



Universiteit
Leiden
The Netherlands

The United Nations and the Evolution of Global Values

Spijkers, O.

Citation

Spijkers, O. (2011, October 12). *The United Nations and the Evolution of Global Values*. *School of Human Rights Research Series*. Intersentia, Antwerpen. Retrieved from <https://hdl.handle.net/1887/17926>

Version: Not Applicable (or Unknown)

License: [Licence agreement concerning inclusion of doctoral thesis in the Institutional Repository of the University of Leiden](#)

Downloaded from: <https://hdl.handle.net/1887/17926>

Note: To cite this publication please use the final published version (if applicable).

The United Nations, the Evolution of Global Values and International Law

PROEFSCHRIFT

ter verkrijging van
de graad van Doctor aan de Universiteit Leiden,
op gezag van Rector Magnificus prof. mr. P.F. van der Heijden,
volgens besluit van het College voor Promoties
te verdedigen op woensdag 12 oktober 2011
klokke 15.00 uur

door

Otto Spijkers

geboren te Voorburg

in 1979

Promotiecommissie:

Promotor: prof. dr. N.J. Schrijver

Co-promotor: dr. J.J.G. van der Bruggen (The Hague Institute for Global Justice)

Overige leden: prof. dr. W.J.M. van Genugten (Universiteit Tilburg)
prof. dr. P.A. Nollkaemper (Universiteit van Amsterdam)
prof. dr. J.P. Pronk (International Institute of Social Studies of Erasmus University Rotterdam)
prof. dr. T.J.M. Mertens (Universiteit Leiden en Radboud Universiteit Nijmegen)
prof. dr. A. van Staden

The United Nations,
The Evolution of Global Values
and International Law

SCHOOL OF HUMAN RIGHTS RESEARCH SERIES, Volume 47

The titles published in this series are listed at the end of this volume.



Antwerp – Oxford – Portland

This study was made possible with financial support from the Netherlands Organisation for Scientific Research (NWO).

Intersentia Ltd
Trinity House | Cambridge Business Park | Cowley Road
Cambridge | CB4 0WZ | United Kingdom
mail@intersentia.co.uk

Otto Spijkers
The United Nations, the Evolution of Global Values and International Law

Cover image: © Victor Spijkers

ISBN 978-1-78068-036-1
NUR 820

© 2011 Intersentia
www.intersentia.com | www.intersentia.co.uk

British Library Cataloguing in Publication Data. A catalogue record for this book is available from the British Library.

No part of this book may be reproduced in any form, by print, photoprint, microfilm or any other means, without written permission from the publisher.

ACKNOWLEDGEMENTS

First of all, I wish to thank my two supervisors, Professor Nico Schrijver and Dr. Koos van der Bruggen. They set up the research project on the United Nations and the Evolution of Global Values of which this study is also a product. They urged me to meet the deadlines, focus on the research question, study the literature and delve into the archives of the United Nations Organization. It was a fascinating journey through sixty-something years of UN ideas. They have also given me the liberty to go out and explore the international academic community, not just by familiarizing myself with the literature, but also by encouraging me to present my cosmopolitan - and perhaps somewhat naïve - thoughts at conferences all around the world.

Over the years, I have come to consider my two supervisors as my academic fathers. And like any child, I often wanted to rebel against them. I have enjoyed our cooperation tremendously. Whenever I needed advice, I could always be sure to receive a reply, be it in conversations at Leiden or Oegstgeest, or in the form of short email messages coming from places such as Geneva, New York, Kuala Lumpur, and the Hainan Island in the South China Sea. And if either of them ever again forgets his keys and wallet after a fancy dinner and needs a ride home in my minuscule car, he is free to call upon me.

Many of the ideas we developed were “tested” in a course called World Law, which Professor Schrijver and I set up and taught at Leiden University’s Law Faculty. I have benefited a great deal from the critical remarks of the World Law students. We also organized a national workshop at Leiden University and an international conference in the Peace Palace on the theme of the United Nations and global values. The reflections of the participants of both the workshop and the conference have been enlightening.

I also wish to express my appreciation to Professors Willem van Genugten, Andre Nollkaemper, Jan Pronk, Thomas Mertens and Alfred van Staden for serving as members of the thesis committee and raising pertinent questions. I acknowledge with gratitude the skilful editing of the text by Tony Langham and Plym Peters.

I want to thank all my colleagues at Leiden University’s Grotius Centre, in particular the three people I had the pleasure of sharing an office with: Lennert Breuker, Daniëlla Dam-de Jong, and Anna Gouwenberg. I want to thank Professors Niels Blokker, John Dugard, Larissa van den Herik and all the other colleagues for the daily lunch talk. Professor Fred van Staden played his role as professor of international relations in the faculty of international law brilliantly, by reminding his colleagues – me included – of the importance of politics, power, and economic

Acknowledgements

relations. And I want to thank my colleagues at the Peace Palace Library, especially its Director Jeroen Vervliet, for the time and encouragement they have given me.

