human rights.² This is not to say that there was no interest in the international protection of human rights at all in 1945 when the UN Charter was drafted. In Article 68 UN Charter, ECOSOC was asked to set up a commission for the promotion of human rights.³ On the basis of this provision, the United Nations Commission on Human Rights was established by ECOSOC in 1946. It was mandated to

Submit [...] proposals, recommendations and reports to [ECOSOC] regarding an international bill of rights; international declarations or conventions on civil liberties, the status of women, freedom of information and similar matters; the protection of minorities [and] the prevention of discrimination on grounds of race, sex, language or religion.⁴

This commission, which Lauterpacht described as the “principal organ of the United Nations for the protection of human rights,” was not officially one of the principal organs of the Organization.⁵ It was only one of many commissions established by ECOSOC. Nevertheless, until the World Summit of 2005, it was the Human Rights Commission that did most of the work relating to the protection of human dignity and the development of human rights. It has been particularly successful in its main task, the codification and dissemination of human rights.⁶ However, as it was only a Commission, it had to rely on ECOSOC, and eventually the General Assembly itself, to ensure that its ideas and declarations were embraced by the international community. Because the Assembly is the only UN organ speaking on behalf of the entire international community, the Assembly resolutions

² UN Charter, Article 7.

³ For a brief history of the Commission and a comparison with the Council, see also Nico Schrijver, “The U. N. Human Rights Council: A New ‘Society of the Committed’ or Just Old Wine in New Bottles?” (2007).

⁴ Commission on Human Rights, resolution adopted by the Economic and Social Council on 16 February 1946 (UNDoc. E/20).

⁵ Hersch Lauterpacht, “The international protection of human rights” (1947), p. 57 (see also p. 52).

⁶ Buergenthal sees the codification of human rights as “the most important contribution of the United Nations to the protection of human rights.” See Thomas Buergenthal, “The Evolving International Human Rights System” (2006), p. 791.

are used as the primary documents in this study, not the preparatory work done by the Human Rights Commission.⁷

At the World Summit of 2005 the Members of the United Nations replaced the Human Rights Commission with the Human Rights Council.⁸ The Council was formally established one year later.⁹ The then Secretary-General Kofi Annan wanted the Council to become one of the principal organs of the United Nations. All global values would then have their own Council: the Security Council for the value of peace and security, the Economic and Social Council for the value of social progress and development, the Trusteeship Council for self-determination, and the Human Rights Council for human dignity. However, the Human Rights Council did not become one of the UN's main organs.¹⁰

2 HUMAN DIGNITY IN SAN FRANCISCO

2.1 The Preamble

According to Smuts' first draft of the Preamble, the United Nations was established, *inter alia*, "to re-establish the faith of men and women in fundamental human rights [and] in the sacredness, essential worth and integrity of the human personality."¹¹ In San Francisco, this was changed into "to reaffirm faith in fundamental human rights, in the dignity and value of every human being, in the equal rights of men and women."¹² One of the more interesting changes was the replacement of the word "re-establish" with "reaffirm." The reason for this change was that, according to the relevant Subcommittee, "that faith [in the dignity and value of every human being] ha[d] never faded," and that it was this faith in human dignity and rights "which moved men and women in all lands to accept the sacrifices by which victory [was]

⁷ The Assembly's authority to speak on behalf of the entire international community has been most easily accepted in the field of human rights. See also Philip Alston, "Conjuring up New Human Rights: A Proposal for Quality Control" (1984), pp. 608-609. On p. 617, Alston affirmed the conclusion that "a claim is an international human right if the General Assembly says it is."

⁸ 2005 World Summit Outcome, paras. 157-160. The establishment of such a Council was already proposed in the early sixties. See Louis B. Sohn, "United Nations Machinery for Implementing Human Rights" (1968), p. 910.

⁹ Human Rights Council, General Assembly resolution 60/251, adopted 15 March 2006.

¹⁰ It would have required an amendment of the UN Charter, and that is a most cumbersome process.

¹¹ Draft Preamble to the Charter of the United Nations Proposed by the Union of South Africa, 26 April, 1945, UNCIO, vol. 3, pp. 474-475. For a slightly rephrased version, see the Preamble to the Charter of the United Nations Submitted by the South African Delegation in Revision of Draft of April 26, 1945, May 3, 1945, *idem*, pp. 476-477.

¹² Draft Preamble (as Approved by Committee I/1/A), 31 May 1945, UNCIO, vol. 6, p. 694. It is not clear why a reference to human dignity was added at this stage. See also pp. 675-676, Christopher McCrudden, "Human Dignity and Judicial Interpretation of Human Rights" (2008).

achieved.”¹³ However, “that faith needed reaffirmation in our Charter especially after it ha[d] been trampled upon by Nazism and Fascism in Europe as well as in other instances elsewhere.”¹⁴ With one minor change, the subcommittee’s formulation was adopted by the Committee and then the Commission.¹⁵

2.2 The Purpose

There was no reference to human rights or human dignity in the Dumbarton Oaks’ general list of purposes. However, there was a reference in the document’s purpose in disguise.¹⁶ Many States did not think that was enough, and suggested that the promotion of human rights should become a general purpose of the Organization.¹⁷ At the insistence of the US, which was itself inspired by various suggestions by non-State actors and individuals, the sponsors had already remedied the situation even before the San Francisco Conference.¹⁸ They had included in the list of purposes of the revised Dumbarton Oaks proposals the “promotion and

¹³ Report of Rapporteur, Subcommittee I/1/A, Section 3, to Committee I/1, June 5, 1945, UNCIO, vol. 6, p. 359. See also Report of Rapporteur of Committee 1 to Commission I, UNCIO, vol. 6, p. 392.

¹⁴ *Idem.*

¹⁵ The reference to the dignity and value of the “human being” was changed into that of the “human person”, at the request of Smuts. See Report of Rapporteur of Committee 1 to Commission I, UNCIO, vol. 6, p. 461, and the Thirteenth Meeting of Committee I/1, June 5, 1945, *idem*, p. 366, where the Committee adopted the revised text. The Commission also adopted the same text: see First Session of Commission I, June 14, 1945, *idem*, p. 20. See further the Summary Report of Forty-First Meeting, June 25, 1945, UNCIO, vol. 17, p. 380 and the Summary Report of Eleventh Meeting of Steering Committee, June 23, 1945, UNCIO, vol. 5, p. 307, where one last change was made: the deletion of the word “value.”

¹⁶ Dumbarton Oaks Proposals for a General International Organization, UNCIO, vol. 3, p. 19. This read as follows: “With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations, the Organization should [...] promote respect for human rights and fundamental freedoms.”

¹⁷ See *e.g.*, Amendments Submitted by Mexico, UNCIO, vol. 3, p. 178; Uruguay, *idem*, p. 34; India, *idem*, p. 527; Venezuela, *idem*, p. 224; Brazil, the Dominican Republic and Mexico (jointly), *idem*, p. 602; Egypt, *idem*, p. 453; Ecuador, *idem*, p. 400; France, *idem*, p. 383. Most of the nations that promoted human rights came from Latin America, and it is clear that they were inspired by the Act of Chapultepec, concluded in Mexico less than two months before the start of the San Francisco Conference.

¹⁸ See Memorandum by the Secretary of State to President Truman, April 19, 1945, in FRUS, 1945, *General*: Volume I, p. 354. See also Porter, “Stassen Outlines Our 9 Objectives,” in *New York Times* of May 4, 1945, about the importance the US attached to this amendment. Various consultants, representing church bodies and other organizations, urged the US delegation to promote human rights language. See *e.g.*, Minutes of Twenty-sixth Meeting of the United States Delegation, May 2, 1945, in FRUS, 1945, *General*: Volume I, p. 532. See also Edward R. Stettinius, “Human Rights in the United Nations Charter” (1946), p. 1; Eibe Riedel, “Article 55(c)” (2002), p. 920; Ruth B. Russell, *A history of the United Nations Charter* (1958), pp. 568-569; Jan Herman Burgers, “The Road to San Francisco” (1992), p.475; John P. Humphrey, “International Protection of Human Rights” (1948), p. 16; Robert C. Hilderbrand, *Dumbarton Oaks* (1990), pp. 91-93.

encouragement of respect for human rights and for fundamental freedoms for all without distinction as to race, language, religion or sex.”¹⁹

In San Francisco, the delegates expressed a “desire to be unstinting and painstaking in formulating a clear and strong statement of purpose” on human rights.²⁰ At the same time, the human rights purpose could not be formulated *too* strongly, since it was generally believed that “assuring or protecting such fundamental rights [was] primarily the concern of each state;” and that only if “such rights and freedoms were grievously outraged so as to create conditions which threaten peace [...] they cease[d] to be the sole concern of each state.”²¹ Moreover, in view of the US, “it was important to avoid giving the impression that the Organization would deal with individuals,” because “[i]ts main function would be to settle disputes between governments and it would be unfortunate to arouse hopes that the Organization would directly help individuals when this could not be realized.”²² The Subcommittee therefore chose not to make too many changes.²³ After some insignificant grammatical changes, the amendment proposal of the sponsors became Article 1(3) of the UN Charter. According to this Article it is one of the Purposes of the United Nations:

To achieve international co-operation in [...] promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion.

There was also a reference to human rights in the purpose in disguise (which became Article 55). Australia suggested, as an amendment only to the purpose in

¹⁹ Amendments Submitted by the United States, the United Kingdom, the Soviet Union and China, UNCIO, vol. 3, pp. 622-623. The insertion of this new human rights purpose did not cause the disappearance of the reference to human rights in the purpose-in-disguise (see *idem*, p. 626). The exact wording of this amendment was based on a Russian suggestion. See the Minutes of First Four-Power Consultative Meeting on Charter Proposals, May 2, 1945, in FRUS, 1945, *General*: Volume I, p. 551.

²⁰ Sixth Meeting of Committee I/1, May 14, 1945, UNCIO, vol. 6, p. 296.

²¹ Report of Rapporteur, Subcommittee I/1/A, to Committee I/1, June 1, 1945, UNCIO, vol. 6, p. 705.

²² Minutes of Fifth Meeting of the United States Delegation, April 9, 1945, in FRUS, 1945, *General*: Volume I, p. 220.

²³ Text of Chapter I, as Agreed upon by the Drafting Committee of Committee I/1, UNCIO, vol. 6, p. 684. Panama later suggested changing “promotion and encouragement” into “promotion and protection” of human rights. The Delegates of the United Kingdom and the United States objected to the alteration, because they “believed that the amendment would raise the question as to whether or not the Organization should actively impose human rights and freedoms within individual countries, and that it would lead many peoples of the world to expect more of the Organization than it could successfully accomplish.” The Panamanian amendment was subsequently rejected. See Tenth Meeting of Committee I/1, June 2, 1945, UNCIO, vol. 6, pp. 324-325. See also Amendments Submitted by Panama, UNCIO, vol. 3, p. 271, and Costa Rica, UNCIO, vol. 3, p. 280 (and 276), and the Statement of Uruguayan Delegation on Its Position with Reference to Chapters I and II as Considered by Committee I/1, UNCIO, vol. 6, p. 628.

disguise, that the Organization should promote the “observance by all members” of human rights, as opposed to promoting only “respect”.²⁴ The difference between promoting “respect” and promoting “observance” of human rights was subtle, and the Coordination Committee had some difficulty understanding it.²⁵ In the end, the Australian suggestion was adopted, which makes the genuine purpose and the purpose in disguise slightly inconsistent.

A few Latin American States proposed annexing a human rights declaration to the UN Charter.²⁶ The US was very much in favour of this idea.²⁷ However, the US explained to the Latin American delegates that some of the other superpowers were opposed to a bill of rights, and thus “[i]t would be extremely difficult to incorporate in the Charter anything approaching a full statement of a bill of rights.”²⁸ In San Francisco the relevant Subcommittee “received the idea with sympathy, but decided that the present Conference, be it only for a lack of time, [could] not proceed to realize such a draft in an international contract,” and that it was a good task for the General Assembly.²⁹ This suggestion was taken over by the Commission.³⁰ On the last day of the conference, the American President Truman said that “we have good reason to expect an international bill of rights, acceptable to all the nations involved,” and that “that bill of rights will be as much a part of international life as our own Bill of Rights is a part of our Constitution.”³¹ A few years later, the General Assembly adopted the Universal Declaration of Human Rights.³²

²⁴ Amendments Submitted by Australia, UNCIO, vol. 3, p. 546. See also p. 4, Herbert Vere Evatt, “Economic Rights in the United Nations Charter” (1946).

²⁵ See Coordination Committee’s Summary Report of Seventeenth Meeting, June 13, 1945, UNCIO, vol. 17, pp. 107-108. In the Coordination Committee, it was suggested that only the term “observance” implied an obligation to change the laws of one’s own country to implement this article. Another suggestion was that the word “respect” had “the connotation of passive acceptance,” while the word “observance,” was “intended to imply active implementation.”

²⁶ Amendments Submitted by Cuba, UNCIO, vol. 3, pp. 494-495, and 500-502; Mexico, *idem*, pp. 73-74; Uruguay, *idem*, p. 34 (Uruguay called it a “Charter of Mankind”); Panama, *idem*, pp. 265-266. Uruguay also stressed the need for “a system of effective international juridical guardianship of those rights” (*idem*, p. 35). See also Ecuador, *idem*, p. 423.

²⁷ See Lawrence E. Davies, “Stettinius Urges World Rights Bill,” in *New York Times* of May 16, 1945.

²⁸ Memorandum of Conversation, by Mr. Leo Pasvolsky, to the Secretary of State, April 21, 1945, in FRUS, 1945, *General*: Volume I, p. 357. See also Lawrence E. Davies, “Stettinius Urges World Rights Bill,” in *New York Times* of May 16, 1945.

²⁹ Report of Rapporteur, Subcommittee I/1/A, to Committee I/1, June 1, 1945, UNCIO, vol. 6, p. 705. See also Sixth Meeting of Committee I/1, May 14, 1945, *idem*, p. 296. And see the Report of Rapporteur of Committee 1 to Commission I, *idem*, p. 456, and Fifteenth Meeting of Committee I/1, June 11, 1945, *idem*, p. 423. And see Hersch Lauterpacht, “The international protection of human rights” (1947), p. 74.

³⁰ Sixth Meeting of Committee I/1, May 14, 1945, UNCIO, vol. 6, p. 296.

³¹ Final Plenary Session, June 26, 1945, UNCIO, vol. 1, p. 683.

³² See next section.

2.3 The Universal Declaration of Human Rights

The centrepiece of the United Nations in the field of human rights is a legally non-binding General Assembly resolution, adopted four minutes before midnight on 10 December 1948. It is the Universal Declaration of Human Rights.³³ It was drafted by the Human Rights Commission, chaired by Eleanor Roosevelt.³⁴ This Declaration initially had very modest aims. It was meant to make all the world's citizens aware of their inalienable rights.³⁵ Since then, the declaration has done much more than that. It has been the inspiration for all the United Nations resolutions and treaties on human rights that have been adopted since 1948.³⁶ It also influenced significant changes in the domestic law of various States, and inspired a number of regional treaties.³⁷ It also directly influenced the philosophical discourse. Beitz, one of today's more prominent philosophers, referred to it as the "founding document of modern human rights doctrine."³⁸ Soon after its adoption, the Declaration was embraced by "men and women from the streets, from the fields, from the mines, from the factories, from the pampas, and from the sea."³⁹ This popularity, especially in times of political turmoil, explains the Declaration's success. As Buergenthal remarked, the Declaration has been the starting point for a "worldwide movement that has captured the imagination of human beings yearning to be treated humanely and with dignity."⁴⁰ No other UN document, apart from the Charter itself, has been more successful at capturing the imagination.

³³ Universal Declaration of Human Rights, Part A of International Bill of Human Rights, General Assembly resolution 217(III), adopted 10 December 1948 ("Universal Declaration of Human Rights"). See John Kenton, "Human Rights Declaration adopted by UN Assembly," in *New York Times* of 11 December 1948; Thomas Buergenthal, "The Evolving International Human Rights System" (2006), p. 787.

³⁴ For an excellent and detailed account of the drafting history and the debates, see Johannes Morsink, *The Universal Declaration of Human Rights: Origins, Drafting, and Intent* (1999). On pp. 1-12, one can find a brief overview of the drafting stages. See also Roger Normand and Sarah Zaidi, *Human rights at the UN: the political history of universal justice* (2008), pp. 177-182.

³⁵ See Part D of the Universal Declaration of Human Rights, entitled Publicity to be given to the Universal Declaration of Human Rights, para. 1. See also René Cassin, "Les droits de l'homme" (1974), pp. 3303-331; Johannes Morsink, *Inherent human rights: philosophical roots of the Universal Declaration* (2009), especially pp. 40-46.

³⁶ See for example the Asian Human Rights Charter, para. 2.2; and the Preamble of the Council of Europe's European Convention on Human Rights, signed in Rome, 4 November 1950; and the preamble of the African Union's African Charter on Human and Peoples' Rights of 1986.

³⁷ Louis Henkin, "The United Nations and Human Rights" (1965), pp. 506-507.

³⁸ Charles R. Beitz, "What Human Rights Mean" (2003), p. 36.

³⁹ René Cassin, "La déclaration universelle et la mise en œuvre des droits de l'homme" (1951), p. 290.

⁴⁰ Thomas Buergenthal, "The Evolving International Human Rights System" (2006), p. 807. See also Philip Quincy Wright, "Human Rights and Charter Revision" (1954), pp. 54-55; and Myres S. McDougal & Gerhard Bebr, "Human Rights in the United Nations" (1964), p. 641.

Formally, the Universal Declaration of Human Rights is only a General Assembly resolution. However, it is also an authoritative interpretation of the references to human rights in the UN Charter.⁴¹ There was a close connection between the San Francisco Conference of 1945 and the Universal Declaration of Human Rights, adopted only a few years later. There was not enough time in San Francisco to draft a universal bill of rights to be annexed to the Charter. The Universal Declaration filled that gap. Haimbaugh described the increasing relevance of the declaration in the international legal order as follows:

What began as mere common aspiration is now hailed both as an authoritative interpretation of the human rights provisions of the United Nations Charter [i.e. Articles 1, 55 and 56] and as established customary law, having the attributes of *jus cogens* and constituting the heart of a global bill of rights.⁴²

In any case it is clear that the Universal Declaration has influenced the international legal order in a way that no other General Assembly resolution – and no multilateral treaty except for the UN Charter itself – has ever done.

Throughout the years, the Assembly has made sure that the spotlight remained focused on the declaration. The Assembly proclaimed 10 December as human rights day,⁴³ and organized various other activities, especially during the thirtieth,⁴⁴ thirty-fifth,⁴⁵ fortieth,⁴⁶ and sixtieth anniversaries of the Universal Declaration.⁴⁷ On its sixtieth anniversary, the Assembly referred to the Declaration as the world's "ethical compass," and also stated that for sixty years the Declaration had successfully "empowered women and men around the globe to assert their inherent dignity and rights."⁴⁸

⁴¹ Various scholars referred to this argument. See *e.g.*, Louis B. Sohn, "The Improvement of the UN Machinery on Human Rights" (1979), p. 188.

⁴² George D. Haimbaugh, "Jus Cogens: Root & Branch (An Inventory)" (1987).

⁴³ Human rights day, General Assembly resolution 423(V), adopted 4 December 1950.

⁴⁴ See the Suggested measures for the celebration of the thirtieth anniversary of the universal declaration of human rights, annexed to Observance of the 30th anniversary of the universal declaration of human rights, General Assembly resolution 32/123, adopted 16 December 1977.

⁴⁵ See the Suggested measures for the celebration of the thirty-fifth anniversary of the universal declaration of human rights, annexed to Observance of the 35th anniversary of the Universal Declaration of Human Rights, General Assembly resolution 36/169, adopted 16 December 1981. See also Thirty-five years of the Universal Declaration of Human Rights, General Assembly resolution A/RES/38/57, adopted 9 December 1983.

⁴⁶ See Recommended measures for the celebration of the thirtieth anniversary of the universal declaration of human rights, annexed to Fortieth anniversary of the Universal Declaration of Human Rights, General Assembly resolution 41/150, adopted 4 December 1986.

⁴⁷ Declaration on the sixtieth anniversary of the Universal Declaration of Human Rights, annexed to Sixtieth anniversary of the Universal Declaration of Human Rights, General Assembly resolution 63/116, adopted 10 December 2008.

⁴⁸ *Idem*.

2.4 The Principle

During the Dumbarton Oaks conference, the US suggested incorporating a human rights principle in the draft charter. This stated that

The International Organization should refrain from intervention in the internal affairs of any state, it being the responsibility of each state to see that conditions prevailing within its jurisdiction do not endanger international peace and security and, to this end, to respect the human rights and fundamental freedoms of all its people and to govern in accordance with the principles of humanity and justice.⁴⁹

The UK did not like this new principle, because "such a provision would give rise to the possibility that the organization might engage in criticism of the internal organization of member states."⁵⁰ The Soviet Union also opposed it, because "the reference to human rights and basic freedom [was] not germane to the main tasks of an international security organization."⁵¹ Therefore the US withdrew the principle it had proposed.⁵² This explains why there was nothing resembling a human rights principle in the Dumbarton Oaks proposals. Following the insistence of the US, a reference to human rights was added to the Dumbarton Oaks proposals, but this reference was not in the section on purposes and principles, nor in the specific mandate of the General Assembly or ECOSOC, but in the general part on Arrangements for International Economic and Social Cooperation.⁵³

⁴⁹ Progress Report on Dumbarton Oaks Conversations – Eighteenth Day, in FRUS, 1944, *General: Volume I*, p. 791. This was later rephrased to sound more like a principle. See Progress Report on Dumbarton Oaks Conversations – Twenty-eighth Day, in FRUS, 1944, *General: Volume I*, p. 829 (footnote 23). See also Thomas M. Franck, *Recourse to Force* (2002), p. 18; and Ruth B. Russell, *A history of the United Nations Charter* (1958), p. 423. They both cite slightly different versions of this proposal.

⁵⁰ *Idem*, p. 789. See also Progress Report on Dumbarton Oaks Conversations – Twenty-seventh Day, *idem*, p. 825.

⁵¹ *Idem*. According to Russell, the Soviet Union was willing to accept the provision if it referred specifically to "fascist States" as the sole violators of human rights obligations. The UK disagreed because there was not yet a universally accepted standard of human rights. See: Ruth B. Russell, *A history of the United Nations Charter* (1958), pp. 423-424.

⁵² Progress Report on Dumbarton Oaks Conversations – Twenty-eighth Day, in FRUS, 1944, *General: Volume I*, p. 829. When he later met with President Roosevelt in his bedroom, he expressed his disappointment, and told the President that he would "continue to press the matter as hard as we know how." See Meeting in the President's Bedroom with the President and the Secretary, *idem*, p. 834. The result of this pressure was the reference to human rights in the purpose-in-disguise. See also Progress Report on Dumbarton Oaks Conversations – Thirty-fourth Day, *idem*, p. 838. See also *idem*, p. 898, and Dumbarton Oaks Proposals for a General International Organization, UNCIO, vol. 3, p. 19.

⁵³ See United Nations: Dumbarton Oaks Proposals for a General International Organization, UNCIO, vol. 3, p. 18.

