

The 1948 Universal Declaration of Human Rights (UDHR) and the United Nations (UN) in development: Conceptual, Institutional, Operational

The end of World War II was capped significantly by the establishment of the UN organization which is still at the apex of multilateralism today. One of the key tenets of its work has been to foster respect for human rights, together with many other essentials such as international peace and security, and these components are laid out generally in the UN Charter. Yet, the elements of human rights were not singled out in the Charter and it was later the task of the UDHR, based on a Resolution of the UN General Assembly (GA) adopted in 1948, to identify and list a number of key rights of a global nature. This was the beginning of normative cartography locating civil, political, economic, social and cultural rights, such as freedom of expression and social security, in the concept of non-discrimination of universal import. These were the basic minimum benchmarks to which all countries should aspire, especially at the national level.

Stocktaking of developments can thus perhaps be divided into three phases: late 1940s-early 1990s, early 1990s-early 2000s, early 2000s ("2000 plus") and beyond.

The late 1940s till the early 1990s were a time of gestation. The first international human rights treaty of a binding nature, vested with a monitoring body, was the Convention for the Elimination of all Forms of Racial Discrimination (CERD). This was followed by others, now numbering 9 key human rights treaties. All Asia-Pacific countries are parties to the Convention on the Rights of the Child, with a large number also as members of the women's Convention (CEDAW) and the persons with disabilities' Convention (CRPD). This was also a period for initiating global human rights programming, such as to promote human rights education, and the UN Centre for Human Rights started to function in the 1980s as the secretariat for the primary organ dealing with human rights – the UN Commission on human rights based in Geneva, under the UN Economic and Social Council.

The period was marked by at least 5 key features:

1. This was a time of the Cold War between capitalist and socialist countries (at times dichotomized as West versus East), with the former highlighting civil and political rights contrasting with the latter's emphasis on economic, social and cultural rights, leading to the split of the potentially main human rights treaty into two Covenants: International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Cultural Rights (ICESCR).
2. The decolonization process was taking place, leading to the birth of new States. This would also lead to new voices desiring a more inclusive approach in the post-War system, exemplified by the propensity to advocate a new generation of rights, such as the right to development.
3. The beginnings of UN institutions on human rights, such as UN Special Procedures in the form of UN working groups and Special Rapporteurs to monitor human situations and advocate on behalf of victims, were witnessed. However, the pinnacle of the UN system, the UN Security Council (SC), would often be blocked by the veto exercised by one or more of its 5 permanent members for political reasons which also interrelated with serious human rights concerns.
4. Increasing claims of particularities emerged in the early 1990s, especially from some non-democratic Asian countries claiming that there were some regional and national specifics which

deserved to be highlighted more than some international human rights standards. Par excellence, this was the claim of “Asian values” such as the priority of family and collectivity over individuals, the prevalence of economic rights such as the right to food over political rights such as freedom of expression, and broad constraints on human rights under strong national Executive branch.

5. There would be greater attention concerning vulnerabilities facing particular groups, especially the call to address women’s issues, more emphatically in international law and relations.

The next phase of developments might be configured between the early 1990s and early 2000s’ period. The early 1990s were preceded by the end of the Cold War around 1989 with the fall of the Berlin Wall, but followed later by arguably the hot peace, meaning that other wars of a different nature would ensue, such as the Iraq-Kuwait war of 1991. Mini armed conflicts of a non-international nature would also proliferate on some continents such as in Africa, Asia and South America. A most traumatic event took place on September 11, 2001 when the Twin Towers in New York were attacked by terrorists leading to a war between the US and Afghanistan, with a huge backlash against terrorism worldwide, at times without adequate checks-and-balances.

