# UNIVERSAL DECLARATION OF HUMAN RIGHTS: LEGAL AND POLITICAL DIMENSIONS

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## Abstract

This is the second of two articles on the ethical, moral, legal, and political dimensions of the Universal Declaration of Human Rights (UDHR). Focusing on the latter two aspects, this study complements an article on the ethical, moral, and political dimensions of the UDHR published in the 15th edition of these *Cadernos*. In four sections, it analyzes the UDHR from the following perspectives: (1) the incorporation of some of its norms into customary international law; (2) its binding nature as an authoritative interpretation of the UN Charter; (3) the codification of its norms in international treaties and regimes; (4) its incorporation into national legal systems. It concludes by pointing out the mutually reinforcing relationship between the moral, ethical, and legal dimensions of the values and norms consolidated in the Declaration, and the extent to which these ideals and rules influence political choices and the configuration of the world order.

**Keywords:** Human rights. Law. Legal theory. International relations. World politics.

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# DECLARAÇÃO UNIVERSAL DOS DIREITOS HUMANOS: DIMENSÕES JURÍDICA E POLÍTICA

**Resumo**

Este é o segundo de dois artigos sobre as dimensões ética, moral, jurídica e política da Declaração Universal dos Direitos Humanos (DUDH). Dedicado aos dois últimos aspectos, este estudo complementa artigo sobre as dimensões ética, moral e política da DUDH publicado na 15ª edição destes *Cadernos*. Em quatro seções, analisa a DUDH sob os seguintes prismas: (1) a incorporação de parte de suas normas ao Direito internacional consuetudinário; (2) seu caráter vinculante como interpretação autorizada da Carta da ONU; (3) a codificação de suas normas em tratados e regimes internacionais; (4) sua incorporação em ordenamentos jurídicos nacionais. Conclui-se apontando a relação de reforço mútuo existente entre as dimensões moral, ética e jurídica dos valores e normas consolidados na Declaração, e a medida em que estes ideais e regras influenciam escolhas políticas e a configuração da ordem mundial.

**Palavras-chave:** Direitos humanos. Direito. Teoria do Direito. Relações Internacionais. Política mundial.

# DECLARACIÓN UNIVERSAL DE DERECHOS HUMANOS: DIMENSIONES JURÍDICA Y POLÍTICA

**Resumen**

Este es el segundo de dos artículos sobre las dimensiones ética, moral, jurídica y política de la Declaración Universal de Derechos Humanos (DUDH). Dedicado a los dos últimos aspectos, este estudio complementa el artículo sobre las dimensiones ética, moral y política de la DUDH publicado en la 15.ª edición de estos Cuadernos. En cuatro secciones, analiza la DUDH desde los siguientes prismas: (1) la incorporación de parte de sus normas al derecho internacional consuetudinario; (2) su carácter vinculante como interpretación autorizada de la Carta de las Naciones Unidas; (3) la codificación de sus normas en tratados y regímenes internacionales; (4) su incorporación en los ordenamientos jurídicos nacionales. Se concluye señalando la relación de refuerzo mutuo que existe entre las dimensiones moral, ética y jurídica de los valores y normas consolidados en la Declaración, y la medida en que estos ideales y normas influyen en las decisiones políticas y en la configuración del orden mundial.

**Palabras clave:** Derechos humanos. Derecho. Teoría del Derecho. Relaciones internacionales. Política mundial.

## Introduction

This is the second in a series of two articles that aim to examine the moral, ethical, legal, and political dimensions of the Universal Declaration of Human Rights. Complementing the previous study, which discussed the content and impact of the UDHR from moral, ethical, and political perspectives (Cabral 2024), this text analyzes the influence of the Declaration from legal and political standpoints. The political dimension appears in both articles because it concerns the behavior of actors and the process of institutional development, which are influenced both by the moral and ethical dimensions and by the legal dimension of human rights.

This article examines the various ways in which the precepts of the Universal Declaration of Human Rights are transformed into legally binding norms. These processes unfold through four distinct means, each corresponding to one section of the text. The first section discusses the gradual recognition of UDHR norms as part of customary international law. The second analyzes the extent to which the Declaration is understood as an authoritative interpretation of the UN Charter, a circumstance under which UDHR norms are considered legally binding due to their association with the founding treaty of the United Nations. The third section describes the creation of a multilateral legal regime—alongside regional regimes—comprising treaties inspired by the UDHR that codify its norms in the form of positive law. The final section investigates the process through which UDHR norms have been incorporated into the legal systems of more than half of today's States, by means of the codification of those norms in constitutions and domestic legislation, or, in some cases, through direct application by national courts, leading to the development of case law.