The research project was made possible by the Netherlands Organization for Scientific Research (NWO). I want to thank the NWO, and Jasper Roodenburg especially.

I also wish to thank the professors that introduced me to the law of the United Nations and to international law. It was Professor André Nollkaemper of the University of Amsterdam who got me fascinated by international law in the first place. I would also like to thank Professor Martti Koskenniemi, who taught a course at New York University Law School about the rise and fall of international law. It was especially the last lecture, about the fall of international law, which motivated me to think about – and doubt – the purpose and use of the language of international law. Fortunately, Koskenniemi showed great sympathy for the “tragic heroes,” like Lauterpacht, who continued to believe in international law against all odds and against better judgment. Perhaps one of these “tragic heroes” was my other teacher at NYU, Professor Thomas Franck, who taught a course about the Constitutional Law of the United Nations together with Simon Chesterman. It was during the time of the 2003 Iraq invasion, in which the authority of the UN was largely ignored by the USA. Professor Franck often stood up in the middle of our seminars to defend the United Nations against various accusations from his highly critical students. Needless to say that his ideas have greatly influenced this study.

And I want to thank Hanna Dreifeldt and Pierre Bodeau-Livinec, my supervisors, and all my other former colleagues at the Codification Division of the Office of Legal Affairs of United Nations Headquarters. Thanks also go to my former colleagues at the Appeals Chamber Support Unit of the International Criminal Tribunal for Rwanda, especially Roman Boed and Laetitia Husson, and judge Inés Mónica Weinberg de Roca. Finally, I would like to thank all my fellow interns, both in New York and The Hague, for showing me what it means to be a part of the global UN community.

Last but not least, I want to thank my family, and especially my parents, Peter and Betty. They have supported me from the day I was born, and they never stopped doing so. Special thanks go to my brother Victor. My gratitude to you all is so gigantic that it cannot really be translated into words, so I’d rather not try to do so here. But I wish to dedicate this study to all of you.

TABLE OF CONTENTS

Acknowledgements
Table of Contents

v
vii

PART 1

Chapter I Introduction

3

1	Presentation of the problem	4
2	Research question	6
3	Methodology	7
4	Outline of the argument per chapter	9
4.1.	Global values	9
4.2.	Global values and the United Nations	9
4.3.	The role of the United Nations in the evolution of global values	10

Chapter II Global Values

13

1.	A definition of global values	13
2.	Values as preferences of the international community	20
2.1.	The global community as an ideal: cosmopolitanism	21
2.2.	The reality of the global community: globalization	26
2.3.	Local communities in the global community	31
2.4.	Conclusion	34
3.	A global discussion to determine global values	34
3.1.	The need for a discussion that involves the entire global community	35
3.2.	The need for rules of communication to ensure a genuine discussion	36
3.3.	Values and interests	38
3.4.	The need for a discussion as a motivation for action	39
3.5.	Conclusion	42
4.	A description of the “preferable” world	42

vii

Table of Contents

4.1.	Perceived shortages as the primary source of global values	43
4.2.	A list of global values	45
4.3.	The evolution of global values	50
4.4.	Global values and the belief in progress	52
5.	Responsibility for the realization of global values	53
5.1.	Who is responsible for promoting and safeguarding global values?	54
5.2.	Global values as the driving force for global governance	55
6.	Conclusion	57
Chapter III United Nations Decision Making as Value-based Decision Making		59
1.	Introduction	59
2.	The United Nations Charter: the result of global discussion	59
2.1.	Introduction	59
2.2.	The drafting of the UN Charter as a global discussion	60
2.3.	The UN Charter as a value-based document	68
2.4.	The United Nations Charter as a document to motivate action	73
2.5.	The evolution of the United Nations Charter	79
2.6.	Conclusion	81
3.	General Assembly resolutions as the result of global discussion	81
3.1.	Introduction	81
3.2.	The Assembly's competence to discuss UN values, purposes and principles	83
3.3.	The General Assembly as a forum for global discussion	89
3.4.	The Assembly's rules of communication to ensure genuine discussion	96
3.5.	The General Assembly resolutions as a motivation for action	99
3.6.	The contribution of other UN organs to the global discussion	126
3.7.	Conclusion	134
4.	Responsibility for the realization of the norms and values of the UN Charter	135
4.1.	Introduction	135
4.2.	The United Nations Organization	136
4.3.	United Nations Member States	141
4.4.	Conclusion	144
5.	Conclusion	145