In their amendment proposals, certain States suggested including a general human rights principle.⁵⁴ In the relevant Committee in San Francisco, the added value of having a principle in addition to a purpose on human rights was clearly understood. If the UN Charter had only a purpose, then “it would bind only the Organization and would relieve member governments from the obligation to respect the fundamental freedoms of individuals within their own countries.”⁵⁵ Uruguay sought to remedy this situation by adding a new principle stating that “all members of the Organization should respect the essential rights of mankind.”⁵⁶ Uruguay explained that its amendment was “based on the premise that the paramount concern of any government should be the essential rights of the human person, and that these rights could be best guaranteed by the united pledge of all nations to respect them.”⁵⁷ The Committee rejected the Uruguayan suggestion, primarily because it was believed that such a human rights pledge could simply be derived from a combination of the purpose in disguise and the more general pledge successfully proposed by Australia.⁵⁸ If the relevant parts of Articles 55 and 56 are combined, the result is a principle stating that “Member States pledge themselves to take joint and separate action in co-operation with the Organization for the promotion of universal respect for, and observance of, human rights.” The Committee’s view was therefore correct. Ideally, this principle should have been inserted in the list of principles in Article 2, as Uruguay had requested, but the fact that it is to be found in a combination of Articles 55 and 56 does not diminish its legal relevance.

⁵⁴ See *e.g.*, Amendments Submitted by Uruguay, UNCIO, vol. 3, p. 35, see also Statement of Uruguayan Delegation on Its Position with Reference to Chapters I and II as Considered by Committee I/1, UNCIO, vol. 6, p. 628; Amendments Submitted by New Zealand, UNCIO, vol. 3, p. 486; Chile, *idem*, p. 294; Norway, *idem*, p. 366; Colombia, *idem*, p. 587.

⁵⁵ Fifth Meeting of Committee I/1, May 14, 1945, UNCIO, vol. 6, p. 291. This was also pointed out in the Statement of Uruguayan Delegation on Its Position with Reference to Chapters I and II as Considered by Committee I/1, UNCIO, vol. 6, p. 629.

⁵⁶ Fourteenth Meeting of Committee I/1, June 7, 1945, UNCIO, vol. 6, p. 381. See also Statement of Uruguayan Delegation on Its Position with Reference to Chapters I and II as Considered by Committee I/1, UNCIO, vol. 6, p. 629.

⁵⁷ Fourteenth Meeting of Committee I/1, June 7, 1945, UNCIO, vol. 6, p. 381.

⁵⁸ *Idem*. Uruguay was not so pleased with the way in which its proposal was treated. It was especially not pleased with the fact that the discussion just referred to was not mentioned in the Report of the Committee to the Commission. At the request of Uruguay, an Addendum to the Report was circulated. See Addendum to Report of Rapporteur of Committee I to Commission I, UNCIO, vol. 6, p. 483. Uruguay also distributed a most interesting statement containing its views. See Statement of Uruguayan Delegation on Its Position with Reference to Chapters I and II as Considered by Committee I/1, UNCIO, vol. 6, p. 632.

3 THE CONCEPTUAL BASIS OF HUMAN RIGHTS

3.1 Introduction

The drafters of the UN's human rights documents did not want to base their work on one particular philosophy or doctrine, alienating or offending others.⁵⁹ They sought a philosophical compromise. This was the use of "human dignity" as a central value, without defining it.⁶⁰ The vagueness of the term human dignity has motivated philosophers to come up with their own meaning of this value.⁶¹ Some of these theories are referred to in this section, and are compared with the UN documents.

3.2 Prevention of the recurrence of past wrongs

After studying the drafting of the Universal Declaration of Human Rights in great detail, Morsink concluded that "the Holocaust shocked the moral consciousness of all civilized peoples into an increased awareness of the inherent dignity of every human being," and that the Universal Declaration can be seen as an act of protest, a revolutionary document, or "a trumpet call of victory after battle."⁶² If the Universal Declaration is the trumpet call, then the references to human rights in the UN Charter were the prelude to it.⁶³

It is clear that the human rights movement of the United Nations was a direct consequence of the barbarities of the Second World War.⁶⁴ It shares one fundamental characteristic with most national or local human rights movements: it

⁵⁹ See also Charles R. Beitz, *The idea of human rights* (2009), p. 8, and pp. 20-21.

⁶⁰ This does not mean, however, that the drafters of the human rights texts did not have philosophical discussions. They did, especially in the Human Rights Commission, at the time the Universal Declaration of Human Rights was adopted. For a detailed description, see Johannes Morsink, *The Universal Declaration of Human Rights: Origins, Drafting, and Intent* (1999).

⁶¹ As is often pointed out, it was actually the United Nations that ensured a renewed interest of human dignity in philosophical discourse, after it had "been fading into the past." See e.g., Michael S. Pritchard, "Human Dignity and Justice" (1972), p. 299.

⁶² For the first quote, see Johannes Morsink, *Inherent human rights: philosophical roots of the Universal Declaration* (2009), pp. 59-60; for the second, see Johannes Morsink, *The Universal Declaration of Human Rights: Origins, Drafting, and Intent* (1999), p. 38.

⁶³ Georges Kaeckenbeeck, "La Charte de San-Francisco dans ses rapports avec le droit international" (1948), p. 260.

⁶⁴ See e.g., Yehoshua Arieli, "On the Necessary and Sufficient Conditions for the Emergence of the Doctrine of the Dignity of Man and His Rights" (2002), p. 1; Christian Tomuschat, *Human rights: between idealism and realism* (2008), pp. 22-23; René Cassin, "Les droits de l'homme" (1974), pp. 324-325; Thomas Buergenthal, "The Evolving International Human Rights System" (2006), p. 786; Evadné Grant, "Dignity and Equality" (2007), p. 303.

was based not so much on philosophical teachings, but on a shared intuition that the way people had been treated in the (recent) past was fundamentally wrong, and that there was a need for a “revolution.”⁶⁵ The Second World War has been seen as such a revolution. It has been described as a “war for human rights,” even a “crusade for human rights.”⁶⁶ This international crusade has inspired many domestic revolutions, such as the “revolutions” in Germany, Italy and Japan after the Second World War;⁶⁷ in Spain after years of dictatorship;⁶⁸ and in South Africa after *apartheid*.⁶⁹ The Constitutions of all these States have a reference to human dignity, as if to say: “never again.”⁷⁰

The Universal Declaration of Human Rights itself referred to the war, when it stated that

Disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people.⁷¹

The principal aim of the Universal Declaration of Human Rights was therefore to “avoid a return to inhuman ideologies and practices” such as those practised by the Nazis.⁷²

⁶⁵ See John P. Humphrey, “International Protection of Human Rights” (1948), p. 21. See also Jochen Frowein, “Human Dignity in International Law” (2002), pp. 122-123.

⁶⁶ The first quote is from John P. Humphrey, “International Protection of Human Rights” (1948), p. 15; the second is from René Cassin, “La déclaration universelle et la mise en œuvre des droits de l’homme” (1951), p. 241. See also Roger Normand and Sarah Zaidi, *Human rights at the UN: the political history of universal justice* (2008), who named one chapter of their book “The Human Rights Crusade in World War II.” See also Jean-Pierre Cot & Alain Pellet, “Préambule” (2005), p. 300; they also referred to the Second World War as a “guerre de croisade.”

⁶⁷ See e.g., Jerzy Zajadlo, “Human dignity and human rights” (1999), p. 19; Evadné Grant, “Dignity and Equality” (2007), p. 307; Christopher McCrudden, “Human Dignity and Judicial Interpretation of Human Rights” (2008), p. 664.

⁶⁸ The Spanish constitution, drafted after the death of Dictator Franco, is interesting because it refers explicitly to the Universal Declaration of Human Rights. See Article 10(2). Also cited in Thomas Buergenthal, “The Evolving International Human Rights System” (2006), p. 804.

⁶⁹ The Constitution of the Republic of South Africa referred to “human dignity” as founding value of the new society. See Arthur Chaskalson, “The third Bram Fischer lecture” (2000), pp. 195 and 198. See also David Kretzmer and Eckart Klein, *The concept of human dignity in human rights discourse* (2002), p. v; Evadné Grant, “Dignity and Equality” (2007), p. 310. Interestingly, Heyns suggested that the reason why Smuts failed to see that “his” apartheid regime was in violation of the purposes and principles he so strongly supported in San Francisco, was exactly that Smuts himself never suffered from apartheid, whilst he did suffer from the War. Christof Heyns, “The Preamble of the United Nations Charter” (1995), p. 348.

⁷⁰ Brenda Hale, “Dignity” (2009), p. 103.

⁷¹ Universal Declaration of Human Rights, Preamble.

⁷² Roberto Andorno, “The paradoxical notion of human dignity” (2001), p. 156.

The Nobel Prize winner and one of the survivors of the Auschwitz concentration camps, Elie Wiesel, was asked, during an interview on a Dutch television show, whether there was a connection between his terrible experiences in Auschwitz and his work as a human rights activist. In his affirmative reply, he started by noting that one of the worst things in the concentration camp had been the realization that “nobody was responsible for us,” that they were abandoned and all alone. He explained:

For a victim to be a victim is already bad. And painful. And disrupting. But in addition to that, when a victim feels alone; that’s the worst. So one thing I cannot do [as a human rights activist]... Many things I cannot do: I cannot prevent a victim from suffering by others. But I can prevent the victim from feeling alone. And all my activities in the field of human rights [aim to achieve] at least that: I don’t want a prisoner of conscience in his or her cell to feel alone. I don’t want a child who is hungry somewhere in Africa, and his or her mother, to feel alone.⁷³

Essentially, the international protection of human dignity comes down to the duty of the international community as a whole, to protect individuals who have been abandoned by their own State. This duty continues even after the death of individuals. The Assembly “recognizing the importance of promoting the memory of victims of gross and systematic human rights violations and the importance of the right to truth and justice,” proclaimed an international day for the right to the truth concerning gross human rights violations and for the dignity of victims.⁷⁴

Similarly, Beitz recently defined “the doctrine of human rights [as] the articulation in the public morality of world politics of the idea that each person is a subject of global concern.”⁷⁵ There are limits to what the international community can do in cases of terrible abuse, and this will always be the case, but it can make sure that these individuals do not feel alone, abandoned, and entirely dehumanized.

3.3 The search for a definition of human dignity

The Universal Declaration contains many references to human dignity.⁷⁶ Most importantly, Article 1 of the Declaration stated that “all human beings are born free and equal in dignity and rights [and that] they are endowed with reason and

⁷³ Elie Wiesel interviewed by Chris Kijne in 2006, in the Series *Opinie & Gesprek*. See also his Nobel lecture of 1986.

⁷⁴ Proclamation of 24 March as the International Day for the Right to the Truth concerning Gross Human Rights Violations and for the Dignity of Victims, General Assembly resolution 65/196, adopted 21 December 2010.

⁷⁵ Charles R. Beitz, *The idea of human rights* (2009), p. 1. See also p. 12.

⁷⁶ Universal Declaration of Human Rights, Preamble. See also Articles 22 and 23 of the Declaration.

conscience and should act towards one another in a spirit of brotherhood.”⁷⁷ The often intuitive and perhaps even sentimental approach to the value of human dignity makes it even more important for the international community to define it in sufficiently precise terms.

Andorno saw human dignity as “one of the very few common values in our world of philosophical pluralism,” and referred to the shared feeling that “human beings have an intrinsic dignity” as the “Standard Attitude.”⁷⁸ Similarly, Schachter wrote about the dignity of the human person, stating that “no other ideal seems so clearly accepted as a universal social good.”⁷⁹ Hennette-Vauchez wrote about human dignity that it is “hard to think of other legal concepts as widely consecrated (by norms) and celebrated (by scholars).”⁸⁰ One might therefore assume that there is a universally agreed definition of human dignity.⁸¹ But is there such a definition?

One way to begin to understand the meaning of a particular concept is to resort to a dictionary.⁸² The Concise Oxford English Dictionary defines dignity as “the state or quality of being worthy of honour or respect.”⁸³ Therefore human dignity is the state or quality of being worthy of honour or respect by virtue of being human.⁸⁴ All human beings need to do to deserve to be treated with dignity, is

⁷⁷ *Idem*, Article 1. This Article, which was included into the Declaration at the request of the French delegate in the Human Rights Commission, was clearly inspired by the French Déclaration des droits de l’homme et du citoyen of 1789, in which we read that “les hommes naissent et demeurent libres et égaux en droits.” See Johannes Morsink, *The Universal Declaration of Human Rights: Origins, Drafting, and Intent* (1999), p. 281; Christopher McCrudden, “Human Dignity and Judicial Interpretation of Human Rights” (2008), pp. 676-677.

⁷⁸ Roberto Andorno, “The paradoxical notion of human dignity” (2001), p. 151.

⁷⁹ Oscar Schachter, “Human Dignity as a Normative Concept” (1983), p. 849.

⁸⁰ Stéphanie Hennette-Vauchez, “When Ambivalent Principles Prevail” (2007), p. 3 (footnote 20).

⁸¹ Others were less enthusiastic. For example, Feldman wrote that, although human dignity was generally accepted as an important concept, “the meaning of the word [was] by no means straightforward, and its relationship with fundamental rights [was] unclear.” David Feldman, “Human dignity as a legal value - Part I” (1999), p. 682. Even more critical were Mirko Bagaric & James Allan, in their article “The Vacuous Concept of Dignity” (2006), especially pp. 261-268. Sonja Grover then wrote “A response to Bagaric and Allan’s ‘The Vacuous Concept of Dignity’” (2009), defending the concept.

⁸² Many philosophers have used the same strategy. See e.g., David Feldman, “Human dignity as a legal value - Part I” (1999), p. 686; Roberto Andorno, “The paradoxical notion of human dignity” (2001), p. 152. Some authors go much further, and look extensively at the etymology of the word. See e.g., Oscar Schachter, “Human Dignity as a Normative Concept” (1983), p. 849; Carlos Ruiz Miguel, “Human dignity: history of an idea” (2002), pp. 282-283.

⁸³ See the Concise Oxford English Dictionary, Twelfth edition (2008). The Oxford English Dictionary essentially defines dignity as “the quality of being worthy,” or “the state of being worthy of honour or respect.” See, respectively, the Oxford English Dictionary, Second edition 1989, and the Oxford Encyclopedic English Dictionary, edition 1996. The Dutch translation of human dignity, “menselijke waardigheid,” literally means “human worthiness.”

⁸⁴ See Roberto Andorno, “The paradoxical notion of human dignity” (2001), p. 153.

simply to be born.⁸⁵ Human beings cannot – voluntarily or involuntarily – lose their dignity.⁸⁶ This does not mean that all individuals are *actually* treated with dignity and respect from the moment they are born. Certainly, many people “lead a life of abject poverty and indignity.”⁸⁷ The idea is that no matter how badly they are treated, people never lose the inherent dignity that came with birth.

When a person demands respect for his or her human dignity, he or she is essentially demanding to be considered not as a mere object, but as a human being. He or she demands to be treated with respect, and not to be humiliated, or dehumanized.⁸⁸ Such demands can be addressed to the community, but also to oneself. Thus human dignity has two aspects: a “subjective” aspect, *i.e.* human dignity as self-worth, and an “objective” aspect, *i.e.* human dignity as an entitlement for respect from the community.⁸⁹ If a person loses his or her self-worth, or is treated by the community as being inferior to other human beings, this does not result in the actual loss of one’s dignity, but it does affect one’s “sense of dignity.”⁹⁰ The UN cannot do much to help those who lose their self-worth. The UN focuses on the “objective” aspect. The Organization aims to protect individuals against inhuman treatment by their own community.⁹¹

If human dignity is understood solely in terms of the entitlements of the individual from his or her State, then it corresponds with the individual’s right not to be treated by the State in ways which do not respect the intrinsic worth of the individual. The individual can claim respect for his or her autonomy and freedom. Interpreted in this way, the value of human dignity is closely related to the process of individualization.⁹²

⁸⁵ See also Jack Donnelly, “Human Rights and Human Dignity: An Analytic Critique of Non-Western Conceptions of Human Rights” (1982), pp. 305-306.

⁸⁶ Sometimes it looks as if people might lose their dignity. See also Michael S. Pritchard, “Human Dignity and Justice” (1972), p. 305 (about the torture victim who surrenders to his torturers), and p. 307 (about the slave who accepts his fate).

⁸⁷ Catherine Dupré, “Unlocking Human Dignity” (2009), p. 193.

⁸⁸ See Roberto Andorno, “The paradoxical notion of human dignity” (2001), p. 158; Oscar Schachter, “Human Dignity as a Normative Concept” (1983), pp. 849-850; Gay Moon and Robin Allen, “Dignity Discourse in Discrimination Law” (2006), p. 645; For a critical view, see Daniel Statman, “Humiliation, dignity and self-respect” (2002).

⁸⁹ David Feldman, “Human dignity as a legal value - Part I” (1999), pp. 685-686; Gay Moon and Robin Allen, “Dignity Discourse in Discrimination Law” (2006), p. 645. Similarly, Capps interpreted human dignity as a form of “empowerment:” to have dignity means to have the capacity to exercise freedom and autonomy. See Patrick Capps, *Human dignity and the foundations of international law* (2009), especially pp. 108-109.

⁹⁰ See also Patrick Lee & Robert George, “The Nature and Basis of Human Dignity” (2008), p. 174.

⁹¹ The UN thus does not have to deal with the difficult issue of someone who voluntarily subjects him or herself to dehumanizing treatment. It is sometimes suggested that such a person might be forced to be treated – and treat him- or herself – with dignity. See also Brenda Hale, “Dignity” (2009), p. 106.

⁹² See also Evadné Grant, “Dignity and Equality” (2007), p. 304.

This narrow interpretation of human dignity is not universally acceptable. The individualist aspect is only one part of the respect that the inherent dignity of all human beings requires. As the Constitutional Court of South Africa remarked, “recognizing the unique worth of each person [in the South African Constitution] does not presuppose that a holder of rights is an isolated, lonely and abstract figure possessing a disembodied and socially disconnected self.”⁹³ The individualist aspect reminds one of the life of Diogenes,⁹⁴ but the value of human dignity is generally interpreted in more positive terms. Individuals are entitled to live their own lives, and make their own choices, but they are also part of a community of persons who care for each other.⁹⁵

The United Nations deliberately refrained from adopting a particular philosophy of human dignity⁹⁶ and did not rely on any particular religious doctrine, for the simple reason that this would mean that it would have to reject others.⁹⁷ The UN also refrained from referring to reason or rationality as a basis for human dignity. Although a rationality-based theory would be the least controversial philosophical theory to choose,⁹⁸ even that theory has its problematical and controversial aspects.⁹⁹ Therefore instead of choosing any particular philosophy as a

⁹³ Opinion Judge Sachs, Constitutional Court of South Africa, *National Coalition for Gay and Lesbian Equality and Another v Minister of Justice and Others*, Case CCT 11/98, decided on 9 October 1998, para. 117. Cited on p. 313 of Evadné Grant, “Dignity and Equality” (2007).

⁹⁴ See section 2.1 of Chapter II, above.

⁹⁵ Robert C. Kelman, “The Conditions, Criteria, and Dialectics of Human Dignity” (1977), pp. 531-532. Kelman referred to “individual freedom” as related to the first element, and ‘social justice’ as related to the second.

⁹⁶ When drafting the Universal Declaration of Human Rights, the Commission “agreed to disagree.” See Charles R. Beitz, “What Human Rights Mean” (2003), p. 36. See also James Griffin, “The Presidential Address: Discrepancies between the Best Philosophical Account of Human Rights and the International Law of Human Rights” (2001), pp. 5-6.

⁹⁷ See Yehoshua Arieli, “On the Necessary and Sufficient Conditions for the Emergence of the Doctrine of the Dignity of Man and His Rights” (2002); Josef L. Kunz, “The United Nations Declaration of Human Rights” (1949), p. 316. However, on p. 299 of this article, the author rightly stressed that human dignity, as used in international human rights instruments, was deliberately not based on such doctrines. See also René Cassin, “La déclaration universelle et la mise en œuvre des droits de l’homme” (1951), p. 284.

⁹⁸ This Kantian theory is the most objective theory of all. It basically says that to know what is the right thing to do, we must act in such a way that we believe our behavior corresponds with a rule that is suitable to guide the behavior of all. This is very much a law-like way of thinking, and thus is ideally suited as basis for human rights. See George P. Fletcher, “Human Dignity as a Constitutional Value” (1984), especially pp. 174-175.

⁹⁹ For example, it could be argued that the theory is biased against non-humans. If “reason” is the basis of human dignity, and it is assumed that animals lack the capacity to reason, then they do not deserve to be treated with dignity. See *e.g.*, Patrick Lee & Robert George, “The Nature and Basis of Human Dignity” (2008), who argue in this way.

basis for human dignity, the United Nations argued that the basis of human dignity is simply its self-evident nature.¹⁰⁰

It is difficult for the United Nations to use human dignity as a basis for all human rights whilst at the same time refusing to give the value any meaning. The value of human dignity, as used in UN parlance, must have some substance. According to McCrudden, the UN's intention was basically that different philosophers could give substance to the value of human dignity according to their own preferred theories, as long as all these different substances had a common "minimum core," and as long as they all led to essentially the same list of human rights.¹⁰¹ According to McCrudden, this common core was the idea that "every human being possess[ed] an intrinsic worth, merely by being human," and that "this intrinsic worth should be recognized and respected by others."¹⁰² There was no universally accepted explanation of why all human beings had such an intrinsic worth.¹⁰³ McCrudden believed that the UN's theory was controversial in at least one respect, namely that it believed that "recognizing the intrinsic worth of the individual require[d] that the state should be seen to exist for the sake of the individual human being, and not *vice versa*."¹⁰⁴ According to McCrudden, this minimal theory of human dignity was sufficient for the UN to continue its work.¹⁰⁵

Rather than referring only to this "common core," another option is to admit that the UN had its own, more substantive theory. This is Morsink's view. He referred to the UN's theory of human dignity as the "doctrine of inherent human rights." This was the doctrine which the drafters of the Universal Declaration of Human Rights had chosen in 1948, and which has been followed by the UN ever since.¹⁰⁶ This theory of inherent human rights consisted of theses, the first of which stated that "people everywhere and at all times ha[d] rights that [were] not man-

¹⁰⁰ Interestingly, some philosophers go even further in their efforts to "de-philosophize" human rights. For example, Beitz did not even refer to human dignity as the 'source' of human rights. Instead, he believed that it would be better to "approach human rights practically, not as the application of an independent philosophical idea [like human dignity] to the international realm, but as a political doctrine constructed to play a certain role in global political life." Charles R. Beitz, *The idea of human rights* (2009), pp. 48-49 (this is the approach chosen in the entire book).

¹⁰¹ Christopher McCrudden, "Human Dignity and Judicial Interpretation of Human Rights" (2008), p. 678.

¹⁰² *Idem*, p. 679.

¹⁰³ *Idem*, p. 723.

¹⁰⁴ *Idem*, p. 679. As McCrudden rightly emphasized, this did not mean that there was agreement over the choice between an individualistic and a more communitarian conception of human dignity. See *idem*, pp. 699-701.

¹⁰⁵ *Idem*, p. 724. Admittedly, McCrudden did not refer to the UN, but to the international judge.