## 1.The Universal Declaration and Customary Law

Customary law, understood as "evidence of a general practice accepted as law," was recognized as a source of public international law in Article 38 of the Statute of the Permanent Court of International Justice, adopted in 1920; this same formulation was retained in the Statute of its successor, the International Court of Justice, in 1945 (League of Nations 1920; United Nations 1945). According to this definition, customary law comprises two elements: a factual element—consistent practice in accordance with a norm—and a psychological element—the belief that the norm must be observed, a notion commonly referred to as *opinio juris* (Humphrey 1989, 197–198).

In the field of human rights, customary law has three distinctive features. First, unlike in other areas such as trade and armed conflict, customary human rights law is a relatively recent phenomenon, dating mainly from the postwar period. Second, unwritten customary norms in this field derive mostly from previously agreed written documents, essentially the Universal Declaration and subsequent treaties. This is the opposite of what occurred in other legal domains, such as those mentioned above, where tacit rules predated formally adopted norms (Schabas 2021, 83).

Third, and most significantly, there are notable cases of customary human rights norms that have been recognized as such despite the refusal of certain recalcitrant states to comply with them or accept their binding nature. According to the American jurist Louis Henkin, the main cause of this unusual evolution of customary law in the field of human rights was the international outrage provoked by the apartheid regime in South Africa. Although that country persisted in its policies of racial discrimination and refused to accept the prohibition of such practices, a customary norm against this type of conduct was nonetheless recognized by leading legal authorities, including the American Law Institute in the third edition of its *Restatement of the Foreign Relations Law of the United States*, published in 1987 (Henkin 1996, 36–39).

This represents an important legal innovation, as it entails a rupture with the so-called "persistent objector principle." Indeed, it is understood that the psychological element of customary law is satisfied when there exists "general consensus" in favor of a norm, even in the absence of "unanimity." In this sense, persistent non-conformity has not prevented the recognition of various human rights—most of them first articulated in the Universal Declaration—as customary norms of international law binding on all states (Schabas 2021, 72–73; Henkin 1996, 36–39; Ramcharan 2013, 517).

A recent development that has had a transformative impact on the identification and consolidation of customary human rights law is the Universal Periodic Review (UPR) of the Human Rights Council (HRC). In effect since 2008, the UPR is a process whereby all UN Member States have their human rights performance examined at least once every four and a half years by other states, with technical support from the Office of the High Commissioner for Human Rights. HRC Resolution 5/1, which establishes the general rules of the UPR, specifies that the bases for the process are the Charter of the United Nations, the Universal Declaration of Human Rights, and the international human rights instruments to which the state under review is a party (Human Rights Council 2007).

What makes the UPR so decisive in this context is the fact that states with weak records of ratifying human rights treaties—including major actors such as the United States and China—explicitly identify, during their participation in the process (both as reviewed states and as commentators on the performance of others), the international norms they recognize as binding either on themselves or on other states. The characterization of the UDHR as a foundational basis of the UPR already serves as strong evidence of its relevance, and the fact that States frequently cite several of its norms throughout this process further reinforces the customary status of the precepts invoked.

The customary nature of specific human rights norms is recognized or asserted by a wide range of institutions, the most authoritative of which is the International Court of Justice (ICJ). Other significant institutions include the International Law Commission (ILC); the Human Rights Committee and other treaty bodies; the Special Procedures of the Human Rights Council; the courts and commissions of the African, American, and European regional human rights systems; national courts; groups of international experts such as the International Law Association and the International Commission of Jurists; and national expert bodies such as the American Law Institute (Schabas 2021, 72–73; Henkin 1996, 41–53).

The Universal Declaration is widely recognized as the most important and influential component of the International Bill of Human Rights (Humphrey 1983, 424, 438; Jayawickrama 2017, 36), as well as the source of most human rights norms that have become customary. This is due primarily to its status as the first human rights instrument with universal scope; to its political, ethical, and moral significance, reinforced by the manner in which it was negotiated, adopted, and later reaffirmed at the United Nations conferences in Tehran (1968) and Vienna (1993); to the fact that it applies to all UN Member States, not only to those that have ratified specific human rights treaties; and to its role as a major source of inspiration for most subsequent multilateral and regional human rights treaties, as well as for numerous other declarations and non-binding documents (Ramcharan 2013, 514–518; Henkin 1996, 40; United Nations 1968, §2; United Nations 1993, 8).