This period was marked by at least 5 key developments:

1. The latest (and most recent) world conference on human rights took place in 1993. It adopted a global Declaration and Programme of Action (“The Vienna Declaration and Programme of Action”) opening doors to various developments below. Significantly it was preceded by various regional conferences which were a test case for key conceptual, normative issues as well as practical implementation. A heated debate was raging between the universality and indivisibility of human rights versus regional and national particularities. The governmental human rights Declaration from the Asia Pacific region in 1993 subjected universal standards to regional particularities while the non-governmental organizations’ “NGO Declaration” emphasized human rights universality and indivisibility as primordial. The NGO message was that “one set of rights cannot be used to bargain for another (set of rights)”, meaning that economic rights cannot prevail over political rights and that the former cannot be used to bargain for the latter, as they are all part of indivisible, universal rights. The compromise in Vienna was to state that while regional and national particularities are to be borne in mind, it is the duty of States to respect fundamental rights and freedoms, implying prevalence of universal/indivisible human rights over particularities.
2. A key consequence of the Vienna Programme was to advocate globally that “women’s rights are human rights”. This was to lead to much more attention on violence against women. Other groups deserving attention such as children, indigenous peoples, persons with disabilities, minorities and workers came to the fore more prominently. From 2001, reaction against terrorism would also test the relationship between rights and limits on rights, inflated by the conflation of war and terrorism under the ambivalent title of “war against terror”.
3. Institutional development has been key since 1993. The post of UN High Commissioner for Human Rights came into existence. The Centre for Human Rights which had been accustomed to servicing the Geneva-based Human Rights Commission became the Office of the UN High Commissioner for Human Rights (OHCHR) with a more outward-looking role to service countries at the field level beyond Geneva.

4. The call for regional and national human rights institutions to promote and protect human rights was responded to by the setting up of several national commissions in the Asia-Pacific region. The seeds for establishment of a Commission of the Association of Southeast Asian Nations (ASEAN) were sown during this time with various proposals and discussions on a mechanism for the ASEAN region.
5. Development and environmental issues emerged more evidently, especially with the adoption of the Global Millennium Development Goals (MDGs) 2000-2015. These were complemented by various environmental treaties, originating with the UN Framework Convention on Climate Change in 1992.

The most recent phase of developments ("2000 plus") can be traced back to the UN reform process under the World Outcome Document in 2005 when the UN Human Rights Commission was decommissioned and the UN Human Rights Council (HRC) was established with a number of other adjustments. In real terms, the UN SC remains the most powerful organ of the UN which can deal with human rights, but its potential has been impeded by the veto which is overexercised by the permanent 5 Powers, and the 2005 reform only touched this issue tangentially in regard to the notion of Responsibility to Protect mentioned below.

Five key developments since 2005 have been very salient, especially in relation to the implementation and operationalization of human rights, in a setting where the Asia-Pacific region is regrettably faced with more widespread authoritarianism vis a vis democratic aspirations and where civic and political space has been shrinking:

1. There is a whole range of consequences from the World Outcome Document 2005 which initiated key UN reforms. While the SC is unchanged in its format, the notion of Responsibility to Protect (R2P) was adopted partly to catalyse the SC and the UN as a whole to justify action to protect a country's population where the State of origin fails to do so in regard to mass atrocities. The R2P notion has been invoked often since, but enforcement measures under Chapter VII of the UN Charter have met difficulties with the veto power mentioned, while assistance-based, facilitative action under R2P has been more possible.
2. The mechanisms under the HRC have been expanded. Notably, the new Universal Periodic Review was introduced to vet the record of all countries on human rights without exception. Even though it is soft engagement, it is premised on the universality of monitoring without distinction and helps to counter the argument that human rights are applied discriminately as double standards. The range of UN Special Procedures has also expanded with the latest being the appointment of a UN Special Rapporteur on Climate Change. There is more integration of human rights in UN Country Teams and currently OHCHR has around 100 field presences in the form of regional offices, country offices and human rights advisers and related programmes. UN Resident Coordinators are now supposed to be more human-rights sensitive, with more human rights based developing planning and programming.
3. Development targets are enhanced by the global Sustainable Development Goals (SDGs) 2015-30 which are more human rights oriented. The issue of environmental protection and climate change has gained much more global weight, most recently with global conferences to mobilize action such as "COP 27" in 2022 which opened the door to a fund to help address environmental harm with compensation for developing countries. However, there is also the reservation of too much talk and little action under pervasive "green-washing".