¹⁰⁶ See Johannes Morsink, *Inherent human rights: philosophical roots of the Universal Declaration* (2009). See also Johannes Morsink, *The Universal Declaration of Human Rights: Origins, Drafting, and Intent* (1999), pp. 284-290, for an overview of the debates in the Human Rights Commission, and pp. 290-302, for a first account of the inherent rights doctrine.

made, but inherent in the human person from the moment of birth.”¹⁰⁷ According to the second thesis, “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 the moral birth rights spoken of in the [first] thesis.”¹⁰⁸ As this theory relies to a great extent on a globally shared moral intuition, rather than on philosophical doctrine, the interpretation and understanding of the value was left to this intuition, the idea being that everyone can recognize a violation of human dignity without knowing exactly how to define it. This approach, which can be regarded as the UN approach, has many followers. For example, Baroness Hale was convinced that “it should not take anything more than ordinary human empathy to understand that [certain] things are an affront to human dignity and human rights.”¹⁰⁹ Similarly, according to Schachter, all people recognize a violation of human dignity when they see it, even though they cannot tell you what human dignity is.¹¹⁰ In the words of Andorno, “it is easier to understand what is contrary to human dignity than what is in accordance with it [and thus] one of the best ways to explore what human dignity really means, is to start from the experience of indignities suffered by human beings in concrete situations.”¹¹¹ Admittedly, the reliance on such globally shared moral intuitions alone also has its opponents.¹¹²

3.4 Human dignity as the basis for human rights

According to all UN documents, human rights are based on human dignity. The UN Charter itself already referred, in its Preamble, to the “faith in fundamental human rights [and] in the dignity and worth of the human person.”¹¹³ Thus it made a link between human rights and human dignity. This relationship between human rights and human dignity has often been reiterated since 1945. References to human dignity have become commonplace in international human rights declarations and other legal documents.¹¹⁴ For example, the Vienna Declaration of 1993, adopted at

¹⁰⁷ Johannes Morsink, *Inherent human rights: philosophical roots of the Universal Declaration* (2009), p. 17.

¹⁰⁸ *Idem*.

¹⁰⁹ Brenda Hale, “Dignity” (2009), p. 103.

¹¹⁰ Oscar Schachter, “Human Dignity as a Normative Concept” (1983), p. 849. Henkin spoke of a “common contemporary moral intuition.” See Louis Henkin, “The Universality of the Concept of Human Rights” (1989), p. 15.

¹¹¹ Roberto Andorno, “The paradoxical notion of human dignity” (2001), pp. 156-157.

¹¹² See e.g., Patrick Capps, *Human dignity and the foundations of international law* (2009), p. 115.

¹¹³ UN Charter, Preamble.

¹¹⁴ Christopher McCrudden, “Human Dignity and Judicial Interpretation of Human Rights” (2008), p. 668. For international examples, see *idem*, pp. 668-671. McCrudden also found references to human dignity in separate opinions of judges of the International Court of Justice, but not in actual judgments. See *idem*, pp. 682-683.

the end of the World Conference on Human Rights, states that “all human rights derive from the dignity and worth inherent in the human person,” and that they are “the birth right of all human beings.”¹¹⁵ The preamble of the two most important covenants on human rights, states that “these [human] rights derive from the inherent dignity of the human person.”¹¹⁶

What exactly is the relationship between human dignity and human rights? There is no human right to human dignity. Rather, one must agree with Baroness Hale that it is better to see human dignity as a “value which underlies other more concrete rights.”¹¹⁷ These more concrete rights are the universally recognized human rights, all of which are directly based on the value of human dignity.¹¹⁸ This link is not entirely uncontroversial. As Schachter rightly pointed out, “the general idea that human rights are derived from the dignity of the person is neither truistic nor neutral.”¹¹⁹ Most cultural traditions embrace human dignity in some form, but this is not always expressed in human rights language.¹²⁰ Thus there are alternatives to the view that human dignity is the basis of human rights. A brief explanation of the link between human dignity and rights is provided below.

When individuals claim respect for their human rights, they basically insist on having their dignity respected by the community in which they live.¹²¹ Or in Henkin’s words, “the human rights idea declares that every individual has legitimate claims upon his or her own society for certain freedoms and benefits.”¹²² What are these freedoms and benefits? Essentially, the most complete answer to this question is provided by the entire catalogue of international human rights, and this

¹¹⁵ Vienna Declaration and Programme of Action, adopted at the World Conference on Human Rights, held in Vienna, between 14 and 25 June 1993, UNDoc. A/CONF.157/23, distributed 12 July 1993, Preamble and Article 1. See also Human rights and fundamental freedoms, General Assembly resolution 3222(XXIX), adopted 6 November 1974.

¹¹⁶ See preamble of both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, both adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966. Entry into force 1976.

¹¹⁷ Brenda Hale, “Dignity” (2009), p. 104.

¹¹⁸ Similarly, Feldman wrote that “there is arguably no human right which is unconnected to human dignity,” and Moon & Allen wrote that “human dignity is at the core of all the major human rights texts.” See David Feldman, “Human dignity as a legal value - Part I” (1999), p. 690; Gay Moon and Robin Allen, “Dignity Discourse in Discrimination Law” (2006), p. 610. See also Arthur Chaskalson, “The third Bram Fischer lecture” (2000), pp. 197-198.

¹¹⁹ Oscar Schachter, “Human Dignity as a Normative Concept” (1983), p. 853.

¹²⁰ See section on cultural particularities and human rights (5.4 of Chapter VI).

¹²¹ One of the main criticisms of human rights is that it focuses too much on the right to be accepted into a community of care, supposedly ignoring the fact that the same individuals have the corresponding duty to provide such care. However, as Henkin rightly remarked, the language of rights is not inconsistent with the language of duties; it is just one side of the same coin. See Louis Henkin, “The Universality of the Concept of Human Rights” (1989), p. 16.

¹²² Louis Henkin, “The Universality of the Concept of Human Rights” (1989), p. 11.

applies to all human beings in this world. All human rights are, by virtue of their foundation in human dignity, universal and inalienable.¹²³

Since human dignity is not a legal concept, it has often been argued that individuals have human rights regardless of whether these rights have been recognized by States in international treaties.¹²⁴ After all, as all individuals are entitled to respect for their intrinsic dignity, and as human rights are directly derived from that intrinsic dignity and are therefore themselves also inalienable, it would be strange to argue that the existence of human rights nevertheless depended on whether a certain human rights treaty had entered into force. When it comes to gross violations of human dignity, such as torture, slavery, and genocide, it is particularly odd to assume that such grave violations of human rights only became prohibited because of the entry into force of a certain treaty. Similarly, Koskenniemi wondered why “the certainty we have of the illegality of genocide, or of torture [was not] by itself sufficient reason to include those norms in international law.”¹²⁵

The main source of inspiration for the human rights catalogue has been the indignities suffered by actual people, especially during the war, and the universal condemnation of the acts concerned.¹²⁶ Wrongs which have been perpetrated constitute the foundation of rights, also at the international level.¹²⁷ The human rights catalogue cannot be derived entirely from the value of human dignity itself via some philosophical thought experiment, but is the result of a long list of actual violations of human dignity which have subsequently been condemned by the international community as a whole. It could not have been otherwise. After all, the abstract value of human dignity alone is not specific enough as basis for the increasingly detailed category of rights as we know it.¹²⁸

¹²³ See also Klaus Dicke, “The Founding Function of Human Dignity in the Universal Declaration of Human Rights” (2002), pp. 118-120.

¹²⁴ See e.g., Hersch Lauterpacht, “The international protection of human rights” (1947), pp. 9-10.

¹²⁵ Martti Koskenniemi, “Pull of the Mainstream” (1990), p. 1952.

¹²⁶ On the Second World War as source for literally all human rights in the Universal Declaration of Human Rights, see Johannes Morsink, *The Universal Declaration of Human Rights: Origins, Drafting, and Intent* (1999), pp. 36-91; and Johannes Morsink, *Inherent human rights: philosophical roots of the Universal Declaration* (2009), pp. 61-77.

¹²⁷ See also Alan Dershowitz, *Rights from Wrongs: A Secular Theory of the Origins of Rights* (2004).

¹²⁸ As Beitz pointed out, human rights are thus not “pre-institutional.” They depend on the existing institutions of the international society. See Charles R. Beitz, *The idea of human rights* (2009), especially p. 55.

3.5 The humanization of international law

The value of human dignity not only served as the foundation for all human rights, but also led to a new way of looking at the international legal order as a whole, and to a new way in which international legal obligations should be phrased.

In the opinion of the judges of the International Criminal Tribunal for former Yugoslavia, “[t]he general principle of respect for human dignity [...] in modern times [...] has become of such paramount importance as to permeate the whole body of international law.”¹²⁹ Increasingly, international law sees the “worth and the status of the individual as the ultimate unit of all law,” and thus focuses on the plight of the individual, wherever he or she may be located.¹³⁰ The shift in focus from the State to the individual is often called a paradigm shift.¹³¹ The United Nations has played a leading role in establishing and promoting this shift.¹³² This is no coincidence. The “humanization” of international law is a direct consequence of the horrors of the Second World War, in which millions of individuals were left at the mercy of brutal dictators who should have defended and protected their interests.¹³³ The same War also made the establishment of the United Nations possible.

This process of humanization has had an enormous impact on ethics and ethical theory. Human rights, which are the supreme expression of this humanization of international law, can be found in a series of declarations, of both a legal and a purely moral character. The Universal Declaration of Human Rights of 1948 is the *primus inter pares* of all these declarations.¹³⁴ Since that declaration was

¹²⁹ Prosecutor v. Furundzija, Judgment (Trial Chamber), case no. IT-95-17/1-T, 10 December 1998, para. 183.

¹³⁰ The quote is from Hersch Lauterpacht, “The international protection of human rights” (1947), p. 8.

¹³¹ One of the most passionate defenses of this paradigm shift was by Shawcross, the English prosecutor at the Nuremberg Tribunal. See the Trial of the Major War Criminals before the International Military Tribunal Nuremberg (14 November 1945 - 1 October 1946), vol. 19, pp. 471-472 (cited in “The Charter and the Judgment of the Nürnberg Tribunal: History and Analysis”, UNDoc. A/CN.4/5, 1949, p. 71).

¹³² See *e.g.*, Address by the Secretary-General of the United Nations [Boutros Boutros-Ghali] at the Opening of the World Conference on Human Rights, delivered at Vienna, 14 June 1993, UNDoc. A/CONF.157/22, p. 5.

¹³³ For the term “humanization”, see Theodor Meron, *The Humanization of International Law* (2006), especially pp. 201-207. See also Meron, “International Law in the Age of Human Rights;” Antônio Augusto Cançado Trindade, “International law for humankind: towards a new jus gentium, Part I (2005),” pp. 33- 35; Christian Tomuschat, *Human rights: between idealism and realism* (2008), pp. 22-23.

¹³⁴ Besides the UN documents, see the Universal Islamic Declaration of Human Rights: adopted by the Islamic Council in 1980; Cairo Declaration on Human Rights in Islam: adopted at the end of the 19th Islamic Conference of Foreign Ministers in 1990; Declaration toward a Global Ethic: declaration endorsed by the Parliament of the World’s Religions in 1993; The Bangkok Declaration: adopted by Ministers and representatives of Asian states in 1993; Asian Human Rights Charter: A People’s Charter: Asian Human Rights Commission, 1998. This list is annexed to Will Kymlicka’s book, *The*

adopted, the language of human rights, *i.e.* “the rights that one has simply as a human being,”¹³⁵ has continued to develop, and has in recent times been extremely successful, functioning as a “global moral vision,”¹³⁶ a “shared moral touchstone,”¹³⁷ the “moral *lingua franca* of our age,”¹³⁸ or the “gold standard” of international morality.¹³⁹ In the words of one author, “[w]hen someone does something morally wrong one of the most common answers offered today is that ‘it is a violation of human rights’.”¹⁴⁰ The former UN Secretary-General Boutros-Ghali expressed his hope that “human rights [may] become the common language of all humanity!”¹⁴¹

The language of human rights has had an enormous impact on international law. It has influenced all the traditional issues, such as State responsibility, diplomatic protection, the law of treaties, and so on.¹⁴² Moreover, most of the recognized *jus cogens* norms in some way also have a human rights character. This is not surprising when one remembers the moral basis of these rules. After all, morality is more applicable to human beings, who have the capacity to enjoy and to suffer, than to States, which exist only in the abstract. The ILC Rapporteur Fitzmaurice said in 1958 that most of *jus cogens* consisted of “cases where the position of the individual is involved, and where the rules contravened are rules instituted for the protection of the individual.”¹⁴³ His successor, Waldock, agreed.¹⁴⁴ The French representative made a similar connection between *jus cogens* and the legal protection of the individual, when he said that “the substance of *jus cogens* was what represented the undeniable expression of the universal conscience, the

Globalization of Ethics (2007). For those who believe that the humanist perspective is not represented in this list of declarations, we could refer to the Humanist Manifestos, especially the one of 1973, where the Universal Declaration is also explicitly acknowledged as one of the main sources of inspiration. Humanist Manifesto II, 7th principle.

¹³⁵ Jack Donnelly, “Human Rights: Political Aspects” (2004), p. 7025.

¹³⁶ Sathirathai, “Renewing Our Global Values: A Multilateralism for Peace, Prosperity, and Freedom,” p. 5.

¹³⁷ Charles R. Beitz, *The idea of human rights* (2009), p. 44.

¹³⁸ Johannes Morsink, *Inherent human rights: philosophical roots of the Universal Declaration* (2009), p. 1.

¹³⁹ See, *e.g.*, Will Kymlicka, “Introduction: The Globalization of Ethics” (2007), p. 3. However, the author then lists some counter-arguments, about the so-called Western bias in the approach.

¹⁴⁰ Haule, “Some Reflections on the Foundation of Human Rights – Are Human Rights an Alternative to Moral Values?” p. 369.

¹⁴¹ Boutros Boutros-Ghali at the Opening of the World Conference on Human Rights, 14 June 1993, UNDoc. A/CONF.157/22, p. 13. See also Charles R. Beitz, *The idea of human rights* (2009), p. 1.

¹⁴² For an excellent overview, see Menno T. Kamminga and Martin Scheinin (editors), *The impact of human rights law on general international law* (2009).

¹⁴³ Yearbook of the International Law Commission, 1958, Volume II, p. 40.

¹⁴⁴ Yearbook of the International Law Commission, 1966, Vol. I, Part I, p. 40.

common denominator of what men of all nationalities regarded as sacrosanct, namely, respect for and protection of the rights of the human person.”¹⁴⁵

The United Nations has played a substantial role in promoting a humanized approach to international law. The former Secretary-General Kofi Annan used his two five-year terms in office to promote the value of human dignity, and it became the *Leitmotif* for all of the United Nations’ work.¹⁴⁶ The conceptual foundation of this human rights-based approach relies on the work of many individuals and scholars from an impressive range of countries. The United States of America and Europe have always placed great emphasis on the freedom of the individual, and promote individual freedom at the global level.¹⁴⁷ In 1990, the Director of the International Law section of the Institute of State and Law of the Academy of Sciences of the USSR spoke about his own country’s approach to human rights and noted that

I feel that we have hitherto over-emphasized the role of the state, of the nation, and particularly of the classes, forgetting about the human being and humanity. In these times our primary concern should be the interest of humanity as a whole in connection with the global threats to its existence, as well as the rights and freedoms of each human being, for there can be no free society unless every human being who is a member of that society is free.¹⁴⁸

Efforts are constantly being made to show that other cultures also have a favourable attitude to human rights and a human-centred approach.¹⁴⁹ Recent history shows that representatives of many cultures have made contributions to the development of the human discourse. The main human rights promoters at the San Francisco Conference, where the UN Charter was drafted, were the Latin American countries.¹⁵⁰ The concept of human development was championed by Mahbub ul

¹⁴⁵ UNDoc. A/Conf.39/11[A], p. 309. We can also refer to Norway (UNDoc. A/Conf.39/11[A], p. 324), and the United Republic of Tanzania (*idem*, p. 322).

¹⁴⁶ See especially Kofi Annan, *We, the Peoples: the Role of the United Nations in the Twenty-first Century* (2000), para. 10; In larger freedom: towards development, security and human rights for all, Report of the UN Secretary-General, distributed 21 March 2005, UN Doc. A/59/2005, paras. 13 – 15; and Kofi Annan, “Walking the International Tightrope”, in the *New York Times* of 19 January 1999.

¹⁴⁷ For the past, see the American Unanimous Declaration of the United States of America (1776), and the French Déclaration des Droits de l’homme et du citoyen (1789). For the (European) present, see *e.g.*, the Declaration on the occasion of the fiftieth anniversary of the signature of the Treaties of Rome, adopted by EU leaders in Berlin, on the 25th of March 2007.

¹⁴⁸ Rein A. Müllerson, “Human Rights and the Individual as Subject of International Law: A Soviet View” (1990).

¹⁴⁹ For Asia, see *e.g.*, Amartya Sen, *Human Rights and Asian Values* (1997); for the Jewish religion, see *e.g.*, Michael Walzer, *Universalism and Jewish Values* (2001); for the Arab world, see *e.g.*, Kevin T. Dwyer, *Arab Voices: The Human Rights Debate in the Middle East* (1991). See also the work of An-Naim, *e.g.*, Abdullahi An-Naim, “Human Rights in the Arab World: A Regional Perspective” (2001).

¹⁵⁰ Ruth B. Russell, *A history of the United Nations Charter* (1958), pp. 568-569.

Haq from Pakistan;¹⁵¹ “development as freedom” by Amartya Sen from India;¹⁵² “human security” by Amartya Sen, Ramesh Thakur (India), and Sadako Ogata from Japan.¹⁵³ Therefore these “human discourses” are truly global. As the United Nations is the only organization that represents the entire world, it is no coincidence that all the above-mentioned scholars have developed their ideas while they were employed by it in some way.¹⁵⁴

3.6 Conclusion

The United Nations has deliberately refrained from adopting a strong position with regard to the conceptual basis of human rights. As the UN represents the entire global community, it could not choose one particular theory over another. Thus this was the only approach available to it. Nevertheless, some ideas have been generally accepted. There is no doubt that the global formulation of human rights was a direct response to the barbarities of the Second World War. Never again should a State be allowed to treat its own citizens in the way that citizens were treated by the Nazi regime. Never again would the international community fail to respond to grave violations of the human dignity of individual people, wherever this took place. There is a universal consensus that human dignity constitutes the basis of all international human rights. However, this does not mean that there is a universally agreed definition of human dignity, or that the relationship between human dignity and rights has been fully understood in any great depth or detail. In general, both the meaning of human dignity and its relationship with human rights are based on generally shared but rather vague intuitions. In addition to serving as the basis for all universally recognized human rights, the value of human dignity also led to a new approach to international law. The State now has to share the stage in the theatre of international law with other actors, including individuals.

¹⁵¹ See Mahbub ul-Haq, *Reflections on Human Development* (1995). See also Richard Jolly, “Human Development” (2007).

¹⁵² Amartya Sen, *Development as Freedom* (1999).

¹⁵³ Commission on Human Security, *Human security now* (2003).

¹⁵⁴ See *e.g.*, Richard Jolly, Louis Emmerij, Dharam Ghai & Frédéric Lapeyre, *UN Contributions to Development Thinking and Practice* (2004).

4 THE CONTENT OF HUMAN RIGHTS

4.1 Introduction

The more concrete and detailed the language of human rights becomes, the harder it is to link it to what it is based on: the value of human dignity. As Ruggie noted, “there is a shared vocabulary endorsing human rights in general, but a cacophony of meanings and preferences concerning the vindication of any particular right.”¹⁵⁵ In an attempt to avoid this cacophony, some philosophers have presented their own “best philosophical account” of human rights. These accounts were much more specific and detailed than the intuitive approach of the United Nations. Griffin, for example, presented such an account, and then checked to see whether all universally agreed human rights corresponded with his account.¹⁵⁶ The problem with this sort of academic enterprise is that other philosophers disagree on what is the “best account.” Even if the entire world agreed on what is the best account, the list of rights would still not automatically follow from that account; it requires interpretation.¹⁵⁷

The Assembly’s discourse differs from the philosophical discourse in many ways. First of all, the Assembly cannot afford to accept that there is no answer to the question: what are our rights? Secondly, it cannot develop a detailed philosophical account, because that would certainly alienate some of its Member States. Perhaps these differences explain the Assembly’s success in coming up with a universally shared and detailed list of human rights. After all, if the details of the philosophical account are not discussed, there is nothing to disagree with. In 1986, the General Assembly recalled, with a considerable sense of pride, “the extensive network of international standards in the field of human rights, which it, other United Nations bodies and the specialized agencies, ha[d] established.”¹⁵⁸ It also emphasized the “primacy of the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant

¹⁵⁵ John G. Ruggie, “Human Rights and the Future International Community” (1983), p. 98.

¹⁵⁶ James Griffin, “The Presidential Address: Discrepancies between the Best Philosophical Account of Human Rights and the International Law of Human Rights” (2001). See also James Griffin, *On human rights* (2008), especially pp. 5-6, 13-14, 51-56, 182-184 and 186-187.

¹⁵⁷ Griffin’s account is actually quite original and thus controversial. It focuses on personhood, which requires autonomy, minimum welfare and liberty; and he believes that certain recognized rights are not human rights at all (such as the right to work, and the right to health as defined in international law). See James Griffin, “The Presidential Address: Discrepancies between the Best Philosophical Account of Human Rights and the International Law of Human Rights” (2001), pp. 6-8; and also James Griffin, *On human rights* (2008) (on pp. 32-33 one finds a summary of his theory).

¹⁵⁸ Setting international standards in the field of human rights, General Assembly resolution 41/120, adopted 4 December 1986 (“Setting international standards in the field of human rights”), Preamble.

on Economic, Social and Cultural Rights in this network.”¹⁵⁹ The last two documents, referred to by the General Assembly as “the first all-embracing and legally binding international treaties in the field of human rights,”¹⁶⁰ were first adopted by the Assembly in 1966, and entered into force ten years later.¹⁶¹

The content of human rights is examined below, bearing in mind the central role of the Universal Declaration and the demand that all human rights are derived from human dignity, as the Assembly stated.

4.2 The evolution of the contents of human rights

The importance of the Universal Declaration of Human Rights in setting out the world’s list of rights has been emphasized already. The question arises whether this list of rights, which was drafted in 1948, is not out of date after more than sixty years.

The short answer is that the Declaration was drafted in such general terms that it allowed for an evolutionary interpretation. Like the UN Charter, the Universal Declaration of Human Rights is a “living document,” which can evolve with the times.¹⁶²

None of the human rights treaties adopted after the Universal Declaration contain rights that were not already included in the 1948 document.¹⁶³ Whenever a new technology emerged, it soon became clear that the human rights issues relating to this new technology were successfully covered by the terms of the Universal Declaration. For example, the human right of access to the internet is covered by everyone’s right to the “freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”¹⁶⁴ In the United Nations Declaration on Human Cloning, the Assembly

¹⁵⁹ *Idem*.

¹⁶⁰ Declaration on the occasion of the 25th anniversary of the adoption of the International Covenants on Human Rights, General Assembly resolution 46/81, adopted 16 December 1991.