Assessments of the extent to which the norms of the Universal Declaration have acquired customary status vary considerably. The African Court on Human and Peoples' Rights stated in a 2015 decision that it considers the Universal Declaration as a whole to be part of customary international law (AfCHPR 2015a, 10), a view shared by several eminent jurists and legal practitioners, including John Humphrey (Humphrey 1989, 198). Beyond this general

statement, the African Court has also explicitly affirmed the customary status of UDHR norms relating to the right to life (AfCHPR 2015b, 32) and to nationality (AfCHPR 2015c, 22).

In its 1994 General Comment No. 24, the Human Rights Committee stated that States may not formulate reservations to the International Covenant on Civil and Political Rights that would exempt them from complying with customary international law norms. In this regard, the Committee noted that

> a State may not reserve the right to engage in slavery, to torture, to subject persons to cruel, inhuman or degrading treatment or punishment, to arbitrarily deprive persons of their lives, to arbitrarily arrest and detain persons, to deny freedom of thought, conscience and religion, to presume a person guilty unless he proves his innocence, to execute pregnant women or children, to permit the advocacy of national, racial or religious hatred, to deny to persons of marriageable age the right to marry, or to deny to minorities the right to enjoy their own culture, profess their own religion, or use their own language. And while reservations to particular clauses of article 14 may be acceptable, a general reservation to the right to a fair trial would not be. (United Nations 2008a, 249; Lillich 1996, 19-21; Schabas 2021, 36).

For its part, the American Law Institute listed in its third Restatement of the Foreign Relations Law of the United States (1987) the following State actions as violations of customary international human rights law:

> (a) genocide; (b) slavery or slave trade; (c) murder or causing the disappearance of individuals; (d) torture or other cruel, inhuman, or degrading treatment or punishment; (e) prolonged arbitrary detention; (f) systematic racial discrimination; (g) a consistent pattern of gross violations of internationally recognized human rights (Schabas 2021, 22).

Several years later, Louis Henkin—principal drafter of the human rights section of the *Restatement*—expressed willingness to expand this list to include the rights to live in a democracy, to freedom of religion, to gender equality, and to property (Henkin 1996, 36–39; Lillich 1996, 7; Shelton 2013, 517).

More cautious than the institutions and authors mentioned above, the International Court of Justice has "clearly and unequivocally" recognized the prohibition of torture as a human right incorporated into customary

international law (Schabas 2021, 127–131; ICJ 2012, 5, 13). Most interpreters also consider that the Court's pronouncements affirm, with a sufficient degree of clarity, the customary status of the prohibition of racial discrimination (Schabas 2021, 165–166; ICJ 1970, 32); slavery (Schabas 2021, 146; ICJ 1970, 32); arbitrary deprivation of liberty (Schabas 2021, 165–166; ICJ 1980, 42); as well as the proscription of genocide (Schabas 2021, 115; ICJ 2006, 32).

Despite a significant degree of convergence on the recognition of the customary nature of several specific human rights, substantial disagreements persist among specialists in the field. Reflecting this continued uncertainty, William Schabas—one of the foremost experts on this topic, and author of a recent comprehensive study on customary international human rights law—refrained from producing a categorical and exhaustive list of norms that have attained this status (Schabas 2021, 103). Given the complexity and the enduring controversies surrounding this area, this article does not aim to provide a definitive inventory of the human rights recognized as part of customary international law. What is essential to retain is, first, that several such rights have indeed acquired customary status and therefore apply to all states, irrespective of ratification or acceptance of any specific treaty; and second, that most of these rights take the Universal Declaration as their principal point of reference.

As a final observation, it is important to note that the Statute of the International Court of Justice also lists "the general principles of law recognized by civilized nations" among the sources of international law (United Nations 1945, art. 38 §1(c)). Despite this provision, this source is rarely invoked by jurists or courts in the field of human rights. When invoked, general principles of law are often not clearly distinguished from customary international law. Moreover, some domestic legal systems—for example, Article 10 of the Italian Constitution—do not use the expression "general principles" in exactly the same sense as the ICJ Statute. Finally, it should be noted that certain UDHR norms, sometimes described as general principles of law—such as the "principle of legality"—are also characterized as customary rules. Therefore, regardless of the relevance of general principles of law in other contexts, the concept is not necessary for the present analysis, as the issues at stake are sufficiently addressed within the preceding discussion of customary international law (Hannum 1996, 351–352; Oraá 1997, 182–183).