PART 2	147
Chapter IV	
Peace and Security	149
1. Introduction	149
1.1. The Security Council's role in the evolution of the value of peace and security	150
2. Peace and Security in San Francisco	153
2.1. The Preamble	153
2.2. The Purpose	154
2.3. The Principle	162
3. The search for a substantive definition of international peace and security	164
3.1. Introduction	164
3.2. Peace and security defined in positive terms	164
3.3. Conclusion	167
4. The use of force as a threat to international peace and security	167
4.1. Introduction	167
4.2. The prohibition on the use of force	167
4.3. Aggression and the prohibition on the use of force	173
4.4. Conclusion	175
5. Other threats to international peace and security	176
5.1. Introduction	176
5.2. Domestic conflicts and genocide	176
5.3. Apartheid	178
5.4. The arms race	180
5.5. Hijackers, hostage takers, mercenaries and terrorists	187
5.6. Conclusion	193
6. The root causes of threats to international peace and security	193
6.1. Introduction	193
6.2. Diseases of mass destruction	194
6.3. Poverty and underdevelopment	195
6.4. Climate change	198
6.5. Conclusion	199
7. The human right to peace and security	201
7.1. Introduction	201
7.2. The right to peace	202
7.3. Human security	203
7.4. Conclusion	213
8. Conclusion	213

Chapter V	
Social Progress and Development	215
1. Introduction	215
1.1. Putting the role of the UN into perspective	216
1.2. The role of the Economic and Social Council	217
2. Social progress and development in San Francisco	220
2.1. The Preamble	220
2.2. The Purpose	220
2.3. The Principle	225
3. Social progress and development	226
3.1. Introduction	226
3.2. The First United Nations Development Decade	231
3.3. The Second United Nations Development Decade	234
3.4. The Third United Nations Development Decade	240
3.5. The Fourth United Nations Development Decade	241
3.6. The Millennium Declaration	244
3.7. Conclusion	251
4. Emergency assistance	252
4.1. Introduction	252
4.2. Natural disasters and other humanitarian emergencies	253
4.3. Conclusion	255
5. Sustainable development	255
5.1. Introduction	255
5.2. The earth as a resource or as something of intrinsic value?	257
5.3. The rise of the three-pillar temple of sustainable development	261
5.4. Self-determination as the basis for the principle of non-intervention	
5.5. Conclusion	268
6. The right to development	269
6.1. Introduction	269
6.2. A rights-based approach prior to the Declaration on the Right to Development	272
6.3. The Declaration on the Right to Development	273
6.4. A rights-based approach after the Declaration on the Right to Development	276
6.5. Conclusion	280
7. Conclusion	280

Chapter VI	
Human Dignity	283
1. Introduction	283
1.1. The role of the Commission on Human Rights and the Human Rights Council	284
2. Human dignity in San Francisco	285
2.1. The Preamble	285
2.2. The Purpose	286
2.3. The Universal Declaration of Human Rights	289
2.4. The Principle	291
3. The conceptual basis of human rights	293
3.1. Introduction	293
3.2. Prevention of the recurrence of past wrongs	293
3.3. The search for a definition of human dignity	295
3.4. Human dignity as the basis for human rights	300
3.5. The humanization of international law	303
3.6. Conclusion	306
4. The content of human rights	307
4.1. Introduction	307
4.2. The evolution of the contents of human rights	308
4.3. The categorization of human rights	310
4.4. Personal freedom	311
4.5. The freedom to associate with others	316
4.6. Spiritual freedom	322
4.7. The freedom to secure for oneself an adequate standard of living	323
4.8. Conclusion	326
5. The worldwide, continuous and equal application of human rights	326
5.1. Introduction	326
5.2. Equal rights and dignity for all	328
5.3. Equal rights and dignity for men and women	332
5.4. Cultural particularities and human rights	335
5.5. Human rights in difficult times	339
5.6. Conclusion	342
6. Human rights of particularly vulnerable groups	343
6.1. Introduction	343
6.2. Children and elderly people	343
6.3. Persons with disabilities	346
6.4. Migrants, minorities and indigenous peoples	349
6.5. Conclusion	351
7. Conclusion	352

Chapter VII

The Self-determination of Peoples	355
1. Introduction	355
2. The self-determination of peoples in San Francisco	356
2.1. The self-determination of peoples	356
2.2. The self-determination of peoples organized as a State (sovereignty)	361
3. The UN Charter system	371
3.1. Introduction	371
3.2. The Trusteeship Council and the trust territories	371
3.3. Non-self-governing territories	374
3.4. Conclusion	377
4. The right of peoples to self-determination	378
4.1. Introduction	378
4.2. Definition of “peoples” entitled to self-determination	379
4.3. The self-determination of colonial peoples	382
4.4. The self-determination of entire populations of an independent State	387
4.5. The self-determination of minority peoples	390
4.6. Arguments about various peoples’ claims to self-determination	402
4.7. Conclusion	406
5. The right of States to self-determination	409
5.1. Introduction	409
5.2. The self-determination of peoples organized in a State	410
5.3. The independence of States and the prohibition of inter-State intervention	414
5.4. Conclusion	432
6. The human right to self-determination	433
6.1. Introduction	433
6.2. Article 1 of the Covenants	435
6.3. Conclusion	442
7. Conclusion	442

Chapter VIII

Conclusion	447
Samenvatting (Dutch Summary)	463
Curriculum vitae	477
Bibliography	479
Index	517
School of Human Rights Research Series	521