¹⁶¹ International Covenant on Economic, Social and Cultural Rights, International Covenant on Civil and Political Rights and Optional Protocol to the International Covenant on Civil and Political Rights, annexed to General Assembly resolution 2200 (XXI), adopted 16 December 1966. International Covenant on Economic, Social and Cultural Rights, entry into force 3 January 1976, United Nations, Treaty Series, vol. 993, p. 3; International Covenant on Civil and Political Rights, entry into force 23 March 1976, United Nations, Treaty Series, vol. 999, p. 171.

¹⁶² See section 2.5 of Chapter III, on the evolution of the UN Charter.

¹⁶³ An exception to this rule is the United Nations Declaration on the Rights of Indigenous Peoples, General Assembly resolution 61/295, adopted 13 September 2007. This Declaration consists mostly of collective rights, which can only be enjoyed – and claimed – by individuals. It may be argued that the right to self-determination is an additional human right. However, it is not clear whether this is a human right at all. For that discussion, see the next chapter.

¹⁶⁴ Universal Declaration of Human Rights, Article 19.

said it was “convinced of the urgency of preventing the potential dangers of human cloning to human dignity,” and it therefore “called upon [all States] to prohibit all forms of human cloning inasmuch as they [were] incompatible with human dignity and the protection of human life,” but it did not see a reason to add a new human right.¹⁶⁵

The Assembly explicitly requested that new human rights should accord with the rights that had already been adopted. It “invite[d] Member States and United Nations bodies to bear in mind [certain] guidelines in developing international instruments in the field of human rights.”¹⁶⁶ New treaties had to be “consistent with the existing body of international human rights law.” All human rights had to be “of fundamental character and derive from the inherent dignity and worth of the human person.” They had to be “sufficiently precise to give rise to identifiable and practicable rights and obligations,” and they had to “provide, where appropriate, realistic and effective implementation machinery, including reporting systems,” and “attract broad international support.”¹⁶⁷ These criteria were intended to prevent the Assembly from adopting over-imaginative human rights, such as the “right to sunshine,” the “right to a sex break,” and the “right to drink oneself to death without interference.”¹⁶⁸

Alston pointed out that “the challenge [was] to achieve an appropriate balance between, on the one hand, the need to maintain the integrity and credibility of the human rights tradition, and on the other hand, the need to adopt a dynamic approach that fully reflect[ed] changing needs and perspectives and respond[ed] to the emergence of new threats to human dignity and well-being.”¹⁶⁹ In this context Boutros-Ghali referred to the “dual nature” of human rights. “They should express absolute, timeless injunctions, yet simultaneously reflect a moment in the development of history.”¹⁷⁰ They were “both absolute and historically defined.”¹⁷¹ The Assembly has been successful in maintaining the consistency of the human rights tradition, at the same time as ensuring the continued relevance of this tradition.

¹⁶⁵ United Nations Declaration on Human Cloning, annexed to General Assembly resolution 59/280, adopted 8 March 2005.

¹⁶⁶ Setting international standards in the field of human rights, para. 4.

¹⁶⁷ *Idem*. See also the guidelines at Philip Alston, “Conjuring up New Human Rights: A Proposal for Quality Control” (1984), pp. 615-617. Since Alston believed such substantive guidelines did not suffice, he also added some procedural guidelines. See *idem*, pp. 619-620.

¹⁶⁸ The examples were taken from Mirko Bagaric & James Allan, “The Vacuous Concept of Dignity” (2006), p. 258.

¹⁶⁹ Philip Alston, “Conjuring up New Human Rights: A Proposal for Quality Control” (1984), p. 609.

¹⁷⁰ Boutros Boutros-Ghali at the Opening of the World Conference on Human Rights, 14 June 1993, UNDoc. A/CONF.157/22, p. 3.

¹⁷¹ *Idem*.

4.3 The categorization of human rights

There are various ways to categorize human rights. McDougal, for example, used a set of rather abstract values, of which respect was the most important.¹⁷² Tomuschat distinguished three different generations of human rights: civil and political rights constituted the first generation, economic and social rights the second, and the more philosophical rights such as the right to peace, belonged to the third generation.¹⁷³

This study uses the categorization presented by René Cassin in his Hague Lecture of 1951.¹⁷⁴ His categorization is followed in this study mainly because Cassin is considered to be one of the fathers of the Universal Declaration. Therefore he is very familiar with that declaration and the various rights in it. This categorization does not in any way suggest that certain rights are more fundamental than others, or that there are different kinds of human rights.¹⁷⁵ Cassin had stressed the “indivisibility” of human rights,¹⁷⁶ and the General Assembly consistently reiterated that “all human rights and fundamental freedoms are indivisible and interdependent,”¹⁷⁷ and that “the promotion and protection of one category of rights can never exempt or excuse States from the promotion and protection of the other rights.”¹⁷⁸ Nevertheless, despite the indivisibility of all human rights, it is at least

¹⁷² See e.g., Myres S. McDougal & Gerhard Bebr, “Human Rights in the United Nations” (1964), pp. 605-606. The right to participate in government secured, *inter alia*, everyone’s share of power (pp. 621-623); the prohibition to discriminate and the right to privacy secured respect for everyone’s dignity (pp. 623-624); the right to free speech and to education secured everyone’s skill and enlightenment (pp. 624-625 and p. 627); the right to work and to property secured everyone’s wealth (pp. 625-626); the right to health, to an adequate standard of living and the prohibition to torture everyone’s well-being (pp. 626-627); the right to family everyone’s affection (p. 627); the freedom of thought and religion everyone’s rectitude (pp. 627-628). For a more extensive account, see Myres S. McDougal, Laswell & Chen, *Human rights and world public order: the basic policies of an international law of human dignity* (1980). See also Robert S. Jordan, “United Nations General Assembly Resolutions as Expressions of Human Values” (1976).

¹⁷³ See e.g., Christian Tomuschat, *Human rights: between idealism and realism* (2008), pp. 25-60. The United Nations itself has never adopted this type of categorization.

¹⁷⁴ René Cassin, “La déclaration universelle et la mise en œuvre des droits de l’homme” (1951), p. 278. Beitz also chose to follow Cassin here, but he added a fifth category of peoples’ rights, such as the right to self-determination and the right to natural resources. See Charles R. Beitz, *The idea of human rights* (2009), pp. 27-28; and Charles R. Beitz, “Human Rights as a Common Concern” (2001), p. 271.

¹⁷⁵ For some of the pros and cons of establishing a list of fundamental human rights, see Theodor Meron, “On a Hierarchy of International Human Rights” (1986).

¹⁷⁶ See René Cassin, “La déclaration universelle et la mise en œuvre des droits de l’homme” (1951), pp. 285-286. See also Marek Piechowiak, “What are human rights?: the concept of human rights and their extra-legal justification” (1999), p. 9.

¹⁷⁷ Alternative approaches and ways and means within the United Nations system for improving the effective enjoyment of human rights and fundamental freedoms, General Assembly resolution 32/130, adopted 16 December 1977, para. 1(a).

¹⁷⁸ Indivisibility and interdependence of economic, social, cultural, civil and political rights, General Assembly resolution 40/114, adopted 13 December 1985.

intuitively plausible to distinguish certain fundamental rights, such as the prohibition on slavery, torture, genocide and the right to life, from other, less fundamental, rights.¹⁷⁹ The objection to this distinction is that it does not serve any purpose, and that it only degrades the latter category of rights.

4.4 Personal freedom

The principal aim of the Universal Declaration of Human Rights was to “liberat[e] individuals from the unjustified oppression and constraint to which they [were] too often subjected.”¹⁸⁰ This explains why the human rights that ensure the personal freedom of all individuals figure so prominently in the Declaration.¹⁸¹

The most important of these classic rights to freedom is the “right to life, liberty and security of person.”¹⁸² The State must not prevent individuals within its jurisdiction from enjoying their personal freedom. The Universal Declaration does not elaborate on this right. That was left to subsequent declarations and treaties.

The most controversial issue with regard to the further elaboration of the right to life was whether it was an absolute right, or whether it allowed for exceptions. One exception to the right to life that is widely recognized, although highly controversial, is the death penalty. In the first draft of the Universal Declaration, the death penalty was expressly acknowledged as a possible exception to the right to life.¹⁸³ Since the 1960s, there has been a gradual tendency to prohibit the death penalty. In the Covenant of 1966, the death penalty was still expressly permitted.¹⁸⁴ In 1968, the Assembly invited all States, “desiring to promote further the dignity of man,” to impose further restrictions on the imposition of the death penalty.¹⁸⁵ In 1977, it set out as its main objective in this field to “progressively restrict [...] the number of offences for which the death penalty may be imposed

¹⁷⁹ See Peter R. Baehr, *De rechten van de mens: universaliteit in de praktijk* (1998), pp. 40-53.

¹⁸⁰ Preamble to Part D of the Universal Declaration of Human Rights, entitled Publicity to be given to the Universal Declaration of Human Rights.

¹⁸¹ Lauterpacht referred to these rights as the “backbone and the origin of national Bills of rights in the past,” and thus gave a historic explanation for the focus on these types of rights. See Hersch Lauterpacht, “The international protection of human rights” (1947), p. 86.

¹⁸² Universal Declaration of Human Rights, Article 3. See also Article 6 (right to life), International Covenant on Civil and Political Rights.

¹⁸³ The first version read that “every one has the right to life,” and that “this right can be denied only to persons who have been convicted under general law of some crime to which the death penalty is attached.” Draft outline of international bill of rights, UNDoc. E/CN.4/AC.1/3, distributed 4 June 1947, p. 2.

¹⁸⁴ See International Covenant on Civil and Political Rights, Article 6 (2).

¹⁸⁵ Capital punishment, General Assembly resolution 2393 (XXIII), adopted 26 November 1968.

with a view to [...] abolishing this punishment.”¹⁸⁶ With the adoption of an additional protocol in 1989 the General Assembly clearly stated that it aimed at the total abolition of the death penalty.¹⁸⁷

The right to liberty and security of person is certainly not absolute.¹⁸⁸ The most obvious exception is imprisonment.¹⁸⁹ In contrast to the strong global opposition to the death penalty, there is no global movement calling for the abolition of prisons.¹⁹⁰ Individuals cannot be “subjected to arbitrary arrest, detention or exile.”¹⁹¹ They cannot be imprisoned without a fair trial,¹⁹² but they can be detained for legitimate reasons, and they can be imprisoned after being convicted of a crime by a duly authorized court or tribunal.¹⁹³

When individuals are arrested, detained or imprisoned by law enforcement officials of a State, they are particularly vulnerable to abuse by those officials.¹⁹⁴ The General Assembly has adopted many legal instruments to prevent such abuse, beginning with the Covenant on Civil and Political Rights itself, which proclaims that “all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.”¹⁹⁵ All prisoners are entitled to full respect of their inherent dignity, whatever crime they have committed.¹⁹⁶ In 1978, the Assembly recommended that “in the performance of their duty, law enforcement officials [should] respect and protect human dignity and maintain and

¹⁸⁶ Capital punishment, General Assembly resolution 32/61, adopted 8 December 1977. See also Arbitrary or summary executions, General Assembly resolution 35/172, adopted 15 December 1980.

¹⁸⁷ Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, annexed to General Assembly resolution 44/128, adopted 15 December 1989. See also Moratorium on the use of the death penalty, General Assembly resolution 62/149, adopted 18 December 2007.

¹⁸⁸ International Covenant on Civil and Political Rights, Article 9.

¹⁸⁹ See Draft outline of international bill of rights, UNDoc. E/CN.4/AC.1/3, distributed 4 June 1947, Article 6, on p. 4.

¹⁹⁰ The German Federal Constitutional Court refused to accept the argument that life imprisonment without parole was inconsistent with respect for human dignity. See Evadne Grant, “Dignity and Equality” (2007), p. 309.

¹⁹¹ Universal Declaration of Human Rights, Article 9.

¹⁹² *Idem*, Article 10 and 11. See also International Covenant on Civil and Political Rights, Articles 14 and 15.

¹⁹³ In 1979, the Assembly stressed the importance of the remedy of *habeas corpus*, *i.e.* the right to challenge the lawfulness of one’s arrest before an impartial tribunal. The right of amparo, habeas corpus or other legal remedies to the same effect, General Assembly resolution 34/178, adopted 17 December 1979.

¹⁹⁴ See generally Human rights in the administration of justice, General Assembly resolution 2858(XXVI), adopted 20 December 1971.

¹⁹⁵ International Covenant on Civil and Political Rights, Article 10.

¹⁹⁶ See Marek Piechowiak, “What are human rights?: the concept of human rights and their extra-legal justification” (1999), p. 6; Roberto Andorno, “The paradoxical notion of human dignity” (2001), p. 160.

uphold the human rights of all persons.”¹⁹⁷ The duty of State officials to respect the dignity of all persons involved in criminal proceedings does not apply only to defendants. In 1985, the Assembly rightly emphasized that “victims [of a crime] should be treated with compassion and respect for their dignity” as well.¹⁹⁸ Most resolutions focus on the State’s treatment of the (alleged) perpetrator of a crime. In 1988, the Assembly proclaimed that “all persons under any form of detention or imprisonment shall be treated in a humane manner and with respect for the inherent dignity of the human person.”¹⁹⁹ Reference should also be made to The Basic Principles for the Treatment of Prisoners, adopted in 1990. The first principle reads that “all prisoners shall be treated with the respect due to their inherent dignity and value as human beings.”²⁰⁰ These declarations serve to remind all States that people who are detained or imprisoned do not cease to be human beings, no matter how horrible the crimes they have (allegedly) committed. Therefore they are at all times entitled to respect for their inherent and inalienable human dignity.

One of the worst violations of the inalienable human worth of detained individuals is the case of enforced disappearance. In 1992, the Assembly stated that “any act of enforced disappearance [was] an offence to human dignity.”²⁰¹ It also explained that “forced disappearance place[d] the persons subjected thereto outside the protection of the law and inflict[ed] severe suffering on them and their families,” and that it constituted a violation of the right to life, liberty and security of person, but also the right to be recognized as a person before the law and the right not to be tortured.²⁰² In 2006, the Assembly came up with the text of an International Convention for the Protection of All Persons from Enforced Disappearance, which defined enforced disappearance as

¹⁹⁷ Code of Conduct for Law Enforcement Officials, General Assembly resolution 34/169, adopted 17 December 1979, Article 2.

¹⁹⁸ Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, annexed to General Assembly resolution 40/34, adopted 29 November 1985, para. 4.

¹⁹⁹ Principle 1, Body of principles for the protection of all persons under any form of detention or imprisonment, annexed to General Assembly resolution 43/173, adopted 9 December 1988. This document further included elaborations of the human rights discussed in this paragraph, including the prohibition to torture.

²⁰⁰ Principle 1, Basic Principles for the Treatment of Prisoners, annexed to General Assembly resolution 45/111, adopted 14 December 1990. See also the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, annexed to General Assembly resolution 45/113, also adopted 14 December 1990. These rules contain various references to the respect for the dignity of such juveniles; see Rules 31, 66, and especially Rule 87. For women prisoners, see the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders, annexed to General Assembly resolution 65/229, adopted 21 December 2010.

²⁰¹ Article 1, Declaration on the Protection of All Persons from Enforced Disappearance, annexed to General Assembly resolution 47/133, adopted 18 December 1992, entry into force 23 December 2010.

²⁰² *Idem*, Article 2.

The arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.²⁰³

The worst type of abuse of people held by the State is torture. The Universal Declaration had already proclaimed everyone's right not to be "subjected to torture or to cruel, inhuman or degrading treatment or punishment."²⁰⁴ Persons detained on the basis of their political opinions and convictions are in particular danger of being tortured.²⁰⁵ The prohibition on torture was further elaborated upon by the General Assembly in a declaration of 1975, in which the Assembly declared that "torture constitute[d] an aggravated and deliberate form of cruel, inhuman or degrading treatment or punishment," and that it should be defined as

Any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted by or at the instigation of a public official on a person for such purposes as obtaining from him or a third person information or confession, punishing him for an act he has committed or is suspected of having committed, or intimidating him or other persons.²⁰⁶

Such acts should be considered as "an offence to human dignity," and as a violation of the purposes of the UN Charter and the Universal Declaration of Human Rights.²⁰⁷ As philosophers have sometimes pointed out, the whole idea of torture is to make people lose their self-worth and sense of dignity. The aim is to break them so they will do anything just to stop the pain and humiliation.²⁰⁸ The Human Rights Commission was asked to prepare a convention on torture based on the general

²⁰³ Article 2, International Convention for the Protection of All Persons from Enforced Disappearance, annexed to General Assembly resolution 61/177, adopted 20 December 2006.

²⁰⁴ Article 5, Universal Declaration of Human Rights. See also Article 7, International Covenant on Civil and Political Rights.

²⁰⁵ Protection of the human rights of certain category of prisoners, General Assembly resolution 32/121, adopted 16 December 1977. See also Protection of persons detained or imprisoned as a result of their struggle against apartheid, racism and racial discrimination, colonialism, aggression and foreign occupation and for self-determination, independence and social progress for their people, General Assembly resolution 32/122, adopted 16 December 1977, and Protection of the human rights of arrested or detained trade union activists, General Assembly resolution 33/169, adopted 20 December 1978.

²⁰⁶ Article 1, Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, annexed to General Assembly resolution 3452(XXX), adopted 9 December 1975.

²⁰⁷ *Idem*, Article 2.

²⁰⁸ Michael S. Pritchard, "Human Dignity and Justice" (1972), pp. 301-302. Simultaneously, torture also constitutes a violation of the dignity of the State on whose behalf the torture is committed, and possibly also of humanity's dignity as a whole. See David Feldman, "Human dignity as a legal value - Part I" (1999), p. 685.

definition quoted above. Until this convention entered into force, States were asked to make unilateral declarations against torture.²⁰⁹ The Assembly adopted the text of the Convention against Torture in 1984.²¹⁰ It entered into force a few years later.²¹¹ The Assembly has consistently held the view that torture can never be justified, *i.e.* “that freedom from torture [was] a non-derogable right that must be protected under all circumstances.”²¹² In 1982, the Assembly expressly prohibited health personnel from being involved in acts of torture.²¹³

Another right that should be included in the category of personal freedom rights is the right not to be “held in slavery or servitude.”²¹⁴ In the first draft of the Universal Declaration, slavery was held to be “inconsistent with the dignity of man,” but this phrase was removed in the final version.²¹⁵ The Covenant on Civil and Political Rights broadened the scope of this right by also prohibiting “forced or compulsory labour,” but expressly excluded “hard labour in pursuance of a sentence to [...] punishment by a competent court” from the reach of this prohibition.²¹⁶ Slavery still occurs in various parts of the world, and the prohibition on slavery is therefore as relevant and urgent as ever.²¹⁷

The right not to be “subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation” also fits in this category of human rights protecting personal freedom.²¹⁸ This is essentially the right to privacy. It has not been the subject of many Assembly resolutions since it was adopted in the Universal Declaration of 1948.

²⁰⁹ See Draft convention against torture and other cruel, inhuman or degrading treatment or punishment, General Assembly resolution 32/62, adopted 8 December 1977, and Unilateral declarations by member states against torture and other cruel, inhuman or degrading treatment or punishment, General Assembly resolution 32/64, also adopted on 8 December 1977.

²¹⁰ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, General Assembly resolution 39/46, adopted 10 December 1984.

²¹¹ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, entry into force on 26 June 1987, United Nations, Treaty Series, vol. 1465, p. 85.

²¹² Torture and other cruel, inhuman or degrading treatment or punishment, General Assembly resolution 62/148, adopted 18 December 2007. According to Article 2 of the Torture Convention, “no exceptional circumstances whatsoever, whether a state of war or a threat or war, internal political instability or any other public emergency, may be invoked as a justification of torture.”

²¹³ Principles of Medical Ethics relevant to the role of health personnel, particularly physicians, in the protection of prisoners and detainees against torture, and other cruel, inhuman or degrading treatment or punishment, annexed to General Assembly resolution 37/194, adopted 18 December 1982.

²¹⁴ Article 4, Universal Declaration of Human Rights

²¹⁵ Draft outline of international bill of rights, UNDoc. E/CN.4/AC.1/3, distributed 4 June 1947, p. 4.

²¹⁶ Article 8, International Covenant on Civil and Political Rights.

²¹⁷ See also Claude Emerson Welch, “Defining Contemporary Forms of Slavery: Updating a Venerable NGO” (2009).

²¹⁸ Article 12, Universal Declaration of Human Rights. See also Article 17, International Covenant on Civil and Political Rights.

4.5 The freedom to associate with others

Included in this category are all those rights that allow individuals to freely associate with other individuals, without unwanted interference by the State.

The largest and most abstract group is the international community itself. The Universal Declaration proclaimed that everyone has “the right to recognition everywhere as a person before the law.”²¹⁹ This does not grant individuals *international* legal personality, but it ensures that they are treated as a legal person in any jurisdiction they find themselves in. There are no legal black holes where individuals are legally irrelevant.²²⁰ This right is most relevant for individuals who do not enjoy the nationality of the State in which they reside. In 1985, the Assembly stressed that aliens, individuals who were not nationals of the State where they lived, were entitled to enjoy most of the human rights that ordinary citizens enjoyed.²²¹

The right to belong to a particular nation, *i.e.* “the right to a nationality,”²²² is a more specific right. According to the Declaration, “no one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.”²²³ This right has been the main inspiration for the Convention on the Nationality of Married Women, adopted in 1957.²²⁴ The main problem with regard to securing this right is the existence of individuals without a nationality, or stateless individuals. To combat this phenomenon, the International Law Commission proposed a Draft Convention on the Elimination of Future Statelessness and a Draft Convention on the Reduction of Future Statelessness.²²⁵ The Assembly then convened a world conference,²²⁶ which chose the less demanding of the two drafts.²²⁷

²¹⁹ Article 6, Universal Declaration of Human Rights. See also Article 16, International Covenant on Civil and Political Rights.

²²⁰ See Ralph Wilde, “Legal “Black Hole”?: Extraterritorial state action and international treaty law on civil and political rights” (2005).

²²¹ Declaration on the human rights of individuals who are not nationals of the country in which they live, General Assembly resolution 40/144, adopted 13 December 1985.

²²² Article 15, Universal Declaration of Human Rights. See also Human rights and arbitrary deprivation of nationality, Human Rights Council resolution 7/10, adopted 27 March 2008.

²²³ *Idem*.

²²⁴ Convention of the Nationality of Married Women, annexed to General Assembly resolution 1040(XI), adopted 29 January 1957.

²²⁵ The two drafts can be found at the Report of the International Law Commission to the General Assembly, in the Yearbook of the International Law Commission, vol. II, pp. 143-147.

²²⁶ Elimination or reduction of future statelessness, General Assembly resolution 896(IX), adopted 4 December 1954.

²²⁷ Convention on the Reduction of Statelessness. Entry into force, 13 December 1975. United Nations, Treaty Series, vol. 989, p. 175. See also the Convention relating to the Status of Stateless Persons. Entry into force on 6 June 1960. United Nations, Treaty Series, vol. 360, p.117. Entry into force on 6 June 1960.