## 2. The Universal Declaration as an Authoritative Interpretation of the UN Charter

Beginning in the early 1940s, demands emerged from various quarters calling for the adoption of an "international bill of human rights." Notable events in this context included Franklin Roosevelt's "Four Freedoms" speech in early 1941, followed by a human rights conference in Buenos Aires and a speech by the Pope later that same year advocating a formal international commitment to human rights. The following year opened with the adoption of the Declaration by United Nations, in which the United States, Great Britain, and their wartime allies affirmed the need to defeat the Axis powers in order, among other objectives, "to preserve human rights" (Declaration by United Nations 1942, 2). In 1943, American Catholic, Protestant, and Jewish organizations organized a major mobilization calling for peace and the protection of human rights.

Another significant landmark in this process was the adoption of the Philadelphia Declaration of the International Labour Organization in 1944, a document filled with human rights concepts such as freedom of expression and association; democratic participation; dignity; equality of opportunity; and economic security (ILO, 1944, arts. I–III). In this atmosphere of renewed Wilsonian internationalist idealism, President Roosevelt and his team successfully worked, at the conferences of Tehran, Dumbarton Oaks, and Yalta, to gradually persuade the Soviets to support the creation of a United Nations Organization whose purposes would include the promotion and protection of human rights.

All these pressures and expectations converged at the San Francisco Conference, held from April to June 1945, where the final text of the Charter of the United Nations was negotiated and adopted. The delegations lacked the time and conditions necessary to negotiate a comprehensive bill of rights to be incorporated into the UN's founding document. Nonetheless, the concept of human rights figures prominently in the preamble and in seven articles of the Charter (Arts. 1, 13, 55, 56, 62, 68, and 76), and the document also includes explicit statements on equality between men and women, both in the preamble and in the main text (Art. 8). Human rights are listed among the purposes of the United Nations (Arts. 55 and 56), and the Charter provides for the creation of the Human Rights Commission (Art. 68).[2] In his closing

2 Following the provisions of the United Nations Charter, the Economic and Social Council adopted two resolutions in 1946 establishing the Human Rights Commission, mandated to negotiate an International Bill of Human Rights (ECOSOC 1946a, 163–165; ECOSOC 1946b, 400–402).

address to the Conference, President Truman stated that the treaty just approved provided the appropriate foundation for negotiating an international bill of human rights, which should play a role comparable to that of the first ten amendments to the U.S. Constitution within the American legal system.

This appeal was carried out by the newly created Human Rights Commission, which negotiated the text of the Universal Declaration of Human Rights, adopted three years later by the United Nations General Assembly. The remainder of the International Bill of Human Rights—namely, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, and its first Optional Protocol—was adopted only in 1966 and entered into force a decade later (Morsink 1999, 1–4).

The fact that the UN Charter requires respect for human rights while saying virtually nothing about the nature of these prerogatives—combined with the fact that the treaties mentioned above took three decades to enter into force—led the Universal Declaration to be increasingly viewed as an authorized interpretation of the founding document of the United Nations. Under this understanding, the UDHR was attributed, by extension, the binding authority of the San Francisco Charter.

Indeed, this interpretation of the Declaration's role was expressed during the final stages of the 1948 negotiations by the delegates of France, Lebanon, Canada, and South Africa—the latter reluctantly, given its abstention from the General Assembly vote on the UDHR's adoption (Morsink 2022, 8; Glendon 2001, 164–165; Hannum 1996, 330–331; Humphrey 1983, 433–434; Schabas 2013, cxv, 2070, 3070). The same conception was endorsed in several important documents, such as the Montreal Statement, adopted by a world assembly of eminent jurists on the twentieth anniversary of the Declaration, and a resolution of the 66th Conference of the International Law Association, held in Buenos Aires in 1994. This view was also articulated by influential jurists such as René Cassin, Seán MacBride, Mohammad Haleem, Bertrand Ramcharan, Louis Sohn, and John Humphrey (Sohn 1977, 133; Humphrey 1983, 434–435; Hannum 1996, 323, 326; Morsink 1999, 295, 320; Jayawickrama 2017, 34).