4. The issue of accountability is more visible. On the one hand, there is the connectivity with a broader variety of actors, in particular the business sector, with the UN's adoption of the Guiding Principles on Business and Human Rights, calling for due diligence from businesses in their duty to respect human rights. On the other hand, there is the panorama of international criminal responsibility in the case of mass atrocities in relation to both government personnel and those from non-government armed groups, where the local setting is unable or unwilling to provide justice. There has been gradual operationalization of the International Criminal Court (ICC), preceded by various ad hoc courts. There are also more international Commissions of Inquiry on human rights which cover not only human rights but also the link with international humanitarian law and international criminal law. However, genuine accountability remains elusive, for example, many fugitives from justice escape the juridical and jurisdictional net of the ICC.
5. In 2020, the UN system issued a Call for Action on human rights highlighting key areas actually and prospectively. This was complemented in 2021 by the UN Secretary-Generals Roadmap for the totality of the UN under the title "Our Common Agenda". Admittedly, these initiatives have been disrupted by the COVID pandemic. However, the seven tenets of the Call for Action remain pertinent for the next phase of human rights development and practice, namely:
 - RIGHTS AT THE CORE OF SUSTAINABLE DEVELOPMENT, GUIDED BY THE SDGS;
 - RIGHTS IN TIMES OF CRISIS, SUCH AS TO AIM TO AVERT SUCH SITUATION AND TO ACTIVATE THE UN SYSTEM MORE EFFECTIVELY;
 - GENDER EQUALITY AND EQUAL RIGHTS FOR WOMEN, ESPECIALLY TO TACKLE DISCRIMINATION AND VIOLENCE;
 - PUBLIC PARTICIPATION AND CIVIC SPACE, TO BE SAFEGUARDED, INCLUDING MEDIA FREEDOMS;
 - RIGHTS OF FUTURE GENERATIONS, ESPECIALLY CLIMATE JUSTICE, ENHANCED BY THE UN GA'S RECENT ADOPTION OF THE RIGHT TO CLEAN, HEALTHY AND SUSTAINABLE ENVIRONMENT AND MORE IMPLEMENTATION TOOLS;
 - RIGHTS AT THE HEART OF COLLECTIVE ACTION, INCLUDING ON ACCOUNTABILITY ISSUES;
 - NEW FRONTIERS OF HUMAN RIGHTS, INCLUDING ON MIGRATION, BUSINESS AND HUMAN RIGHTS AND THE MOVE TOWARDS A DIGITAL COOPERATIVE ARCHITECTURE.

At this juncture, various issues under that global Call, pivotal for international-national partnership, deserve more attention: namely,

- Digitalization and its impact on human rights, especially in regard to data protection and privacy, and overbroad exceptions due to national security and seeping surveillance;
- Advent of new technologies, such as autonomous-killer robots and the need for regulation or prohibition;
- Connectivity between humanity, inter-generations and the total environmental ecosystem as part of shared survival and well-being.

As for the strategies to tackle all these issues, there is logically the call for more prevention and to deal with root causes of human rights violations, especially as linked with peace, democracy and sustainable development; protection of the rights of all persons without distinction so as to overcome any deficit and vacuum, enhanced by access to justice and the International Rule of Law; provision of accessible and empathetic services to help address people's vulnerabilities, including in relation to gender; remediation in relation to accountability of the transgressors and remedies/redress for survivors and

victims; and substantive participation of a broader range of stakeholders in the international and national setting, including respect for and protection of human rights defenders and civil society in relation to human rights work, and more human rights education.

In conclusion, the inspiring refrain of “We, the Peoples” as seminal words of the UN Charter acts as a recurrent reminder for human rights implementation, even though it remains unfulfilled on many fronts. 2023 is also the 75th Anniversary of the UDHR and 30th Anniversary of the Vienna World Conference and its Programme of Action. Poignantly, these instruments are now to be tested in a world where Artificial Intelligence, Robots and Simulated Reality are shaping the novel agenda of the day, at times marginalizing humans from the loop of progression and progress.

The value added of Human Rights, after all, is thus not only the material angle of human dignity, entitlements and well-being. Equally important is the non-material and spiritual angle of consciousness and conscience, supported by global standards, local wisdom, and preferred human/humane practices which may be the saving grace for actuality and posterity. Intrinsically, those inevitable truths are a key check-and-balance against abuse of power, whether in the interface with animate (*alias* human) actors and or the interplay with inanimate (*alias* non-human) factors, pirouetting tenuously and potentially between inhibitive and transformative change.

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