For individuals who are mistreated in their country of nationality, the Universal Declaration proclaimed the right to leave their country, but not a right to be welcomed in any other country.²²⁸ The only right recognized in the Universal Declaration was a “right to seek and to enjoy in other countries asylum from persecution.”²²⁹ People fleeing their own country to seek asylum elsewhere posed a major problem immediately after the end of the Second World War. In 1946, the Assembly established the International Refugee Organization,²³⁰ which was originally intended to be non-permanent. Its main objective was “to bring about a rapid and positive solution of the problem of *bona fide* refugees and displaced persons.”²³¹ Generally speaking, refugees were asylum seekers who fulfilled particular legal criteria. The International Refugee Organization had a rather limited definition of refugees. It assisted only those individuals who had become refugees as a direct result of the Nazi regime, the Spanish Civil War, or those who had already been refugees before the start of the war.²³² “Persons who evidently assisted the enemy,” such as traitors, quislings and war criminals, were denied the status of refugees.²³³ Also excluded were persons who aimed to overthrow their own government after the war, and most controversially, basically all “persons of German ethnic origin.”²³⁴

In 1950, the Assembly created the Office of the United Nations High Commissioner for Refugees, which eventually replaced the International Refugee Organization.²³⁵ In 1950, the Assembly also adopted the first Article of a Draft Convention relating to the Status of Refugees, in which the term “refugee” was defined in more general terms than was the case in the Statute of the International Refugee Organization.²³⁶

²²⁸ Article 13, Universal Declaration of Human Rights. See also Article 12, International Covenant on Civil and Political Rights.

²²⁹ *Idem*, Article 14. The Declaration adds that “this right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.” See also Article 13, International Covenant on Civil and Political Rights.

²³⁰ Constitution of the International Refugee Organization, annexed to Refugees and displaced persons, General Assembly 62 (I), adopted 15 December 1946. See also United Nations, Treaty Series, vol. 18, p. 3.

²³¹ *Idem*, Article 1(a), Definitions, Annex I.

²³² *Idem*, Article 1, Part I, Section A.

²³³ See Sir Arthur Rucker, “The Work of the International Refugee Organization” (1949), p. 66.

²³⁴ Article 1 and 6, Part II, and also Article 1(c), Annex I, Constitution of the International Refugee Organization. Article 14(2) of the Universal Declaration aimed to say the same thing. See Sibylle Kapferer, “Article 14(2) of the Universal Declaration of Human Rights and Exclusion from International Refugee Protection” (2008).

²³⁵ Statute of the Office of the United Nations High Commissioner for Refugees, General Assembly resolution 428 (V), adopted 14 December 1950.

²³⁶ Draft Convention relating to the Status of Refugees, General Assembly resolution 429 (V), adopted 14 December 1950.

Based on the Assembly's draft, a convention was drawn up by the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, organized in Geneva in July 1951.²³⁷ Although the Convention referred to both the UN Charter and the Universal Declaration of Human Rights, it is not a human rights convention in the strict sense, because it does not explicitly grant people, or even the select category of refugees, the right to asylum. It does, however, prohibit States from sending refugees back to "the frontiers of territories where [the refugee's] life or freedom would be threatened."²³⁸

Since 1951, the international community has continued to be rather vague about the existence of an actual right to enjoy asylum, as proclaimed in the Universal Declaration. In the Declaration on Territorial Asylum, the Assembly referred to Article 14 of the Universal Declaration, but did not reiterate the right to enjoy asylum.²³⁹ It mainly dealt with the practicalities that States had to deal with after deciding to grant asylum. It recommended, *inter alia*, that "when a State finds difficulty in granting or continuing to grant asylum, States individually or jointly through the United Nations shall consider, in a spirit of international solidarity, appropriate measures to lighten the burden on that State."²⁴⁰ The next step was to draft a convention on the topic.²⁴¹ A Conference was convened, but the participating States were unable to adopt a convention. Since the adoption of the Universal Declaration, no general human right to asylum has been added to the list.²⁴²

Once individuals belong to a particular State, they also have various rights to become actively involved in the social life of that State. They have "the right to take part in the government of their country, directly or through freely chosen representatives," and "the right of equal access to public service in their country."²⁴³ There is also a right to vote, which is described as follows:

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

²³⁷ Convention relating to the Status of Refugees, United Nations, Treaty Series, vol. 189, p. 137. It entered into force on 22 April 1954.

²³⁸ *Idem*, Article 33.

²³⁹ This right to asylum also did not make in into the International Covenant on Civil and Political Rights.

²⁴⁰ Declaration on territorial asylum, General Assembly resolution 2312 (XXII), adopted 14 December 1967.

²⁴¹ Elaboration of a draft convention on territorial asylum, General Assembly resolution 3456 (XXX), adopted 9 December 1975.

²⁴² See also Ranjana Khanna, "Representing Culture" (2006), p. 474.

²⁴³ Article 21, Universal Declaration of Human Rights. See also Article 25, International Covenant on Civil and Political Rights.

equal suffrage and shall be held by secret vote or by equivalent free voting procedures.²⁴⁴

The Universal Declaration suggested that the right to vote required a democratic form of government, without explicitly stating this. In 1988, while avoiding the word “democracy,” the Assembly “stresse[d] its conviction that periodic and genuine elections are a necessary and indispensable element of sustained efforts to protect the rights and interests of the governed and that, as a matter of practical experience, the right of everyone to take part in the government of his or her country is a crucial factor in the effective enjoyment by all of a wide range of other human rights.”²⁴⁵ In 1993, the Vienna Declaration linked human rights and democracy, although it did not state that all individuals had a right to democracy. The Declaration described democracy as a form of governance “based on the freely expressed will of the people to determine their own political, economic, social and cultural systems and their full participation in all aspects of their lives.”²⁴⁶ The international community stated a clear preference for one particular form of domestic politics (democracy) over all others, as the most obvious means to realize certain political human rights. In 1995, the Assembly referred to the “indissoluble links between the principles enshrined in the Universal Declaration of Human Rights and the foundations of any democratic society,” and urged States and the Organization to assist new democracies.²⁴⁷ In 2000, the Assembly “call[ed] upon States to promote and consolidate democracy,” and suggested various means to do so.²⁴⁸ In 2004, the Assembly produced an interesting list of “essential elements of democracy.” These included “respect for human rights,” especially the freedom of association, the freedom of expression, the right to be elected to public office and the right to vote.²⁴⁹ But democracy was about more than just human rights. Other elements listed by the Assembly included the existence of a “pluralistic system of political parties and organizations, respect for the rule of law, the separation of powers, the independence of the judiciary, transparency and accountability in public administration, and free, independent and pluralistic media.”²⁵⁰ This detailed list describes a particular form of democracy.

²⁴⁴ *Idem*.

²⁴⁵ Enhancing the effectiveness of the principle of periodic and genuine elections, General Assembly resolution 43/157, adopted 8 December 1988.

²⁴⁶ Para. 8, Vienna Declaration and Programme of Action.

²⁴⁷ Support by the United Nations System of the efforts of Governments to promote and consolidate new or restored democracies, General Assembly resolution 50/133, adopted 20 December 1995.

²⁴⁸ This list was extremely lengthy and not very focused, which indicates that the Assembly might not have had a very clear idea of what democracy entailed exactly. Promoting and consolidating democracy, General Assembly resolution 55/96, adopted 4 December 2000.

²⁴⁹ Enhancing the role of regional, subregional and other organizations and arrangements in promoting and consolidating democracy, General Assembly resolution 59/201, adopted 20 December 2004.

²⁵⁰ *Idem*.

At the same time, the Assembly categorically refused to admit that one form of democracy prevalent in one region of the world should be promoted at a global level as a means to realize certain human rights. The Assembly explicitly “recogniz[ed] that there [was] no single political system or single model for electoral processes equally suited to all nations and their peoples, and that political systems and electoral processes [were] subject to historical, political, cultural and religious factors.”²⁵¹ This should not be interpreted to mean that the United Nations believed that democracy was not suitable for all nations, but rather that “there [was] no universal model of democracy.”²⁵² Moreover, the Assembly believed that democracy should not be imposed upon all States in the world. “There [was] no universal need for the United Nations to provide electoral assistance to Member States, except in special circumstances.”²⁵³

Besides political participation, individuals also have the “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.”²⁵⁴ In 2009, the Committee on Economic, Social and Cultural Rights adopted a General Comment on cultural rights.²⁵⁵ This stressed that “[t]he full promotion of and respect for cultural rights is essential for the maintenance of human dignity and positive social interaction between individuals and communities in a diverse and multicultural world.”²⁵⁶ As the Committee acknowledged, the right to participate in cultural life obliges States to allow all citizens to enjoy their particular culture, and it requires States to take certain actions to ensure that all citizens can freely enjoy this right.²⁵⁷ The Committee tried to define the term “culture”. It referred to culture, first in general terms, as “a broad, inclusive concept encompassing all manifestations of human existence.”²⁵⁸ As examples of such manifestations, the Committee referred to

²⁵¹ Respect for the principles of national sovereignty and non-interference in the internal affairs of States in their electoral process, General Assembly resolution 49/180, adopted 23 December 1994. See also General Assembly resolution 44/147, adopted 15 December 1989.

²⁵² Promoting and consolidating democracy, General Assembly resolution 55/96, adopted 4 December 2000.

²⁵³ These special circumstances included “decolonization, in the context of regional or international peace processes or at the request of specific sovereign States, by virtue of resolutions adopted by the Security Council or the General Assembly in each case, in strict conformity with the principles of sovereignty and non-interference in the internal affairs of States.” See Respect for the principles of national sovereignty and non-interference in the internal affairs of States in their electoral process, General Assembly resolution 49/180, adopted 23 December 1994.

²⁵⁴ Article 27, Universal Declaration of Human Rights. See also Article 15, International Covenant on Economic, Social and Cultural Rights.

²⁵⁵ Right of everyone to take part in cultural life, General comment No. 21, adopted by the Committee on Economic, Social and Cultural Rights, distributed 21 December 2009, UNDoc E/C.12/GC/21.

²⁵⁶ *Idem*, para. 1.

²⁵⁷ *Idem*, para. 6. See also paras. 44-72. Most of the Comment dealt with State obligations to promote and respect the right.

²⁵⁸ *Idem*, para. 11.

Ways of life, language, oral and written literature, music and song, non-verbal communication, religion or belief systems, rites and ceremonies, sport and games, methods of production or technology, natural and man-made environments, food, clothing and shelter and the arts, customs and traditions through which individuals, groups of individuals and communities express their humanity and the meaning they give to their existence, and build their world view representing their encounter with the external forces affecting their lives.²⁵⁹

This description can be characterized as a brave attempt to define a term that is actually indefinable, and is therefore often left undefined. It is too soon to tell whether this description has been accepted as the authoritative legal interpretation of the term.

People can also form their own group within a State. They have the right “to freedom of peaceful assembly and association.”²⁶⁰ People may choose to join any society they want, and “no one may be compelled to belong to an association.”²⁶¹

The most concrete association of individual people protected by human rights law is the family. The General Assembly declared that all “men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family.”²⁶² In the Assembly’s view, “the family [was] the natural and fundamental group unit of society and [was] entitled to protection by society and the State.”²⁶³ The Assembly not only sought to protect the family against outside oppression, but also emphasized that the decision to found a family had to be based on free choice and consent. The Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, adopted in 1962, states that “no marriage shall be legally entered into without the full and free consent of both parties,” and that States must specify a minimum age for marriage.²⁶⁴ This minimum age was not specified in the Convention itself. A few years later, the Assembly adopted a recommendation on this matter, in which it *did*

²⁵⁹ *Idem*, para. 13.

²⁶⁰ Article 20, Universal Declaration of Human Rights. See also Article 22, International Covenant on Civil and Political Rights.

²⁶¹ *Idem*.

²⁶² *Idem*, Article 16. The Declaration adds that all individuals “are entitled to equal rights as to marriage, during marriage and at its dissolution,” and that “marriage shall be entered into only with the free and full consent of the intending spouses.” See also Articles 23 and 24, International Covenant on Civil and Political Rights.

²⁶³ *Idem*. See also Article 10, International Covenant on Economic, Social and Cultural Rights.

²⁶⁴ Articles 1 and 2, Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, annexed to General Assembly resolution 1763 A (XVII), adopted 7 November 1962. The Convention entered into force 9 December 1964. See United Nations, Treaty Series, vol. 521, p. 231.

specify an absolute global minimum age for marriage, which was set at fifteen years.²⁶⁵

4.6 Spiritual freedom

The core of this category of rights had been included in the Universal Declaration, which states that “everyone has the right to freedom of thought, conscience and religion.”²⁶⁶ The relationship with human dignity was explicitly mentioned in later resolutions. For example, in 2000, the Assembly reaffirmed that “freedom of thought, conscience, religion and belief [was] a human right derived from the inherent dignity of the human person.”²⁶⁷

The Universal Declaration regarded religion as a matter of personal choice. The Universal Declaration was very progressive in this respect. According to the Declaration, “this right include[d] freedom to change [one’s] religion or belief, and freedom, either alone or in community with others and in public or private, to manifest [one’s] religion or belief in teaching, practice, worship and observance.”²⁶⁸

As Franck pointed out, for a person convinced of the invincible truth of his own beliefs, it is very difficult to tolerate – let alone respect – people who have different beliefs.²⁶⁹ Therefore it is extremely important to teach people to appreciate (religious) beliefs that differ from their own. In 1981, the Assembly demanded that children be taught “respect for freedom of religion or belief of others.”²⁷⁰ However, the problem of religious intolerance only increased in intensity. In 2005, the Assembly “expresse[d] deep concern at the negative stereotyping of religions and manifestations of intolerance and discrimination in matters of religion or belief still in evidence in some regions of the world.”²⁷¹ This became an explosive issue because of the increasing frequency of acts of terrorism motivated by religion. On

²⁶⁵ Principle II, Recommendation on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, annexed to General Assembly resolution 2018 (XX), adopted 1 November 1965.

²⁶⁶ Article 18, Universal Declaration of Human Rights. See also Article 18, International Covenant on Civil and Political Rights.

²⁶⁷ Article 1, Elimination of all forms of religious intolerance, General Assembly resolution 55/97, adopted 4 December 2000. See also Article 3, Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, General Assembly resolution 36/55, adopted 25 November 1981, in which the Assembly determined that “discrimination between human beings on grounds of religion or belief constitute[d] an affront to human dignity.”

²⁶⁸ Article 18, Universal Declaration of Human Rights. This is nowadays also the view of the Human Rights Council. See Freedom of Religion or Belief, Human Rights Council resolution 16/13, adopted 24 March 2011.

²⁶⁹ Thomas M. Franck, “Is Personal Freedom a Western Value?” (1997), especially p. 626.

²⁷⁰ Article 5, Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief.

²⁷¹ Combating defamation of religions, General Assembly resolution 60/150, adopted 16 December 2005.

the one hand, this development showed how some people abused religion to carry out acts of violence, while others were motivated to link a particular religion with such violence in general terms. The Assembly warned against this way of thinking, by “reaffirming that terrorism cannot and should not be associated with any religion, nationality, civilization or ethnic group.”²⁷²

Spiritual freedom is not limited to what goes on inside one’s own mind. It also includes the right to influence the opinion of others. The Universal Declaration added that “everyone has the right to freedom of opinion and expression,” a right which includes the “freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”²⁷³ The Covenant limited this freedom of expression by declaring that “any propaganda for war shall be prohibited by law,” and the same applied to “any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.”²⁷⁴

4.7 The freedom to secure for oneself an adequate standard of living

All individuals also have socio-economic rights.²⁷⁵ The most important of these rights is the “right to a standard of living adequate for the health and well-being of himself and of his family.”²⁷⁶ This right includes the right to adequate “food, clothing, housing and medical care and necessary social services,” as well as “the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.”²⁷⁷ As the Assembly explained in 1970, the basic idea was not so much to guarantee a life of luxury for all human beings, but rather to “ensure a minimum standard of living consistent with human dignity.”²⁷⁸

Some of the elements included in the right to an adequate standard of living were treated separately. Most importantly, in the Covenant on Economic, Social and Cultural Rights, the Assembly defined the right to an adequate standard of

²⁷² Protection of human rights and fundamental freedoms while countering terrorism, General Assembly resolution 62/159, adopted 18 December 2007.

²⁷³ Article 19, Universal Declaration of Human Rights. See also Articles 19, International Covenant on Civil and Political Rights.

²⁷⁴ *Idem*, Article 20.

²⁷⁵ *Idem*, Article 22. Both this article and the Covenant on Economic, Social and Cultural Rights are more careful in the description of the duties of States when compared to the International Covenant on Civil and Political Rights.

²⁷⁶ *Idem*, Article 25. See also Article 11, International Covenant on Economic, Social and Cultural Rights.

²⁷⁷ *Idem*.

²⁷⁸ Para. 9, Declaration on the occasion of the twenty-fifth anniversary of the United Nations, General Assembly resolution 2627 (XXV), adopted 24 October 1970.

living and the right to the enjoyment of the highest attainable standard of physical and mental health as two separate rights.²⁷⁹ The latter right was the subject of a number of General Assembly resolutions. In 2003, the Assembly reaffirmed that the right to health was a human right and “that such right derive[d] from the inherent dignity of the human person.”²⁸⁰ It defined health as “a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity.”²⁸¹ In 1991, the Assembly adopted a declaration specifically on mental illness, in which it proclaimed that “all persons with a mental illness, or who are being treated as such persons, shall be treated with humanity and respect for the inherent dignity of the human person.” This meant that they enjoyed all the other human rights, and that they “ha[d] the right to live and work, to the extent possible, in the community.”²⁸²

There are other examples in which one aspect of the right to an adequate standard of living was isolated from the other aspects. For example, the right to housing was the subject of the Vancouver and Istanbul Declarations on Human Settlements, and the Declaration on Cities and Other Human Settlements in the New Millennium.²⁸³ The Assembly also adopted a number of resolutions specifically on the right to food, stating that “hunger constitute[d] an outrage and a violation of human dignity.”²⁸⁴ Extreme poverty was also seen as “a violation of

²⁷⁹ See Article 12, International Covenant on Economic, Social and Cultural Rights, for the latter right.

²⁸⁰ The right of everyone to the enjoyment of the highest attainable standard of physical and mental health, General Assembly resolution 58/173, adopted 22 December 2003.

²⁸¹ *Idem*.

²⁸² Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care, annexed to The protection of persons with mental illness and the improvement of mental health care, General Assembly resolution 46/119, adopted 17 December 1991.

²⁸³ Vancouver Declaration on Human Settlements, contained in the report of Habitat: United Nations Conference on Human Settlements, a conference held in Vancouver, Canada, between 31 May and 11 June 1976; Istanbul Declaration on Human Settlements, included in the Report of the United Nations Conference on Human Settlements (Habitat II), a conference held in Istanbul, between 3 and 14 June 1996, UNDoc. A/CONF.165/14, distributed 7 August 1996;. Declaration on Cities and Other Human Settlements in the New Millennium, annexed to General Assembly resolution S-25/2, adopted 9 June 2001.

²⁸⁴ The right to food, General Assembly resolution 56/155, adopted 19 December 2001, para. 1. In that resolution, the Assembly also welcomed a General Comment of the Committee on Economic, Social and Cultural right in which it affirmed that “the right to adequate food is indivisibly linked to the inherent dignity of the human person and is indispensable for the fulfilment of other human rights” (para. 13). See also the Universal Declaration on the Eradication of Hunger and Malnutrition, adopted on 16 November 1974 by the World Food Conference (the declaration was later endorsed by the General Assembly, in General Assembly resolution 3348(XXIX), adopted 17 December 1974); the Rome Declaration on World Food Security, published in Food and Agriculture Organization of the United Nations, Report of the World Food Summit, 13-17 November 1996 (WFS 96/REP); World Food Summit Plan of Action, published in Food and Agriculture Organization of the United Nations, Report of the World Food Summit, 13-17 November 1996 (WFS 96/REP); Declaration of the World Food Summit: Five Years Later, annexed to a Letter dated 21 October 2002 from the Permanent

human dignity.”²⁸⁵ As these declarations ended up referring to all the other aspects of the right to an adequate standard of living as well, they show how difficult it is to isolate just one aspect of this right.²⁸⁶ A more useful approach is to focus the attention of the international community on particular problems relating to this right, such as the problematic situation of the world’s homeless.²⁸⁷

In addition to the right to an adequate standard of living and the sub-rights included in this, these socio-economic rights also include “the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment,”²⁸⁸ and “the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.”²⁸⁹

This list also includes the “right to education.”²⁹⁰ According to the General Assembly, elementary education must be free and compulsory. This is not the case for higher forms of education.²⁹¹ The Assembly also gave some suggestions for subjects to be included in the curriculum. In its view, “education [should] be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms.”²⁹² In the Covenant, the Assembly added that education should also be aimed at developing a “sense of [the child’s] dignity” to the full.²⁹³ Since then, the Assembly has often reiterated the importance of educating people about their rights and of making them aware of their intrinsic dignity and rights.²⁹⁴ In 2011, the Human Rights Council adopted the

Representative of Italy to the United Nations addressed to the Secretary-General, UNDoc. A/57/499. See also para. 19, Millennium Declaration..

²⁸⁵ Vienna Declaration and Programme of Action, para. 25. See also Second United Nations Decade for the Eradication of Poverty (2008-2017), General Assembly resolution 65/174, adopted 20 December 2010, where the Assembly underlined that “the eradication of poverty and hunger [was] an ethical, social, political and economic imperative of humankind.”

²⁸⁶ In a resolution on the right to adequate housing, for example, the necessity is stressed to take measures to “promote the right of all persons to an adequate standard of living for themselves and their families, including adequate housing.” Para. 2, Realization of the right to adequate housing, General Assembly resolution 41/146, adopted 4 December 1986.

²⁸⁷ See International Year of Shelter for the Homeless, General Assembly resolution 36/71, adopted 4 December 1981.

²⁸⁸ Article 23, Universal Declaration of Human Rights. See also Articles 6 and 7, International Covenant on Economic, Social and Cultural Rights.

²⁸⁹ *Idem*, Article 24.

²⁹⁰ *Idem*, Article 26.

²⁹¹ *Idem*. The article states that “technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.”

²⁹² *Idem*. Education should further “promote understanding, tolerance and friendship among all nations, racial or religious groups, and [it should] further the activities of the United Nations for the maintenance of peace.”

²⁹³ Article 13, International Covenant on Economic, Social and Cultural Rights.

²⁹⁴ See *e.g.*, Vienna Declaration and Programme of Action, para. 33 and paras. 78-82.

United Nations Declaration on Human Rights Education and Training, with the same purpose in mind.²⁹⁵

4.8 Conclusion

The Assembly used its authority to adopt declarations to elaborate on the rights already recognized in its Universal Declaration of 1948. It did not operate in an *ad hoc* manner, adding rights according to the latest fashion. All of the Assembly's human rights declarations were part of a particular project: to codify the continuing evolution of universal human rights. In its work, the Assembly made sure that it complied with the conditions it had set out for itself.²⁹⁶ One of these conditions was that all human rights had to be derived from the value of human dignity. The Assembly has been faithful to this condition. One cannot help but notice the many explicit references to human dignity as the basis for all human rights. Another condition was that the rights were "sufficiently precise to give rise to identifiable and practicable rights and obligations." The Assembly has also achieved this. Many of the rights have been fleshed out further, without becoming so detailed that they are too rigid to be applied in different contexts and situations. The condition that they attract "broad international support" has also been observed, as most of the treaties referred to in this section have been widely ratified. The question arises whether the Assembly will ever finish its task of identifying and defining international human rights. As time passes, the precise application of human rights leads to various new problems. At the same time, no entirely new rights have been added to the list of 1948. The Universal Declaration provides a stable foundation which is able to cope with changing times, conditions, and even attitudes.