Such statements by governments and jurists contribute to consolidating the Universal Declaration, or some of its norms, as part of customary law. At the same time, they reinforce the idea that the UDHR is an authoritative interpretation of the United Nations Charter, a doctrine that may influence the legal reasoning of judges in international courts. But this view does not necessarily—and still less automatically—make the Universal Declaration an organic extension of the Charter.

The role of the UDHR as an authoritative interpretation of the Charter—of which all UN Member States are parties—takes practical effect only if this interpretation is accepted by a majority of judges of an international court responsible for applying treaties, and if these judges use norms of the Declaration to define a state's legal obligations in the absence of any other conventional or customary mandate. This approach is analogous to Article 31(3)(a) of the Vienna Convention on the Law of Treaties, which stipulates that treaty interpretation must take into account "any agreement relating to the treaty which was made between all the parties in connection with the conclusion of the treaty" (United Nations 1969; Jayawickrama 2017, 30).

This is precisely what the International Court of Justice did in the case concerning United States Diplomatic and Consular Staff in Tehran. In its conclusions, the ICJ stated that

> The wrongful deprivation of liberty of human beings and subjecting them to physical constraints in conditions of hardship is incompatible with the principles of the Charter of the United Nations and with the fundamental rights enunciated in the Universal Declaration (ICJ 1980, 43).

Indeed, aside from the Charter's general obligation that States must respect human rights (Arts. 55–56), nowhere does the UN Charter itself state that depriving individuals of their liberty or subjecting them to "conditions of hardship" constitutes a violation of such rights. These specific precepts appear only in Articles 6 and 13 of the Universal Declaration, concerning freedom of movement, and in Article 5, which prohibits torture as well as "cruel, inhuman or degrading treatment or punishment" (United Nations 1948b; United Nations 1980, 91; Lillich 1996, 3–4; Jayawickrama 2017, 32).

Whenever the International Court of Justice attributes mandatory force—implicitly or explicitly—to norms of the Universal Declaration, without characterizing them as customary, there are good reasons to infer, by exclusion, that the ICJ regards the Declaration as an authorized interpretation of the UN Charter and derives from the Charter itself the binding nature it assigns to the relevant UDHR norm.

## 3. The Declaration and the International Human Rights Regime

The commitment undertaken at San Francisco by most of the founding States of the United Nations—and expressed by Harry Truman—to adopt a

coherent set of human rights under the auspices of the UN Charter (Glendon 2001, 22) began to be implemented when the Economic and Social Council created the Human Rights Commission with the mandate to propose the so-called "International Bill of Human Rights." This commitment was partially fulfilled during the third session of the United Nations General Assembly, when the Universal Declaration was adopted. At the time, it was already clear that more time would be needed to adopt the remainder of the Bill in the form of a legally binding treaty (Humphrey 1983, 423; Morsink 1999, 4).[3]

Another important development occurred in 1951, already in the context of the Cold War, when it became evident that the International Bill of Human Rights would comprise not one, but two separate treaties—in addition to the UDHR. Fifteen years later, the International Covenant on Civil and Political Rights (ICCPR—accompanied by an Optional Protocol), championed by the United States and its allies, and the International Covenant on Economic, Social and Cultural Rights (ICESCR), which was the priority of the Soviet Union and its aligned States, were adopted (Schabas 2021, 18).

Substantively, the Universal Declaration served as the principal source of inspiration for both Covenants, which elaborate in more precise legal language the commitments contained in the UDHR (United Nations 2008b, 261; United Nations 1993, 8; Schabas 2013, cxiv). The few significant elements present in the Declaration but not incorporated into the Covenants include the rights to asylum and to property in a broad sense (with the exception of intellectual property, which is protected under the ICESCR). Conversely, the main additions are the right of peoples to self-determination—found in both treaties—and the cultural, religious, and linguistic rights of minorities, guaranteed by the ICCPR.

In addition to the two Covenants, the Universal Declaration also served as the principal source of inspiration for a set of seven agreements addressing specific issues, classified by the UN High Commissioner for Human Rights as the "core" instruments of the universal human rights regime. The oldest of these is the International Convention on the Elimination of All Forms of

3 It is important to note that from the outset, the two 1946 ECOSOC resolutions establishing the Human Rights Commission referred, in their English versions, to an "international bill of rights." This formulation was more precise, as the intention from the beginning was to adopt both a political declaration and a legally binding treaty. The French versions of the resolutions were less explicit, referring simply to a "déclaration internationale des droits." In the General Assembly resolution that adopted the UDHR in 1948, the French text followed the English formulation and was titled "Charte internationale des droits de l'homme." This project was made explicit: in addition to the text of the Declaration, the resolution contained a section mandating the Human Rights Commission to continue its work toward drafting a "pacte international sur les droits de l'homme" (ECOSOC 1946a, 163–165; ECOSOC 1946b, 400–402; United Nations 1948a).

Racial Discrimination (CERD) (United Nations 1965). Initiated in response to a wave of antisemitic incidents and driven by global indignation at the apartheid regime in South Africa, negotiations on this instrument proceeded exceptionally quickly, leading to its adoption in 1965, one year before the Covenants, whose negotiations had begun much earlier.

After a hiatus of nearly fifteen years, the second of these "core" treaties addressing specific themes was the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (United Nations 1979). This was followed by the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) (United Nations 1984); the Convention on the Rights of the Child (CRC) (United Nations 1989); and the Convention on the Rights of Persons with Disabilities (United Nations 2006a).

The two Covenants and the five other treaties mentioned above enjoy near-universal adherence, having been ratified by more than 170 of the 193 UN Member States.[4] Two notable exceptions among major actors are the United States, which has ratified only the ICCPR, the Convention against Torture, and the CERD; and China, which has not ratified the ICCPR.[5]

Beyond the nearly universal treaties listed above, the remaining two "core" agreements of the regime have received far more limited support. Adopted in 1990, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (United Nations 1990) has been ratified or acceded to by only 58 States, all from the developing world. The International Convention for the Protection of All Persons from Enforced Disappearance (United Nations 2006b) has been ratified or acceded to by 69 States, including nearly all countries of Latin America—a region that made this crime widely known during the dictatorships of the latter half of the twentieth century.

Beyond these "core" treaties, several other important agreements adopted by the General Assembly or by specialized agencies of the United Nations make reference to the Universal Declaration and elaborate on some of its aspects (Schabas 2013, cxiv–cxv). Examples include: the Convention Relating to the Status of Refugees (United Nations 1951); ILO Convention No. 105 on the Abolition of Forced Labour (ILO 1957); the UNESCO Convention against Discrimination in Education (United Nations 1960); the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages

4 With the exception of the International Convention on the Elimination of All Forms of Racial Discrimination, all of the treaties mentioned above have at least one additional protocol.

5 Situation as of July 2025.

(United Nations 1962); the International Convention on the Suppression and Punishment of the Crime of Apartheid (United Nations 1973); and ILO Convention No. 169 concerning Indigenous and Tribal Peoples (ILO 1989).

The production of norms inspired by the Universal Declaration of Human Rights has not ceased within the institutional framework of the United Nations. For example, this is evident in negotiations initiated by Human Rights Council Resolution 26/9 on the "elaboration of an international legally binding instrument on transnational corporations and other business enterprises with respect to human rights" (Human Rights Council 2014).

In addition to this broad range of treaties within the United Nations system, the Universal Declaration is also a vital source of inspiration for regional human rights regimes. This is the case for the European Convention on Human Rights (Council of Europe 1950) and, consequently, for its fifteen protocols, which establish additional rights or amend the original treaty (Hannum 1996, 302). The same is true of the American Convention on Human Rights (OAS 1969), as well as several other human rights treaties adopted within the Organization of American States. The Universal Declaration likewise informs the African regional system, including the African Charter on Human and Peoples' Rights (AU 1981); the African Charter on the Rights and Welfare of the Child (AU 1990); the African Youth Charter (AU 2006); and the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (AU 2009).

## 4. The Declaration and Domestic Legal Systems

In addition to the considerations above regarding the impact of the Universal Declaration on international law from the perspective of custom, through its direct application as an authoritative interpretation of the UN Charter and its role as a source for an extensive body of multilateral and regional treaties—it is important to examine the incorporation of UDHR norms into domestic legal systems. The aim here is not to provide an exhaustive assessment of the Declaration's influence on the legal architecture of the nearly two hundred sovereign political entities in existence today, but rather to offer some global points of reference and highlight a limited set of significant and representative cases.