5 THE WORLDWIDE, CONTINUOUS AND EQUAL APPLICATION OF HUMAN RIGHTS

5.1 Introduction

According to King Hassan II of Morocco, the "concept of human rights [...] is universal and can in no way be departed from or called into question."²⁹⁷ Human

²⁹⁵ United Nations Declaration on Human Rights Education and Training, Human Rights Council resolution 16/1, adopted 23 March 2011.

²⁹⁶ See Setting international standards in the field of human rights, para. 4.

²⁹⁷ Verbatim Records of the 3046th meeting of the Security Council, 31 January 1992, UNDoc. S/PV.3046, p. 41.

rights can and should be enjoyed by all people in all societies.²⁹⁸ They “create a global safety net of rights applicable to all persons, everywhere.”²⁹⁹ This safety net literally covers the entire world. No exceptions to the universal and equal protection of human rights are allowed. This idea, that human rights are universally applicable, without any distinction, has frequently been emphasized by the United Nations.

It all begins with the UN Charter. Article 1 states that it is one of the purposes of the United Nations to “promot[e] and encourag[e] respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion.” The Universal Declaration reiterates the universal application of human rights. Article 2 of that Declaration declares that “everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”³⁰⁰ In 1993, the world adopted the Vienna Declaration on Human Rights, which stated that “the universal nature of these rights and freedoms is beyond question,” and that “all human rights are universal, indivisible and interdependent and interrelated.”³⁰¹ The mandate of the newly established High Commissioner for Human Rights also emphasized the universal application of human rights,³⁰² as did the mandate of the Human Rights Council.³⁰³ To celebrate the sixtieth anniversary of the Universal Declaration, all States reaffirmed their “commitment towards the full realization of all human rights for all, which are universal, indivisible, interrelated, interdependent and mutually reinforcing.”³⁰⁴ These are only a few examples of statements which reiterated the universality of human rights.

This universality is directly derived from the fact that all human rights are based on human dignity. If all human beings have rights just because they have an inherent worth as human beings, it is hard to justify that some people are “more

²⁹⁸ Charles R. Beitz, *The idea of human rights* (2009), p. 59.

²⁹⁹ Thomas M. Franck, “Are Human Rights Universal?” (2001), p. 193.

³⁰⁰ The Universal Declaration of Human Rights adds that “no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.”

³⁰¹ Vienna Declaration and Programme of Action, paras. 1 and 5. See also para. 32, in which “the importance of ensuring “the universality, objectivity and non-selectivity of the consideration of human rights issues” was reaffirmed.

³⁰² High Commissioner for the promotion and protection of all human rights, General Assembly resolution 48/141, adopted 7 January 1994, Preamble and para. 3(b).

³⁰³ Human Rights Council, General Assembly resolution 60/251, adopted 15 March 2006, para. 4.

³⁰⁴ Declaration on the sixtieth anniversary of the Universal Declaration of Human Rights, annexed to Sixtieth anniversary of the Universal Declaration of Human Rights, General Assembly resolution 63/116, adopted 10 December 2008.

worthy” than others.³⁰⁵ The United Nations has combated various forms of discrimination based on the unequivocal rejection of the idea that some individuals are more worthy than others. In particular, the Assembly has condemned all forms of racial discrimination, and discrimination based on gender. It has also rejected any suggestions that human rights only apply in times of peace. Even during the most challenging of times, human rights continue to regulate the relationship between the State and all the individuals within its jurisdiction.

5.2 Equal rights and dignity for all

The UN Charter itself prohibited all distinctions based on “race, sex, language, or religion.”³⁰⁶ In 1948, the Universal Declaration broadened the list of categories significantly. In addition to the prohibited distinctions included in the Charter, a distinction based on “political or other opinion, national or social origin, property, birth or other status” was also prohibited.³⁰⁷ The difference between them is not problematic, since the Charter’s enumeration of prohibited distinctions was never intended to be exhaustive in any way.

The General Assembly has always related equality to respect for human dignity. It adopted a number of declarations to condemn and combat various forms and manifestations of discrimination, and in doing so it frequently referred to such discrimination as a violation of the respect for human dignity.

In combating prohibited distinctions, the Assembly focused on combating racial discrimination. In 1960, the Assembly expressed the principle “that the United Nations is duty bound to combat these manifestations [and therefore] resolutely condemn[ed] all manifestations and practices of racial, religious and national hatred.”³⁰⁸ In this way it accepted the duty to actively combat racist ideologies. As usual, one of the means to do so was to prepare a declaration, followed by a multilateral treaty.³⁰⁹

³⁰⁵ See Marek Piechowiak, “What are human rights? The concept of human rights and their extra-legal justification” (1999), p. 5 and pp. 6-7. See also Christian Tomuschat, *Human rights: between idealism and realism* (2008), p. 69.

³⁰⁶ Article 1(3), UN Charter. See also Article 55(c).

³⁰⁷ Article 2, Universal Declaration of Human Rights. See also Article 7.

³⁰⁸ Manifestations of racial and national hatred, General Assembly resolution 1510 (XV), adopted 12 December 1960.

³⁰⁹ And thus, in 1962, “deeply disturbed by the manifestations of discrimination based on differences of race, colour and religion still in evidence throughout the world,” and “emphasizing that each State ought to take all the necessary action to put an end to these violations, which infringe human dignity,” the Assembly requested the Human Rights Commission to prepare a first draft. Preparation of a draft declaration and a draft convention on the elimination of all forms of racial discrimination, General Assembly resolution 1780 (XVII), adopted 7 December 1962.

In 1963, the United Nations adopted the Declaration on the Elimination of All Forms of Racial Discrimination, in which it proclaimed that “discrimination between human beings on the ground of race, colour or ethnic origin [was] an offence to human dignity.”³¹⁰ The Declaration also called upon all States not to discriminate, and to actively combat discriminatory policies anywhere in the world, especially policies of racial segregation and *apartheid*.³¹¹ In addition, it called upon States to condemn racist propaganda and to punish any acts of violence aimed against any race or group of persons of another colour or ethnic origin.³¹² Although mainly addressing States in more traditional language, there was one article in the declaration which read like a true human rights provision. It guaranteed the right to an “effective remedy and protection against any discrimination.”³¹³

In 1965, the Assembly adopted the text of a Convention on the Elimination of All Forms of Racial Discrimination.³¹⁴ Racial discrimination was broadly defined as “any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which ha[d] the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights.”³¹⁵ All States prepared to sign the Convention were “convinced that any doctrine of superiority based on racial differentiation is scientifically false, morally condemnable, socially unjust and dangerous” and “condemn[ed] racial discrimination and undert[ook] to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races.”³¹⁶

The adoption of the Convention did not stop the Assembly from adopting further declarations on the topic of racial discrimination. For decades, most of these declarations focused on combating the *apartheid* policies of South Africa. In 1973, the Assembly adopted a Programme for the Decade for Action to Combat Racism and Racial Discrimination. The ultimate goal of this Programme was to “promote human rights and fundamental freedom for all, without distinction of any kind on

³¹⁰ Article 1, United Nations Declaration on the Elimination of All Forms of Racial Discrimination, General Assembly resolution 1904 (XVIII), adopted 20 November 1963.

³¹¹ *Idem*, Articles 2-6.

³¹² *Idem*, Article 9.

³¹³ *Idem*, Article 7.

³¹⁴ International Convention on the Elimination of All Forms of Racial Discrimination, General Assembly resolution 2106 (XX), adopted 21 December 1965. The Convention entered into force on 4 January 1969. United Nations, Treaty Series, vol. 660, p. 195.

³¹⁵ *Idem*, Article 1. It is well-known that the Assembly labeled “zionism” as a form of racism in its resolution 3379 (XXX), adopted 10 November 1975. This resolution was revoked in General Assembly resolution 46/86, adopted 16 December 1991. This is the only resolution in the Assembly’s history that was ever revoked by a subsequent resolution.

³¹⁶ *Idem*, Article 2.

grounds of race, colour, descent or national or ethnic origin.”³¹⁷ One of the key events of this first decade was a world conference on racism held in 1978, at which all States expressed their determination to eradicate racism and *apartheid*, referred to as “evils perpetrated against the dignity of the human being.”³¹⁸ The main theme of the decade was certainly the fight against *apartheid*. As early as 1973, the Assembly adopted the text of an International Convention on the Suppression and Punishment of the Crime of Apartheid.³¹⁹ The idea was that such a convention would “make it possible to take more effective measures at the international and national levels with a view to the suppression and punishment of the crime of *apartheid*.”³²⁰ The Convention criminalized *apartheid*, labelling it a “crime against humanity.”³²¹ It defined *apartheid* by enumerating certain “inhuman acts,” such as the infringement of the freedom or dignity of a certain racial group, “committed for the purpose of establishing and maintaining domination by one racial group of persons over any other racial group of persons and systematically oppressing them.”³²² The year 1978, when the first global anti-racism conference was organized, was also proclaimed as anti-*apartheid* year. The purpose of this proclamation was to “make world opinion fully aware of the inhumanity of *apartheid*.”³²³ Mindful of the “gross indignities” that South Africa inflicted on its foreign workers, most of whom came from neighbouring countries, the Assembly “endorsed” a Charter of Rights for Migrant Workers in Southern Africa in the same year (1978), which addressed the “gross indignities” inflicted on the foreign workers by the country’s migratory labour system.³²⁴

³¹⁷ Programme for the Decade for Action to Combat Racism and Racial Discrimination, annexed to General Assembly resolution 3057 (XXVIII), adopted 2 November 1973. It also called upon the eradication of racist policies and ideologies. See also the Programme of activities to be undertaken during the second half of the Decade for Action to Combat Racism and Racial Discrimination, annexed to General Assembly resolution 34/24, adopted 15 November 1979.

³¹⁸ Declaration, included in the Report of the World Conference to Combat Racism and Racial Discrimination, held at Geneva, between 14 and 25 August 1978, UNDoc. A/CONF.92/40, p. 10.

³¹⁹ International Convention on the Suppression and Punishment of the Crime of Apartheid, General Assembly resolution 3068 (XXVIII), adopted 30 November 1973. The treaty entered into force on 18 July 1976. See United Nations, Treaty Series, vol. 1015, p. 243.

³²⁰ *Idem*, Preamble.

³²¹ *Idem*, Article 1.

³²² *Idem*, Article 2. The Convention applied to all forms of apartheid now and in the future, and was thus not applicable exclusively to the apartheid of South AfricaSouth Africa.

³²³ Programme for the International Anti-Apartheid Year, annexed to Policies of apartheid of the Government of South Africa, General Assembly resolution 32/105, adopted 14 December 1977, para. 1(a).

³²⁴ This Charter of Rights for Migrant Workers in Southern Africa was initially adopted at a Conference on Migratory Labour, which took place on 7 April 1978, in South AfricaSouth Africa. The text of the Charter was annexed to Migratory Labour in Southern Africa, General Assembly resolution 33/162, adopted 20 December 1978.

Apartheid was also the main theme of the second anti-racism decade, which started with the second world conference on racism, organized in 1983. At that conference, *apartheid* was described as “an institutionalized form of racism [and] a deliberate and totally abhorrent affront to the conscience and dignity of mankind, a crime against humanity and a threat to international peace and security.”³²⁵ The programme for the second decade to combat racism also focused on condemning and combating South Africa’s *apartheid* policies.³²⁶ The same decade also saw the adoption, in 1985, of the text of an International Convention against *Apartheid* in Sports.³²⁷ Finally, in 1989 the Assembly adopted the Declaration on *Apartheid* and its Destructive Consequences in Southern Africa, in which the Assembly reminded the world that *apartheid* had sought, *inter alia*, to “dehumanize entire peoples.”³²⁸ In the last years of the decade, the Assembly foresaw the end of *apartheid* through negotiated settlement, and that is what happened.³²⁹ The global value of human dignity figured prominently in the new Constitution of South Africa. Equality was defined in the Constitution, and also in the case law of the Court, in terms of equality of dignity.³³⁰

In 1993, the Assembly proclaimed the Third Decade to Combat Racism and Racial Discrimination. Despite the end of the *apartheid* regime in South Africa, the Assembly saw the previous two decades largely as failures and simply adopted the list of ultimate goals of the first decade as the ultimate goals for the third decade.³³¹ In 1994, one year after the first free elections in South Africa, the

³²⁵ Declaration, included in the Report of the Second World Conference to Combat Racism and Racial Discrimination, held in Geneva, between 1 and 12 August 1983, UNDoc. A/CONF.119/26, para. 6. Most of the other paragraphs in the Declaration also focused on South Africa; some of them addressed racist propaganda, neo-Nazism, minorities, migrants and refugees.

³²⁶ Programme of Action for the Second Decade to Combat Racism and Racial Discrimination, annexed to General Assembly resolution 38/14, adopted 22 November 1983. It did, however, also address more general issues, such as education, propaganda, and the protection against racism of minority groups, indigenous peoples, and migrants.

³²⁷ International Convention against Apartheid in Sports, annexed to Policies of apartheid of the Government of South Africa, General Assembly resolution 40/64, Part G, adopted 10 December 1985. Earlier, General Assembly resolution 32/105, adopted 14 December 1977, already annexed to it an International Declaration against Apartheid in Sports. The Convention entered into force on 3 April 1988. See United Nations, Treaty Series, vol. 1500, p. 161.

³²⁸ Preamble, Declaration on Apartheid and its Destructive Consequences in Southern Africa, annexed to General Assembly resolution S-16/1, adopted 14 December 1989.

³²⁹ *Idem*.

³³⁰ See Evadne Grant, “Dignity and Equality” (2007).

³³¹ Programme of Action for the Third Decade to Combat Racism and Racial Discrimination (1993-2003), annexed to General Assembly resolution 48/91, adopted 20 December 1993, para. 1. In the Preamble of this resolution, the Assembly “not[ed] with grave concern that despite the efforts of the international community, the principal objectives of the two Decades for Action to Combat Racism and Racial Discrimination have not been attained and that millions of human beings continue to this day to be the victims of varied forms of racism, racial discrimination and apartheid.”

Assembly adopted a revised version of the programme.³³² With *apartheid* dealt with, the Assembly now focused on racial hatred and the “ethnic cleansing” practised during the armed conflict in the former Yugoslavia in the 1990s.³³³ The Assembly referred to ethnic cleansing and racial hatred as “totally incompatible with universally recognized human rights and fundamental freedoms.”³³⁴

A World Conference against Racism took place in South Africa in 2001.³³⁵ Compared with the earlier declarations, the Declaration adopted at this conference sounded much more positive.³³⁶ For example, instead of simply condemning racism – which it did – it also affirmed the importance of “tolerance, pluralism and respect for diversity” and the “values of solidarity, respect, tolerance and multiculturalism,” referring to these values as “the moral ground and inspiration for [the] worldwide struggle against racism.”³³⁷

5.3 Equal rights and dignity for men and women

The Preamble of the UN Charter states that the United Nations is determined “to reaffirm faith in [...] the equal rights of men and women.” Article 1 one states that it is one of the purposes of the Organization to “achieve international co-operation in [...] promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to [...] sex.” This last phrase is repeated in Article 55 UN Charter. Despite all these references, the Assembly concluded in

³³² The section on apartheid consisted of just one paragraph, which basically called for the repair of the damage done in the past. Revised Programme of Action for the Third Decade to Combat Racism and Racial Discrimination (1993-2003), annexed to General Assembly resolution 49/146, adopted 23 December 1994, para. 3.

³³³ Third Decade to Combat Racism and Racial Discrimination, General Assembly resolution 49/146, adopted 23 December 1994, para. 1.

³³⁴ “Ethnic cleansing” and racial hatred, General Assembly resolution 47/80, adopted 16 December 1992, para. 3.

³³⁵ Report of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, held in Durban (South Africa/South Africa), between 31 August and 8 September 2001. UNDoc. A/CONF.189/12 (“Report of the World Conference against Racism”).

³³⁶ Admittedly, not all paragraphs in the declaration were as positive. Most of the Declaration was more traditional. It consisted of a long list of various forms of discrimination, and ways to address them. See further the Outcome Document of the Durban Review Conference, adopted at the Durban Review Conference, which took place between 20 and 24 April 2009 in Geneva, UNDoc. A/CONF.211/8; and The fight against racism, racial discrimination, xenophobia and related intolerance and the comprehensive implementation of and follow-up to the Durban Declaration and Programme of Action, General Assembly resolution 57/195, adopted 18 December 2002, and subsequent such resolutions.

³³⁷ Declaration, included in the Report of the World Conference against Racism, paras. 5 and 6. See also *idem*, para. 32. Much earlier, the General Conference of the United Nations Educational, Scientific and Cultural Organization (UNESCO) already adopted a declaration in which the positive aspects of the rich diversity was celebrated. See Declaration on Race and Racial Prejudice, adopted by UNESCO, 27 November 1978, UNDoc. E/CN.4/Sub.2/1982/2/Add.1.

1946, that “certain Member States ha[d] not yet granted to women, political rights equal to those granted to men,” and therefore it “recommend[ed] that all Member States, which ha[d] not already done so, adopt[ed] measures necessary to fulfil the purposes and aims of the Charter in this respect by granting to women the same political rights as to men.”³³⁸ In 1952, the Assembly went one step further and adopted a Convention on the Political Rights of Women, proclaiming the rights of women to vote, to be eligible for election to all publicly elected offices, and to exercise all public functions.³³⁹

This Convention was only about political equality between men and women, and therefore there was still a need for a more comprehensive declaration, or preferably a convention. The first step in this direction was taken by the Assembly in 1967, when it adopted the Declaration on the Elimination of Discrimination against Women.³⁴⁰ In this Declaration, the Assembly considered that discrimination against women was “an obstacle to the full development of the potentialities of women in the service of their countries and of humanity.”³⁴¹ Discrimination based on sex was also considered to be “fundamentally unjust and constitute[d] an offence against human dignity.”³⁴² The Declaration urged States to abolish all laws which violated this principle of equality, and to replace them with laws affirming such equality. In 1970, the Assembly suggested that the United Nations Organization should “set an example” by ensuring equal opportunities for men and women in the employment of its own staff.³⁴³

In 1975, another step was taken with the adoption of the Declaration of Mexico on the Equality of Women and Their Contribution to Development and Peace.³⁴⁴ This Declaration proclaimed that “equality between women and men means equality in their dignity and worth as human beings as well as equality in their rights, opportunities and responsibilities.”³⁴⁵ This declaration called for

³³⁸ Political rights of women, General Assembly resolution 56 (I), adopted 11 December 1946.

³³⁹ Convention on the Political Rights of Women, annexed to General Assembly resolution 640 (VII), adopted 20 December 1952. The treaty entered into force on 7 July 1954. See United Nations, Treaty Series, vol. 193, p. 135.

³⁴⁰ Declaration on the Elimination of Discrimination against Women, General Assembly Resolution 2263(XXII), adopted 7 November 1967.

³⁴¹ *Idem*, Preamble.

³⁴² *Idem*, Article 1.

³⁴³ Employment of qualified women in senior and other professional positions by the secretariats of organizations in the United Nations system, General Assembly resolution 2715(XXV), adopted 15 December 1970. It also adopted a Programme of concerted international action for the advancement of women, annexed to General Assembly resolution 2716 (XXV), adopted on the same day.

³⁴⁴ Declaration of Mexico on the Equality of Women and Their Contribution to Development and Peace, adopted at the World Conference of the International Women’s Year, held in Mexico City, between 19 June and 2 July 1975, UNDoc E/CONF.66/34, distributed 2 July 1975.

³⁴⁵ *Idem*, para. 1.

equality in all situations and circumstances, both in society and in the family.³⁴⁶ The inviolability of the human body, as well as the right of every woman to decide freely whether to marry – or not to marry – were explicitly connected to human dignity.³⁴⁷

In 1979, the General Assembly, “recalling that discrimination against women violates the principles of equality of rights and respect for human dignity,” adopted the text of a Convention on the Elimination of All Forms of Discrimination against Women.³⁴⁸ The Convention defined discrimination based on sex in very broad terms, as

Any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.³⁴⁹

In addition to ensuring that the domestic laws were in accordance with the principle of equality,³⁵⁰ the Convention also urged States, *inter alia*, to “take all appropriate measures to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.”³⁵¹ This was the most difficult and ambitious goal set out in the Convention, *i.e.* to change these conventional ideas, prevalent in almost all societies in the world, about the traditional roles specifically assigned to men and women in society. The Committee on the Elimination of Discrimination against Women was established to assist States to strive for the common goals outlined in the Convention.³⁵²

Although the Convention in a sense completed the Assembly’s work on promoting the idea of equality between the sexes, it continued to adopt declarations

³⁴⁶ *Idem*, see especially para. 5.

³⁴⁷ *Idem*, paras. 11 and 13.

³⁴⁸ Convention on the Elimination of All Forms of Discrimination against Women, annexed to General Assembly resolution 34/180, adopted 18 December 1979. The Convention entered into force on 3 September 1981. United Nations, Treaty Series, vol. 1249, p. 13. The quote is from the preamble of the Convention.

³⁴⁹ *Idem*, Article 1.

³⁵⁰ The largest part of the Convention contained ways in which the equality of rights played out for specific rights, such as the right to work, the right to education, etc.

³⁵¹ Article 5, Convention on the Elimination of All Forms of Discrimination against Women.

³⁵² The Committee can receive individual complaints, after the entry into force, on 22 December 2000, of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, attached to General Assembly resolution 54/4, adopted 6 October 1999, UNDoc. A/RES/54/4. See United Nations, Treaty Series, vol. 2131, p. 83 et seq.

emphasizing particular problems and aspects. Examples include the Declaration on the Protection of Women and Children in Emergency and Armed Conflict,³⁵³ the Geneva Declaration for Rural Women, which was adopted by the wives of heads of State and Government,³⁵⁴ a resolution on women migrant workers,³⁵⁵ the Declaration on the Elimination of Violence against Women,³⁵⁶ and other more general declarations.³⁵⁷ One of the most difficult tasks was to combat traditional practices in which the man played the dominant role in society, and which were therefore practices that were inconsistent with equal rights. Over the years the Assembly became increasingly confident in this respect. For example, in the declaration on the fight against domestic violence of 1990, the Assembly still felt it was necessary to state that it was “conscious that the complex problem of domestic violence [was] viewed differently in various cultures of different countries and that at the international level it must be addressed with sensitivity to the cultural context in each country.”³⁵⁸ Three years later, the Assembly proclaimed that “States should condemn violence against women and should not invoke any custom, tradition or religious consideration to avoid their obligations with respect to its elimination.”³⁵⁹

5.4 Cultural particularities and human rights

Most religions and cultural traditions have embraced the value of human dignity in some way, but not all these traditions have used the language of human rights to put

³⁵³ Declaration on the Protection of Women and Children in Emergency and Armed Conflict, General Assembly resolution 3318 (XXIX), adopted 14 December 1974. This Declaration was thus adopted prior to the adoption of the Convention.

³⁵⁴ Geneva Declaration for Rural Women, adopted at the Summit on the Economic Advancement of Rural Women, held in Geneva, on 25 and 26 February 1992, UNDoc. A/47/308, distributed 2 July 1992. See also Summit on the Economic Advancement of Rural Women, General Assembly resolution 47/174, adopted 22 December 1992.

³⁵⁵ Migrant women workers, General Assembly resolution 47/96, adopted 16 December 1992. In this resolution, the Assembly “expresse[d] grave concern over the plight of migrant women workers who become victims of physical, mental and sexual harassment and abuse.”

³⁵⁶ Declaration on the Elimination of Violence against Women, General Assembly resolution 48/104, adopted 20 December 1993. See also the Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice, annexed to General Assembly resolution 52/86, adopted 12 December 1997.

³⁵⁷ See especially the Beijing Declaration and Platform for Action, adopted at the Fourth World Conference on Women, which was held in Beijing between 4 and 15 September 1995, UNDoc. A/CONF.177/20/Rev.1, pp. 2-5, and the Political Declaration, General Assembly resolution S-23/2, adopted 10 June 2000. See also the Declaration on the Participation of Women in Promoting International Peace and Cooperation, annexed to General Assembly resolution 37/63, adopted 3 December 1982.

³⁵⁸ Domestic violence, General Assembly resolution 45/114, adopted 14 December 1990.

³⁵⁹ Article 4, Declaration on the Elimination of Violence against Women, General Assembly resolution 48/104, adopted 20 December 1993.

this value into practice. Most cultural traditions, notably those with strong religious foundations, have focused on the human *duties* towards the local community, not the human *rights* granted by that community to all individuals.³⁶⁰ The emphasis on human *rights* is therefore a particular approach to ethics which is not universally shared. Objections are supported by the claim that the human rights discourse, as recognized in international law, has a particular rather than a global origin.³⁶¹

In response, it could be argued that the language of human rights has *become* a global language, as revealed by the fact that human rights treaties have been universally ratified.³⁶² The few States that have failed to ratify the human rights treaties are bound anyway, as these norms have become customary international law.³⁶³ This has been a slow and gradual development. Before 1948, there was probably not a single State that acted in accordance with the human rights proclaimed in the Universal Declaration.³⁶⁴ Initially it was certainly not seen as the codification of existing State practice. However, societies have evolved since 1948, using the Declaration as their source of inspiration. By embracing human rights, and by adjusting State practice accordingly, States have adopted an approach which was entirely “new,” in the most general sense of the term.

The universality of the internationally recognized catalogue of human rights is also questioned. According to the Assembly, all international human rights are based on a shared intuitive understanding of human dignity. In his opening

³⁶⁰ See *e.g.*, Jack Donnelly, “Human Rights and Human Dignity: An Analytic Critique of Non-Western Conceptions of Human Rights” (1982); Rhoda E. Howard and Jack Donnelly, “Human Dignity, Human Rights, and Political Regimes” (1986), an article which was discussed in Neil Mitchell, Rhoda E. Howard, and Jack Donnelly, “Liberalism, Human Rights, and Human Dignity” (1987); John D’Arcy May, “Human Dignity, Human Rights, and Religious Pluralism: Buddhist and Christian Perspectives” (2006).

³⁶¹ Many attempts have been made to find one or more drafters of the Universal Declaration of Human Rights. Eleanor Roosevelt, who chaired the Commission, and Charles Malik, who was the Commission’s Rapporteur, and René Cassin, who received the Nobel Peace Prize in 1968 and claimed to be the principal drafter himself, are often considered as the “masterminds” behind the declaration. Less often does one hear the name of John Humphrey, who was responsible for a first draft from the UN Secretariat. In reality, it was not the work of one person, but a collective effort. See *e.g.*, Mary Ann Glendon, “John P. Humphrey and the drafting of the Universal Declaration of Human Rights” (2000); Christopher McCrudden, “Human Dignity and Judicial Interpretation of Human Rights” (2008), pp. 676-677; and Andrew Woodcock, “Jacques Maritain, Natural Law and the Universal Declaration of Human Rights” (2006), pp. 246-248. Normand and Zaidi wished to point out that the Declaration was based almost entirely on “Western sources.” See Roger Normand and Sarah Zaidi, *Human rights at the UN: the political history of universal justice* (2008), p. 195.

³⁶² Beitz also used this as “proof” of the universal acceptance of the link between human dignity and human rights. See Charles R. Beitz, “What Human Rights Mean” (2003), p. 45. Admittedly, some regions focus more on peoples’ rights as opposed to individual human rights, but at the same time they do ratify all the relevant international treaties. See Jack Donnelly, “Human Rights and Human Dignity: An Analytic Critique of Non-Western Conceptions of Human Rights” (1982), pp. 311-313.

³⁶³ Thomas Buergenthal, “The Evolving International Human Rights System” (2006), p. 790.

³⁶⁴ See also Thomas M. Franck, “Are Human Rights Universal?” (2001), pp. 198-200.

statement to the Vienna Conference on Human Rights in 1993, the then UN Secretary-General Boutros Boutros-Ghali emphasized that the list of internationally recognized human rights was not a list of rights that all cultures almost accidentally or coincidentally found acceptable. Instead, the idea was to find what united us as human beings:

Thus the human rights that we proclaim and seek to safeguard can be brought about only if we transcend ourselves, only if we make a conscious effort to find our common essence beyond our apparent divisions, our temporary differences, our ideological and cultural barriers. In sum, what I mean to say, with all solemnity, is that the human rights we are about to discuss here at Vienna are not the lowest common denominator among all nations, but rather what I should like to describe as the "irreducible human element," in other words, the quintessential values through which we affirm together that we are a single human community!³⁶⁵

The Assembly has attempted to follow the same approach, basing all human rights directly on the value of human dignity. This is also what makes all human rights universally applicable, not the accidental fact that a particular right happens to be recognized globally.

The universality of human rights is still occasionally disputed.³⁶⁶ Criticisms usually come from Governments which feel burdened by the formidable task of securing respect for and observance of the human rights of all their citizens. The universality of human rights is never disputed by those citizens themselves, as they mainly benefit from (international) human rights protection.³⁶⁷ As Franck wrote, "it often turns out that oppressive practices defended by leaders of a culture, far from being pedigreed, are little more than the current self-interested preferences of a power elite."³⁶⁸ Such Governments do not even bother to explain what the purpose would be of disregarding human rights. Instead, they simply refer to what they perceive as the particular values and traditions of the culture they claim to represent, and maintain that, in any case, all States have "a sovereign right to be let alone and not be judged by international human rights standards."³⁶⁹

³⁶⁵ Boutros Boutros-Ghali at the Opening of the World Conference on Human Rights, 14 June 1993, UNDoc. A/CONF.157/22, p. 3.

³⁶⁶ For a discussion, see *e.g.*, Christian Tomuschat, *Human rights: between idealism and realism* (2008), pp. 69-96; Peter R. Baehr, *De rechten van de mens: universaliteit in de praktijk* (1998), pp. 27-39; Robert C. Kelman, "The Conditions, Criteria, and Dialectics of Human Dignity" (1977), pp. 542-547.

³⁶⁷ See Bertrand G. Ramcharan, *Contemporary human rights ideas* (2008), pp. 1-2. Ramcharan believed that it was mostly "dictators and social scientists" who criticized the universality of human rights. See *idem*, pp. 53-54. The quote is from a speech by a Senator of the Philippines, as cited in Ramcharan's book.

³⁶⁸ Thomas M. Franck, "Are Human Rights Universal?" (2001), p. 197.

³⁶⁹ *Idem*, p. 192.

To settle the universality debate once and for all, Ramcharan simply argued for a “democratic test of universality.” The idea is simple, at least in theory: we just ask every single person in the world – instead of the officials who claim to represent them – if he or she would like to enjoy human rights, *i.e.* to live, to be free from torture, slavery, and genocide, to freely choose his or her religion, have an adequate standard of living, etc. The answer to all these questions is likely to be a resounding and consistent “yes.”³⁷⁰

Such a global human rights referendum has not yet been organized. Thus politicians can continue the debate on the universality of human rights. The solution is in the form of a compromise: we distinguish a “hard core” of human rights, based directly on human dignity, and then leave the details to be filled in locally, in accordance with local customs and traditions. Li Peng, the Premier of the State Council of the People’s Republic of China, explained in 1992 that “[t]he human rights and fundamental freedoms of all mankind should be universally respected,” but he immediately added that “[i]n essence, the issue of human rights falls within the sovereignty of each country,” and that “[a] country’s human rights situation should not be judged in total disregard of its history and national conditions,” and therefore that “[i]t is neither appropriate nor workable to demand that all countries measure up to the human rights criteria or models of one country or a small number of countries.”³⁷¹ The way forward was “to engage in discussion and cooperation with other countries on an equal footing on the question of human rights on the basis of mutual understanding, mutual respect and seeking consensus, while reserving differences,” and not to “interfere[...] in the internal affairs of other countries using the human rights issue as an excuse.”³⁷²

The UN is not unsympathetic to this Chinese approach. The international community acknowledged the importance of local particularities in the Vienna Declaration, when it stated that “the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind.” At the same time, it was “the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.”³⁷³

In other resolutions, the Assembly called upon States to appreciate the cultural diversity in the world, and not to see this cultural diversity solely as a potential danger to the universal application of human rights. For example, in 1999

³⁷⁰ Bertrand G. Ramcharan, *Contemporary human rights ideas* (2008), pp. 59 and 61.

³⁷¹ Verbatim Records of the 3046th meeting of the Security Council, 31 January 1992, UNDoc. S/PV.3046, pp. 92-93.

³⁷² *Idem*, pp. 92-93.

³⁷³ Vienna Declaration and Programme of Action, para. 5. This was also the message of para. 1(d), Alternative approaches and ways and means within the United Nations system for improving the effective enjoyment of human rights and fundamental freedoms, General Assembly resolution 32/130, adopted 16 December 1977.

the Assembly “recognize[d] that respect for cultural diversity and the cultural rights of all” could “advanc[e] the application and enjoyment of universally accepted human rights across the world.”³⁷⁴ In 2001, it proclaimed the “promotion and protection of all human rights and fundamental freedoms and enrichment of common understanding of human rights” as one of the objectives of the global dialogue among civilizations.³⁷⁵ As long as respect for cultural differences does not require actual violations of the internationally recognized human rights to be condoned, or require the rejection of certain categories of rights, the UN does not object.³⁷⁶

The debate about the universality of human rights is far from over. It is essentially about balancing respect for cultural and religious traditions and particularities, and respect for universally recognized human rights. Therefore Morsink was right when he wrote that “it is inevitable that a document like the Universal Declaration of Human Rights should raise questions about the possibility of there being universal values,” and that “this questioning started before the document was even finished, has continued to this day, and will never end.”³⁷⁷

5.5 Human rights in difficult times

It is in times of crisis that the protection of human rights is most crucial, but also the most difficult. Generally speaking, human rights cannot be set aside in such difficult times. At the same time, there is room for some flexibility. Most human rights are not absolute. They do not apply fully in time of “public emergency which threatens the life of the nation.”³⁷⁸ The principal exceptions to this general rule include the inherent right to life, the prohibition of torture and slavery, and the right to freedom of thought and religion.³⁷⁹

³⁷⁴ Human rights and cultural diversity, General Assembly resolution 54/160, adopted 17 December 1999, para. 2.

³⁷⁵ Article 2, Global Agenda for Dialogue among Civilizations, General Assembly resolution 56/6, adopted 9 November 2001. See also Promotion of religious and cultural understanding, harmony and cooperation, General Assembly resolution 58/128, adopted 19 December 2003.

³⁷⁶ See also Bertrand G. Ramcharan, *Contemporary human rights ideas* (2008), p. 56. Beitz’s view was different. He distinguished certain rights that constituted a “common core” of global morality, or a more or less accidental “overlapping consensus” of all the cultural traditions in this world, from the remaining human rights. However, he believed that even the remaining rights, which were by definition partisan, could be promoted on the global level, as long as this was done through international institutions (the UN). See Charles R. Beitz, “Human Rights as a Common Concern” (2001).

³⁷⁷ Johannes Morsink, *The Universal Declaration of Human Rights: Origins, Drafting, and Intent* (1999), p. ix.

³⁷⁸ See Article 4(1), International Covenant on Civil and Political Rights.

³⁷⁹ See *idem*, Article 4(2).

One of the most dramatic public emergencies is a state of armed conflict. It is true that humanitarian law protects individuals who find themselves in the middle of an armed conflict.³⁸⁰ Nevertheless, the Assembly has consistently held that humanitarian law was not intended to replace human rights law in times of armed conflict. In a resolution entitled *Respect for Human Rights in Armed Conflicts* adopted in 1968, the Assembly affirmed the following three basic humanitarian principles:

That the right of the parties to a conflict to adopt means of injuring the enemy is not unlimited;

That it is prohibited to launch attacks against the civilian populations as such;

That a distinction must be made at all times between persons taking part in the hostilities and members of the civilian population to the effect that the latter be spared as much as possible.³⁸¹

These principles did not contain any reference to human rights, and thus the resolution itself did not do justice to its title. The opposite applies to a resolution entitled *Basic Principles for the Protection of Civilian Populations in Armed Conflicts*, adopted in 1970.³⁸² Although the title did not refer to human rights, the first basic principle stated that “fundamental human rights, as accepted in international law and laid down in international instruments, continue to apply fully in situations of armed conflict.”³⁸³ It could not be put more simply than that.

This approach was further elaborated upon in subsequent resolutions and declarations. For example, in the Assembly’s *Declaration on the Protection of Women and Children in Emergency and Armed Conflict*, the Assembly emphasized that “women and children belonging to the civilian population and finding themselves in circumstances of emergency and armed conflict [...] shall not be deprived of shelter, food, medical aid or other inalienable [human] rights.”³⁸⁴ Much later, in 1999, the Security Council also stressed in general terms, the need for

³⁸⁰ Since the United Nations has not played a major role in the development of humanitarian law, this will not be discussed extensively in this study.

³⁸¹ *Respect for Human Rights in Armed Conflicts*, General Assembly resolution 2444 (XXIII), adopted 19 December 1968.

³⁸² *Basic Principles for the Protection of Civilian Populations in Armed Conflicts*, General Assembly resolution 2675 (XXV), adopted 9 December 1970.

³⁸³ *Idem*, Principle 1.

³⁸⁴ *Declaration on the Protection of Women and Children in Emergency and Armed Conflict*, General Assembly resolution 3318 (XXIX), adopted 14 December 1974, para. 6. The rights explicitly referred to were all human rights, *i.e.* they were those contained in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and the Declaration of the Rights of the Child.

States engaged in armed conflict, to continue to respect the human rights of the civilian population trapped in that armed conflict.³⁸⁵ In 2008, the Council adopted a resolution on sexual violence during armed conflict.³⁸⁶ In that resolution, the Council “recogniz[ed] that States bear primary responsibility to respect and ensure the human rights of their citizens, as well as all individuals within their territory as provided for by relevant international law.”³⁸⁷

Another public emergency posing a threat to human rights protection is the fight against terrorism. In order to remind all States that this fight did not allow them to disregard human rights law, the Assembly adopted a number of resolutions on the relationship between human rights and terrorism. In a resolution of 1993, the Assembly “unequivocally condemn[ed] all acts, methods and practices of terrorism in all its forms and manifestations, wherever and by whomever committed, as activities aimed at the destruction of human rights.”³⁸⁸ It also “call[ed] upon States, in accordance with international standards of human rights, to take all necessary and effective measures to prevent, combat and eliminate terrorism.”³⁸⁹ Terrorism itself was seen as an attack on human rights. At the same time, certain ways of combating terrorism were also considered as attacks on human rights. As the fight against terrorism increased in intensity, the latter aspect was increasingly emphasized. For example, in a resolution adopted in 1995, the Assembly added, in the preamble, that “all measures to counter terrorism must be in strict conformity with international human rights standards.”³⁹⁰ In 2002, one year after the terrorist attacks on the World Trade Center and the Pentagon, the Assembly focused almost exclusively on the latter aspect. The warning referred to above was promoted from the preamble to the principal paragraph of the resolution, and the High Commissioner for Human Rights was asked to examine the protection of human rights in the fight against terrorism.³⁹¹ In 2005, the Assembly, “deeply deploring the occurrence of violations of human rights and fundamental freedoms in the context of the fight against terrorism,” “reaffirm[ed] that it [was] imperative that all States work to uphold and

³⁸⁵ Security Council resolution 1265 (1999), adopted 17 September 1999. On 23 December 2006, the Security Council also adopted resolution 1738 (2006), on the protection of journalists during armed conflict.

³⁸⁶ Security Council resolution 1820 (2008), adopted 19 June 2008.

³⁸⁷ *Idem*, Preamble. See also Security Council resolution 1960 (2010), adopted 16 December 2010.

³⁸⁸ Human rights and terrorism, General Assembly resolution 48/122, adopted 20 December 1993, para. 1.

³⁸⁹ *Idem*, para. 2.

³⁹⁰ Preamble, General Assembly resolution 50/186, adopted 22 December 1995.

³⁹¹ See Protecting human rights and fundamental freedoms while countering terrorism, General Assembly resolution 57/219, adopted 18 December 2002, para. 1. One year later, the Security Council adopted a declaration on combating terrorism, which focused more on finding means to effectively fight terrorism than on human rights protection in the process, but it did refer – only once – to States’ obligations to respect human rights. Para. 6, Declaration on the issue of combating terrorism, annexed to Security Council resolution 1456 (2003), adopted 20 January 2003.

protect the dignity of individuals and their fundamental freedoms [...] while countering terrorism.”³⁹² In 2007, the Assembly expressed its concern about certain measures that it believed were inconsistent with human rights. These measures included the detention of alleged terrorists in places outside the protection of the law, and the return of alleged terrorists to countries without assessing whether this would put them at risk of being tortured. The Assembly urged States to stop using such measures in the fight against terrorism.³⁹³

The Organization itself, and especially the Security Council, has also been criticized for the way it deals with the terrorist threat.³⁹⁴ Most importantly, the Council was blamed for imposing economic sanctions against individuals believed to be involved in terrorist activities, but these individuals had no possibility to challenge this determination. Various corrective measures were adopted by the United Nations Security Council in response to such criticism. These include a delisting procedure for individuals who object to the Council’s conclusion that they are supporting terrorist activities, and the appointment of an Ombudsperson.³⁹⁵

5.6 Conclusion

Human rights are universal. They provide a legal safety net covering all the world’s citizens, wherever they are, in whatever situation they find themselves. The Assembly has explicitly prohibited all forms of discrimination based on race and sex. Any such discrimination is considered, by definition, to be a violation of the duty to promote and respect the human rights of all individuals. This part of the universality thesis is generally unchallenged.

The universality thesis has been questioned when it comes to particular rights in the human rights catalogue. It has been suggested that some rights are not universal, or that the emphasis on individual *rights* – as opposed to *duties* towards the community – does not correspond well with all cultural traditions. In response, it is argued that all human rights flow directly from the value of human dignity itself, and that this value is, in various ways, embraced by all cultural traditions. It is also argued that the catalogue of human rights is flexible enough to allow room for a context-dependent interpretation, and that the core of all human rights norms

³⁹² Protection of human rights and fundamental freedoms while countering terrorism, General Assembly resolution 60/158, adopted 16 December 2005.

³⁹³ Protection of human rights and fundamental freedoms while countering terrorism, General Assembly resolution 62/159, adopted 18 December 2007.

³⁹⁴ See *e.g.*, Nico Schrijver & Larissa van den Herik, “Leiden Policy Recommendations on Counter-Terrorism and International Law” (2010); Nico Schrijver & Larissa van den Herik, “Eroding the Primacy of the UN System of Collective Security: the Judgment of the European Court of Justice in the Cases of Kadi and Al Barakaat” (2008).

³⁹⁵ See Security Council resolution 1904, adopted 17 December 2009, UNDoc S/RES/1904 (2009).

corresponds well with all of the world's cultural traditions. In other words, "universality does not mean uniformity."³⁹⁶

Finally, there was an examination of the resolutions and declarations dealing with the argument that in times of crisis human rights protection should be set aside. Generally speaking, the Assembly has rejected such arguments, even as regards the situation of armed conflict or the fight against terrorism. Thus the Assembly has sought to protect the universality of human rights, also in times of crisis. Human rights apply at all times, in all circumstances.

6 HUMAN RIGHTS OF PARTICULARLY VULNERABLE GROUPS

6.1 Introduction

Individuals with relatively little power to stand up for their own rights are the most vulnerable to abuse.³⁹⁷ To avoid such abuse, the Assembly wanted to ensure "the protection of the rights and the assuring of the welfare of children, the aged and the disabled," and "the provision of protection for the physically or mentally disadvantaged."³⁹⁸ The following sections examine the protection of the human dignity and rights of these most vulnerable groups. The general idea is that like all other human beings, individuals belonging to such vulnerable groups are entitled to all human rights. They do not have more or fewer rights than other individuals. However, to enjoy the same rights as everyone else, they need – and are entitled to – extra protection.

6.2 Children and elderly people

In the first year of its existence, the General Assembly established an International Children's Emergency Fund (UNICEF), to be "utilized for the benefit of children and adolescents of countries which were the victims of aggression."³⁹⁹ UNICEF soon extended its operations to aiding all children in need.⁴⁰⁰

³⁹⁶ See e.g., Advisory Council on International Affairs of the Netherlands, *Universality of Human Rights: Principles, Practice and Prospects* (2008), p. 19.

³⁹⁷ See also Roberto Andorno, "The paradoxical notion of human dignity" (2001), p. 159.

³⁹⁸ Article 11, Declaration on Social Progress and Development, General Assembly resolution 2542 (XXIV), adopted 11 December 1969.

³⁹⁹ Establishment of an International Children's Emergency Fund, General Assembly resolution 57(I), adopted 11 December 1946. UNICEF got the Nobel Peace Prize in 1965.

⁴⁰⁰ See Continuing needs of children, General Assembly resolution 417 (V), adopted 1 December 1950, and United Nations Children's Fund, General Assembly resolution 802 (VIII), adopted 6 October 1953.

The Universal Declaration stated that “childhood [was] entitled to special care and assistance,” and that “all children, whether born in or out of wedlock, [should] enjoy the same social protection.”⁴⁰¹

In 1959, the Assembly adopted the Declaration of the Rights of the Child.⁴⁰² In this declaration, it acknowledged that “the child, by reason of his physical and mental immaturity, need[ed] special safeguards and care, including appropriate legal protection.” The Assembly proclaimed that “the child shall enjoy special protection, and shall be given opportunities and facilities, by law and by other means, to enable him to develop physically, mentally, morally, spiritually and socially in a healthy and normal manner and in conditions of freedom and dignity.”⁴⁰³ The Declaration also stated that a child needed “love and understanding,” and that, generally, his own parents were the best people to provide this.⁴⁰⁴ The Declaration did not go so far as to proclaim a right of the child to a family. The Draft Declaration on Social and Legal Principles relating to the Protection and Welfare of Children states that “every child has a right to a family,” preferably the biological family. In cases where this is not possible for some reason, adoption by another family, or temporary placement in a foster family, is also considered a possibility.⁴⁰⁵ This sentence was removed from the final version of the declaration.⁴⁰⁶

In 1989, the Assembly, “convinced that an international convention on the rights of the child [...] would make a positive contribution to protecting children’s rights and ensuring their well-being,” adopted the text of the Convention on the Rights of the Child.⁴⁰⁷ Although the text of the Convention is long and detailed, many of the key issues have not been resolved. For example, children were defined as “human being[s] below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.”⁴⁰⁸ Therefore there was no universal agreement about when a child ceases to be a child. The Assembly also avoided the

⁴⁰¹ Article 25, Universal Declaration of Human Rights.