What is important to retain from this discussion is that specific norms—or even the entirety of the Declaration's content—are applied as law in the legal systems of nearly half of the United Nations Member States. As shown below,

this may occur through textual incorporation into national constitutions or domestic legislation, or through decisions of national courts that generate case law importing the Declaration's norms into national legislation.

The Universal Declaration served as a model for human rights provisions in roughly ninety national constitutions adopted after 1948 (Duan 2017, 26; Osiatynski 2014, 9; Glendon 2001, 228). A significant number of these constitutions make explicit reference to the Declaration, including those of Argentina; Benin; Burkina Faso; Burundi; Cambodia; Chad; Comoros; Côte d'Ivoire; Spain; Ethiopia; Gabon; Guinea; Equatorial Guinea; Haiti; Malawi; Mali; Mauritania; Nicaragua; Niger; Portugal; Romania; São Tomé and Príncipe; Senegal; Somalia; and Togo (Hannum 1996, 313).[6]

In many countries across all regions, national parliaments have also enacted sub-constitutional legislation incorporating provisions of the Universal Declaration into domestic law. An example is the Mexican law prohibiting torture and cruel, inhuman, or degrading treatment or punishment, inspired by Article 5 of the UDHR. It is also noteworthy that, relying on the UDHR, the Supreme Court of Justice of the Nation—Mexico's highest judicial authority—has held this law to be non-derogable (Gambaraza 2013, 235).

Along similar lines, the Supreme Court of India has repeatedly declared that the country's legal system "echoes" the norms of the Universal Declaration of Human Rights. In a series of judgments, India's highest court has recognized the incorporation into domestic law of most of the rights proclaimed in the Declaration, notably those affirmed in Articles 1 to 13, as well as Articles 17, 19, 22, 25, and 26 (Gambaraza 2013, 181–183).

As mentioned earlier, UDHR norms may also be integrated into national legal systems through judicial decisions, particularly in common-law countries. The United States provides a particularly illustrative example. In the American case, this occurs because (i) the country has ratified very few human rights treaties; (ii) customary international law is in many instances recognized as federal common law; and (iii) several articles of the UDHR are recognized by U.S. courts as part of customary international law. As a result, the U.S. judicial system is the one in which the UDHR is most frequently invoked worldwide. UDHR-based claims are often accepted by U.S. federal courts, leading to the application of the Declaration's norms in numerous domestic cases (Gambaraza 2013, 171–176; Bradley and Goldsmith 1997, 835–836; Cheng 2008, 272, 297–305).

6 The constitutional texts cited were consulted on January 10, 2023, at https://www.constituteproject.org

## Conclusion: Law, Ethics, Morality, and Politics in the UDHR and the World Order

As discussed throughout the four sections of this article, an intense and complex relationship has developed over time between the Universal Declaration and the law. First, a significant portion of the UDHR's norms has been recognized as part of customary international law, becoming binding on all states regardless of their ratification of human rights treaties. Second, it has been shown that multilateral and regional courts—including the International Court of Justice—frequently treat provisions of the Declaration as an authoritative interpretation of the UN Charter and, consequently, attribute binding force to them. Third, the UDHR has been seen to lie at the origin of the most elaborate international regime within the United Nations system, comprising more than a dozen treaties, many of which have been ratified almost universally; and it has also served as one of the principal sources of inspiration for regional human rights regimes in Africa, the Americas, and Europe. Finally, the preceding discussions demonstrated that several rights enunciated by the Declaration have been incorporated into constitutions and sub-constitutional legislation in most contemporary States, and that many UDHR norms are applied directly by national courts, including in populous and influential countries such as India and the United States.

From a broader perspective—including the elements presented in the previous article of this series—the moral and ethical dimensions of human rights combine with their legal dimension, reinforcing the impact of the Universal Declaration on the political behavior of major actors and on the configuration of the contemporary world order.[7] The mutually reinforcing relationship among these four dimensions of the values and norms associated with human rights—moral, ethical, legal, and political—which predate the UDHR and are consolidated in it, is well illustrated by the historical trajectory of the ideal of racial equality since the early twentieth century.