⁴⁰² Declaration of the Rights of the Child, General Assembly resolution 1386 (XIV), adopted 20 November 1959.

⁴⁰³ *Idem*, Principle 2.

⁴⁰⁴ *Idem*, Principle 6.

⁴⁰⁵ Draft Declaration annexed to General Assembly resolution 36/167, adopted 16 December 1981, para. 7.

⁴⁰⁶ Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally, annexed to General Assembly resolution 41/85, adopted 3 December 1986.

⁴⁰⁷ Convention on the Rights of the Child, annexed to General Assembly resolution 44/25, adopted 20 November 1989. The Convention entered into force on 2 September 1990. United Nations, Treaty Series, vol. 1577, p. 3.

⁴⁰⁸ *Idem*, Article 1.

problematic question of when a child comes into being,⁴⁰⁹ and refrained from explicitly proclaiming the child's right to a family. It was, however, very explicit about prohibiting the imposition of the death penalty for offences committed by persons below the age of eighteen, regardless of whether such persons were considered to be children according to domestic law.⁴¹⁰

Since the adoption of the Convention, the United Nations has continued to adopt declarations to keep the world's attention focused on the rights of the child. The General Assembly has been assisted in this task by a number of world conferences organized by the UN, resulting in declarations such as the World Declaration on the Survival, Protection and Development of Children.⁴¹¹ Reference could also be made to A World Fit for Children, a declaration in which the world pledged to "respect the dignity and to secure the well-being of all children."⁴¹² Others focused on particular situations, such as the plight of street children,⁴¹³ child prostitution and pornography,⁴¹⁴ and children in armed conflict.⁴¹⁵ The Security Council has adopted a few general resolutions on this last issue.⁴¹⁶

Old age is a matter of concern at the other end of life. This became a hot topic especially in the 1990s.⁴¹⁷ In 1991, the Assembly adopted the United Nations

⁴⁰⁹ See also Philip Alston, "Unborn Child and Abortion under the Draft Convention on the Rights of the Child" (1990).

⁴¹⁰ Article 37, Convention on the Rights of the Child.

⁴¹¹ World Declaration on the Survival, Protection and Development of Children, adopted at the World Summit for Children, held in New York on 30 September 1990, UNDoc. A/45/625, distributed 18 October 1990. The aim was essentially to work together in order to "to give every child a better future" (para. 1). According to the declaration, "the children of the world [were] innocent, vulnerable and dependent," and "their time should be one of joy and peace, of playing, learning and growing" (para. 2). To accomplish this, the States committed themselves to a list of very generally formulated tasks.

⁴¹² A world fit for children, annexed to General Assembly resolution S-27/2, adopted 10 May 2002, para. 4. See also the objective to "leave no child behind," which is defined as: "each girl and boy is born free and equal in dignity and rights; therefore, all forms of discrimination affecting children must end" (para. 7). See also the Declaration of the commemorative high-level plenary meeting devoted to the follow-up to the outcome of the special session on children, General Assembly resolution 62/88, adopted 13 December 2007, in which various commitments were reaffirmed.

⁴¹³ Plight of street children, General Assembly resolution 47/126, adopted 18 December 1992.

⁴¹⁴ Need to adopt efficient international measures for the prevention of the sale of children, child prostitution and child pornography, General Assembly resolution 48/156, adopted 20 December 1993. This ultimately led to the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, annexed to General Assembly resolution 54/263, adopted 25 May 2000. It entered into force on 18 January 2002.

⁴¹⁵ Protection of children affected by armed conflicts, General Assembly resolution 48/157, adopted 20 December 1993. This ultimately led to the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, also annexed to General Assembly resolution 54/263, adopted 25 May 2000. This protocol entered into force on 12 February 2002.

⁴¹⁶ Security Council resolution 1261 (1999), adopted 25 August 1999. The Council usually deals with specific conflicts, not general and abstract issues.

⁴¹⁷ In 1982, the Assembly already "endorsed" the Vienna International Plan of Action on Ageing. See Question of aging, General Assembly resolution 37/51, adopted 3 December 1982.

Principles for Older Persons.⁴¹⁸ Aware of the fact that “in all countries, individuals are reaching an advanced age in greater numbers and in better health than ever before,” it encouraged States to incorporate certain principles in their domestic policy to ensure the independence of the elderly, their continued participation and integration in the community, their access to health care and other forms of care, their access to resources and opportunities for their continued development, and respect for their inherent dignity. With regard to dignity, the principles stated that “older persons should be able to enjoy human rights and fundamental freedoms when residing in any shelter, care or treatment facility, including full respect for their dignity, beliefs, needs and privacy and for the right to make decisions about their care and the quality of their lives,” and that they “should be able to live in dignity and security and be free of exploitation and physical or mental abuse.”⁴¹⁹

In 1992, the Assembly adopted a Proclamation on Ageing.⁴²⁰ In this resolution, it used very strong words to stress the acute nature of the problem. For example, it referred to the “unprecedented ageing of populations taking place throughout the world,” and the “revolutionary change in the demographic structure of societies,” which required a “fundamental change in the way in which societies organize their affairs.”⁴²¹ As part of the solution, it urged the international community, *inter alia*, to support national initiatives on ageing so that, among many other goals, “older persons [were] viewed as contributors to their societies and not as a burden.”⁴²²

6.3 Persons with disabilities

In 1971, the Assembly proclaimed that “the mentally retarded person ha[d], to the maximum degree of feasibility, the same rights as other human beings.”⁴²³ The general aim of the Declaration on the Rights of Mentally Retarded Persons was to emphasize the “necessity of assisting mentally retarded persons to develop their abilities in various fields of activities and of promoting their integration as far as possible in normal life.”⁴²⁴ Therefore they had a right to medical care, to a decent

⁴¹⁸ United Nations Principles for Older Persons, annexed to Implementation of the International Plan of Action on Ageing and related activities, General Assembly resolution 46/91, adopted 16 December 1991.

⁴¹⁹ *Idem*, paras. 14 and 17. Para. 18 added that “older persons should be treated fairly regardless of age, gender, racial or ethnic background, disability or other status, and be valued independently of their economic contribution.”

⁴²⁰ Proclamation on Ageing, annexed to General Assembly resolution 47/5, adopted 16 October 1992.

⁴²¹ *Idem*, Preamble.

⁴²² *Idem*, Article 2(d).

⁴²³ Para. 1, Declaration on the Rights of Mentally Retarded Persons, General Assembly resolution 2856 (XXVI), adopted 20 December 1971. The Declaration did not define the term “mentally retarded.”

⁴²⁴ *Idem*, Preamble.

standard of living, and a right to work as far as their capabilities allowed them to do so.⁴²⁵

In 1991, the Assembly adopted the Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care.⁴²⁶ It proclaimed that “all persons with a mental illness, or who are being treated as such persons, shall be treated with humanity and respect for the inherent dignity of the human person.”⁴²⁷ The Assembly also emphasized that persons with a mental illness had the right to exercise all internationally recognized human rights, and had the right to “live and work, to the extent possible, in the community.”⁴²⁸

The Assembly did not limit itself to mentally retarded persons and people suffering from mental illness. In 1975, the General Assembly adopted a Declaration on the Rights of Disabled Persons.⁴²⁹ The term “disabled person” was defined

As any person unable to ensure by himself or herself, wholly or partly, the necessities of a normal individual and/or social life, as a result of deficiency, either congenital or not, in his or her physical or mental capabilities.⁴³⁰

Thus it also included the category of *mentally* retarded persons. According to the Declaration, “disabled persons ha[d] the inherent right to respect for their human dignity,” which meant in practice that “disabled persons, whatever the origin, nature and seriousness of their handicaps and disabilities, ha[d] the same fundamental rights as their fellow-citizens of the same age, which implic[d] first and foremost the right to enjoy a decent life, as normal and full as possible.”⁴³¹

In 1993, serious steps had already been taken towards drawing up a convention on disabilities. Initially, the proposal for this convention failed to materialize because “in the opinion of many representatives, existing human rights documents guaranteed persons with disabilities the same rights as other persons.”⁴³² Therefore as a first step, the Assembly adopted a set of Standard Rules on the Equalization of Opportunities for Persons with Disabilities.⁴³³ These rules were not legally binding as such, but the idea was that they would become customary

⁴²⁵ See *idem*, Articles 2 and 3.

⁴²⁶ Principles for the protection of persons with mental illness and the improvement of mental health care, General Assembly resolution 46/119, adopted 17 December 1991.

⁴²⁷ *Idem*, Principle 1(2).

⁴²⁸ *Idem*, Principle 1(5) and 3.

⁴²⁹ Declaration on the Rights of Disabled Persons, General Assembly resolution 3447 (XXX), adopted 9 December 1975.

⁴³⁰ *Idem*, Article 1.

⁴³¹ *Idem*, Article 3.

⁴³² Para. 9, Standard rules on the equalization of opportunities for persons with disabilities, annexed to General Assembly resolution 48/96, adopted 20 December 1993.

⁴³³ *Idem*.

international law.⁴³⁴ The purpose of the rules was “to ensure that girls, boys, women and men with disabilities, as members of their societies, may exercise the same rights and obligations as others.”⁴³⁵ This purpose could be achieved through the equalization of opportunities, a process which was described as “the process through which the various systems of society and the environment, such as services, activities, information and documentation, are made available to all, particularly to persons with disabilities.”⁴³⁶

Despite the initial hesitations, the Assembly adopted the Convention on the Rights of Persons with Disabilities in 2006.⁴³⁷ The purpose of this Convention was to “promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity.”⁴³⁸ Unlike many other human rights conventions, this Convention elaborated on human dignity, by declaring as one of the general principles the “respect for inherent dignity, individual autonomy including the freedom to make one’s own choices, and independence of [all] persons.”⁴³⁹ The Convention did not contain a definition of “disability.” It mainly consisted of a list of already recognized human rights, such as the right to be free from torture, the right to life, liberty, and security of person, the right to education, health, work, and an adequate standard of living, all of which were adapted to the special needs of disabled people. A Committee on the Rights of Persons with Disabilities was established to monitor the promotion and respect of the rights contained in the Convention.⁴⁴⁰

The category of disabled persons is substantial. In 1982, the Assembly estimated that “no less than five hundred million persons are estimated to suffer from disability of one form or another, of whom four hundred million are estimated to be in developing countries.”⁴⁴¹ About ten years later, the Assembly noted that “the number of persons with disabilities in the world [was] large and [was] growing.”⁴⁴² This is still the case, approximately fifteen years later. In 2009, the

⁴³⁴ *Idem*, para. 14.

⁴³⁵ *Idem*, para. 15. In para. 16, disabled persons were defined as people suffering from various “functional limitations.”

⁴³⁶ *Idem*, para. 24.

⁴³⁷ Convention on the Rights of Persons with Disabilities, annexed to General Assembly resolution 61/106, adopted 13 December 2006.

⁴³⁸ *Idem*, Article 1.

⁴³⁹ *Idem*, Article 3(a).

⁴⁴⁰ Optional Protocol to the Convention on the Rights of Persons with Disabilities, attached to General Assembly resolution 61/106, adopted 13 December 2006, UNDoc. A/RES/61/106. The protocol entered into force 3 May 2008, and allows the Committee to receive individual complaints.

⁴⁴¹ Preamble, World Programme of Action concerning Disabled Persons, General Assembly resolution 37/52, adopted 3 December 1982.

⁴⁴² Standard rules on the equalization of opportunities for persons with disabilities, annexed to General Assembly resolution 48/96, adopted 20 December 1993, para. 1.

World Health Organization estimated that there were about 650 million people with disabilities in the world, which is approximately ten per cent of the world's population.⁴⁴³ 80 per cent of these people live in developing countries.⁴⁴⁴

6.4 Migrants, minorities and indigenous peoples

Some individuals are vulnerable to human rights abuses because they are part of a particular group. This applies especially for foreign migrants, and individuals belonging to a minority or an indigenous population. The Assembly regarded the protection of these individuals as essentially a human rights issue, meaning that the protection granted to these groups was granted, not just to the group itself, but above all to the individuals in that group. Essentially this meant that individual migrants, individuals of minority groups, and individuals of the indigenous population were granted special protection. As soon as a minority group or a group of indigenous people can be qualified as a "people," such groups have a right of self-determination. In that sense, the protection of such groups goes beyond the protection of the human dignity of the individuals comprising that group.⁴⁴⁵

In 1990, the Assembly signalled a need to "ensure the human rights and dignity of all migrant workers and their families." It adopted the International Convention on the Protection of the Rights of all Migrant Workers and Members of Their Families.⁴⁴⁶ The Convention defined a "migrant worker" as a person "engaged in a remunerated activity in a State of which he or she is not a national."⁴⁴⁷ The Convention not only emphasized that migrants had human rights just like anyone else, but it also sought to provide special protection for such individuals.⁴⁴⁸

⁴⁴³ See World Health Organization's World Report on Disability and Rehabilitation, available on its website: http://www.who.int/disabilities/publications/concept_note_2009.pdf.

⁴⁴⁴ Realizing the Millennium Development Goals for persons with disabilities through the implementation of the World Programme of Action concerning Disabled Persons and the Convention on the Rights of Persons with Disabilities, General Assembly resolution 63/150, adopted 18 December 2008.

⁴⁴⁵ This will be discussed in Chapter VII on self-determination of peoples, section on minority groups (4.5).

⁴⁴⁶ International Convention on the Protection of the Rights of all Migrant Workers and Members of Their Families, General Assembly resolution 45/158, adopted 18 December 1990. Already in the 1970s, the Assembly adopted resolutions on the violation of the human dignity of foreign immigrants, in Europe and elsewhere. See *e.g.*, Exploitation of labour through illicit and clandestine trafficking, General Assembly resolution 2920 (XXVII), adopted 15 November 1972; and, specifically on migrant workers, Measures to improve the situation and ensure the human rights and dignity of all migrant workers, General Assembly resolution 32/120, adopted 16 December 1977.

⁴⁴⁷ Article 2, International Convention on the Protection of the Rights of all Migrant Workers.

⁴⁴⁸ It thus listed the already recognized human rights, but described them as they applied to the particular situation of the migrant worker. In doing so, the Convention made a distinction between migrants that were "authorized to enter, to stay and to engage in a remunerated activity in the State of

The Assembly's concern with the plight of minorities ultimately led to the adoption in 1992 of a Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities.⁴⁴⁹ According to this declaration, "persons belonging to national or ethnic, religious and linguistic minorities [had] the right to enjoy their own culture, to profess and practice their own religion, and to use their own language, in private and in public, freely and without interference or any form of discrimination."⁴⁵⁰ This Declaration followed the provision in the International Covenant on Civil and Political Rights, which stated that "in those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language."⁴⁵¹

In 2007, the Assembly adopted the United Nations Declaration on the Rights of Indigenous Peoples.⁴⁵² Although the Assembly had referred to the plight of indigenous peoples in earlier resolutions, the adoption of this Declaration in 2007 showed the increased interest there had been in the issue in recent years.⁴⁵³ Like any other human rights declaration, the Declaration stressed that indigenous peoples had a right to have their dignity respected, and that they were entitled to enjoy their human rights just like anyone else.⁴⁵⁴ Although the declaration described its own provisions as "minimum standards for the survival, dignity and well-being of the indigenous peoples of the world," the declaration was rather extensive and went much further than merely the protection of the human rights of the individuals belonging to such indigenous peoples.⁴⁵⁵ It provided all kinds of special rights and

employment" and those that were not so authorized. Although the former group had some more extensive rights, the most basic human rights applied to all migrant workers. Compare Part IV: Other Rights of Migrant Workers and Members of their Families who are Documented or in a Regular Situation with Part III: Human Rights of All Migrant Workers and Members of their Families of the International Convention on the Protection of the Rights of all Migrant Workers

⁴⁴⁹ Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities, annexed to General Assembly resolution 47/135, adopted 18 December 1992.

⁴⁵⁰ *Idem*, Article 2.

⁴⁵¹ International Covenant on Civil and Political Rights, Article 27.

⁴⁵² United Nations Declaration on the Rights of Indigenous Peoples, General Assembly resolution 61/295, adopted 13 September 2007 ("Declaration on the Rights of Indigenous Peoples").

⁴⁵³ Apart from paragraphs in more general resolutions about racism and racial discrimination, the International Year for the World's Indigenous People, General Assembly resolution 46/128, adopted 17 December 1991, can also be referred to, to which was annexed the Programme of Activities for the International Year for the World's Indigenous People; International Decade of the World's Indigenous People, General Assembly resolution 48/163, adopted 21 December 1993, and the Programme of activities for the International Decade of the World's Indigenous People, annexed to General Assembly resolution 50/157, adopted 21 December 1995. See also para. 20, Vienna Declaration and Programme of Action.

⁴⁵⁴ See Declaration on the Rights of Indigenous Peoples, especially Articles 1, 2, and 15.

⁴⁵⁵ *Idem*, Article 43.

privileges to indigenous peoples as a group so that they could maintain their traditional way of life and develop their cultural heritage.⁴⁵⁶

6.5 Conclusion

Certain groups are particularly vulnerable to human rights abuses, and are in particular need of assistance to enable them to enjoy their human rights. This applies to children and elderly people, but also to persons with disabilities. The Disabilities Convention in particular made an explicit link with the global value of human dignity. The special protection of various groups of individuals who were particularly vulnerable to human rights abuses was also examined, including migrants, minorities and indigenous peoples. The special protection of all vulnerable groups gives extra meaning to the value of human dignity by emphasizing the universal applicability of the value, and by showing that the implementation of this value requires different actions, depending on the vulnerability of the individuals concerned to attacks on their human dignity.

Various declarations and conventions appear to grant certain human rights only to one particular group of persons. Such a selective approach is in conflict with the idea that all human beings have the same entitlements. A closer look at the description of the rights granted to specific groups in these documents shows that the vulnerable groups are not granted any new rights at all. What is new is the obligation of States to make an extra effort to ensure that persons belonging to vulnerable groups can enjoy their human rights, just like everyone else. The child has the right to be part of a family, but so do adults. The difference is that the child is much more vulnerable, and needs special care. The elderly have the right to healthcare, but so do young people. The disabled have the right to an adequate standard of living, but so does everyone else. And persons belonging to ethnic minorities have the right to enjoy their own culture, just like persons belonging to the ethnic majority. Most importantly, all vulnerable groups have the right to respect for their intrinsic human dignity, just like everyone else. The difference is that States must make an extra effort to ensure such respect for particularly vulnerable persons.

⁴⁵⁶ The Declaration on the Rights of Indigenous Peoples listed a number of human rights, most of which were collective rights, which can be enjoyed only by the group of indigenous people, not by indigenous individuals acting in isolation. This makes it an unusual human rights declaration. Even the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities does not share this characteristic.

7 CONCLUSION

A world in which the intrinsic human dignity of all the world's citizens is respected and secured is a better world for all. During the Second World War, entire groups of people were dehumanized, and this showed the importance of universal respect for the global value of human dignity. Just after the war, there was some dispute about the exact interpretation of the value, and there were heated debates about the best way to secure its promotion and respect. But there was no objection to the value itself. The basic idea, that all human beings had to be treated with dignity, precisely because they were human beings, was universally accepted.

At the same time, without further elaboration, the idea that human beings have to be treated with dignity seems rather meaningless. Therefore the United Nations took it upon itself to draw up a list of specific entitlements based on the value of human dignity: a list of human rights. In San Francisco, it was decided to postpone the task of codifying a list of universal rights. Once the General Assembly had been established it started to work on this grandiose task. It began by listing the entitlements that arise from the value of human dignity. It used its resolutions to issue declarations, listing the human rights that can be derived directly from the value of human dignity. These declarations have almost all been transformed into multilateral treaties, which significantly increased their capacity to motivate action. These human rights have proved to be flexible enough to cope with the changing times.

The development and codification of the catalogue of human rights and the promotion of universal respect for human dignity have been one of the biggest success stories of the United Nations, when it comes to promoting and developing ideas. Initially the main source of these ideas was the United Nations Commission on Human Rights. Its ideas were often adopted by the international community as a whole through Assembly resolutions, and even international treaties. After several successful years in which the Commission focused on the codification of human rights, it was much less successful at promoting compliance with these rights, and it was subsequently abolished and replaced by the Human Rights Council.

The main aim of this chapter was to show that the value of human dignity, albeit without explicit definition, was used as the foundation for all human rights. This has been the approach of the Assembly since the very beginning, and it has also been embraced in scholarly (philosophical) literature.

The catalogue of human rights was first presented in the Universal Declaration of Human Rights adopted in 1948, and was elaborated in more detail by the Assembly as time progressed. Human rights were divided into four separate subcategories: personal freedom, the freedom to associate with others, spiritual freedom, and the freedom to secure for oneself an adequate standard of living. What all these rights had in common was their foundation in human dignity.

Furthermore, it was shown that the fact that human rights could be derived from the value of human dignity, also had as a logical consequence that human rights were universal, in the sense that they applied to all human beings, everywhere, and in all situations. This in turn led to the conclusion that no distinction could be made on the basis of race or gender, and that human rights continued to apply, even in situations of armed conflict, and even during the fight against terrorism. Nevertheless, it was suggested that some room should be provided for local cultures to integrate human rights in their particular policies, and that local communities should have some flexibility in doing so. The slogan “universality does not mean uniformity” is often used in this context. It does not follow from the universality of human rights that there cannot be any differences whatsoever in the practical implementation of these rights.⁴⁵⁷

Finally, this chapter looked at the work of the Assembly in promoting special protection for particularly vulnerable groups, such as children, the elderly and disabled people. The Assembly based the need of these groups for special protection explicitly on human dignity. The same can be said for the special protection of various groups of individuals who are particularly vulnerable to human rights abuses, such as migrants, minorities and indigenous peoples.

Although the UN General Assembly never defined the value of human dignity, the frequent references to it have provided sufficient ammunition for some scholars to work with. The UN has made it clear that it regards human dignity as something inherent. All human beings are automatically entitled to universal respect for their inherent dignity. The Assembly also related the value of human dignity to individual autonomy, the freedom of individual people to make choices that determine the course of their own lives. As early as 1948, the Assembly stated that all human beings were born free and equal in dignity. The list of rights provides further hints of exactly what the UN believed the value of human dignity to entail. All in all, the Assembly has been relatively outspoken on the subject of human dignity. Some scholars have used these UN documents as the basis for their reflections on human dignity and human rights. The UN can use this scholarly work for a better understanding of the value it helped to create, and to guarantee coherence in the expansion of the human rights catalogue. The cross-fertilization between the UN and scholarship on the value of human dignity can encourage the UN to become more outspoken in its treatment of the other values. Scholarly discussion of a particular value, both within and outside the UN assembly halls, could also contribute to the UN’s more practical work. It can improve the coherence of the many action plans, and guarantee a certain unity in the Organization’s daily work.

⁴⁵⁷ See e.g., Advisory Council on International Affairs of the Netherlands, *Universality of Human Rights: Principles, Practice and Prospects* (2008), p. 19.