The first major milestone in this process was Japan's proposal at the 1919 Paris Peace Conference to include in the Covenant of the League of Nations a provision affirming racial equality. The so-called "racial equality clause" received eleven votes in favor (including Brazil's), with six abstentions

7 Drawing on the theoretical tradition of the English School of international relations, the concept of "world order" is understood here as "the conjunction of states and their reciprocal relations; international institutions and regimes; social movements; non-governmental organizations; and private collective actors with significant influence over the promotion and protection of the most important goals of collective life at the global level" (Buzan 2004, 96).

from countries opposed to it that nevertheless chose not to vote (notably the United States and Australia) in the committee handling the issue. Despite this clear majority, the proposal was rejected by the committee's chair, Woodrow Wilson, who argued that the amendment required unanimous approval, which had not been achieved. As a result, the Japanese proposal was defeated, and the position of the major powers prevailed. This was despite the evidently ad hoc nature of the U.S. president's procedural objection—a requirement not applied in two other motions of interest to the United States previously adopted by vote—and despite protests from numerous delegations and civil society representatives (Lauren 2018, 93–98).

A similar proposal was put forward by China during the preliminary negotiations on the UN Charter at the 1944 Dumbarton Oaks Conference, but it was rejected by the United Kingdom, the United States, and the USSR. Despite this initial setback, the issue remained a priority for various states and social movements and organizations. Significant in this regard was the Inter-American Conference of Chapultepec in early 1945, which adopted a resolution condemning racial discrimination and exerted significant influence on the drafting of the UN Charter at the San Francisco Conference, where Latin American states acted in a coordinated manner as the largest regional group present. Governments from the region joined forces with other delegations, notably from China, India (still part of the British Empire), the Philippines, Iraq, Egypt, Liberia, Ethiopia, France, and the Soviet Union (which had shifted its previously hostile stance toward human rights), as well as with influential social organizations, and succeeded in including affirmations of racial equality in several parts of the Charter (Arts. 1, 13, 55, and 76) (Lauren 2018, 150–157).

Three years later, the Universal Declaration of Human Rights developed these principles into a set of more precise and comprehensive norms, reaffirming and promoting racial equality and proscribing all forms of discrimination (Arts. 1, 2, 7, 23, and 26). This growing consensus was further reinforced with the adoption, in 1965, of the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), the first human rights treaty under the UN system.

This trajectory illustrates the evolution of the value of racial equality and its incorporation into a wide array of moral, ethical, and legal norms, as well as into the political objectives of the great majority of actors in the post-World War II world order. Following the failure in Paris in 1919, racial equality was later incorporated into several legal norms of the 1945 UN Charter; recognized as a universal moral principle in the broad set of norms

enshrined in the UDHR in 1948; given deeper legal protection in the normative framework of CERD in 1965; integrated into the ethical repertoires of most contemporary societies, with the motivational force that this entails; and adopted as a political objective by most relevant actors in the world order.

This sequence and mutual reinforcement of the moral, ethical, legal, and political dimensions of practical reason was decisive, for example, in the overthrow of the apartheid regime in South Africa. This process involved a wide range of actions: spontaneous commercial boycotts; the country's stigmatization and exclusion from the Olympic Games and the FIFA World Cup; political isolation—first among developing countries and later even by Pretoria's traditional supporters, such as the United States and the United Kingdom; and legally binding sanctions imposed by the UN Security Council (Lauren 2018, 272–280).

Needless to say, racial discrimination remains a scourge in many societies, and the promotion and protection of other fundamental values recognized by the Universal Declaration, such as freedom and democracy, face analogous, if not more serious, challenges. Yet it must be acknowledged that, by 2025, these values are far more widely recognized, protected, and respected than in 1919, when most of the world's population lived under colonial or semi-colonial domination, regarded as biologically inferior and deprived of political rights and much of what is today understood as freedom.

Any honest assessment of the contemporary world order—and what it was a century or even fifty years ago—must recognize that moral progress has occurred. Despite frequent setbacks, this progress owes much to a growing consensus around values and norms grouped in ethical conceptions that, through increasing interaction with other worldviews, have undergone a significant process of universalization. These gradually converging ethical perspectives and the regulative moral ideal toward which they point have become increasingly embedded in national laws as well as in regional and universal legal regimes. The history of the Universal Declaration of Human Rights—from its remote antecedents in the founding texts of the seventeenth and eighteenth centuries in England, France, and the United States; through UNESCO's consultations with Mahatma Gandhi and other intellectuals and political leaders around the globe; to its adoption in 1948 and the inspiration it provided for Brazil's post-dictatorship Constitution four decades later—illustrates how ethical, moral, and legal values and norms shape political choices and help mold the world order.

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