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Abstract

On 29–30 June 2023, the Netherlands Network for Human Rights Research held its annual research day (Toogdag), which focused on the past, present, and future of the Universal Declaration of Human Rights in light of its 75th anniversary. This column comments and reflects on the Declaration's impact in the field of human rights, and ponders on the future challenges that it may face.

Keywords

UDHR, new human rights, indivisibility of human rights, Netherlands Network of Human Rights Research, Toogdag, customary international law

I. INTRODUCTION

The adoption of the *Universal Declaration of Human Rights* (UDHR) by the United Nations on 10 December 1948 marked the beginning of the modern international system for the protection of human rights. Since then, much has happened in the field of human rights. The UDHR is based on the powerful underlying premise that we are all 'born free and equal in dignity and rights'. 2023 marks the 75th anniversary of the UDHR, and various events around this milestone were organised throughout the Netherlands to celebrate it, including the Toogdag conference of the

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Netherlands Network for Human Rights Research (NNHRR). The event facilitated reflections on past achievements, the challenges that lie ahead before the Declaration reaches its 100th anniversary, as well as the possibility and actual necessity of exploring opportunities for developing new human rights to complement the Declaration. This contribution discusses some of these aspects and speculates about potential future directions for the UDHR towards its 100th anniversary.

2. PAST RELEVANCE OF THE UDHR

The Declaration remains truly a landmark document.¹ Drafted as a response to the atrocities witnessed during the Second World War, the Declaration marked an important moment in the development of legal human rights protection. No longer were rights of individuals to be regarded as a merely internal matter for states to address and resolve. Now people mattered, not states and their governments. Moreover, the Declaration has put people on equal footing regardless of race, religion or origin, thereby playing an instrumental role in extending the entire human rights catalogue to every human being. The rights enshrined in the Declaration thus became a ‘common standard of achievement for all peoples and all nations’² and the Declaration exhorted individuals and other members of society to

‘strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.’³

It is important to consider the context in which the Declaration was adopted. The inhumanity of the Second World War influenced the objectives of the Declaration. Its contents were moreover informed by the colonial presence and legacy of various states involved in the establishment of the United Nations, and the background and views of the individuals involved in drafting the document. The preamble furthermore highlighted that every organ of society has the responsibility to strive to promote respect for these rights. Lastly, the Declaration takes an integrated approach to human rights, highlighting their interconnectedness. These key features have endowed the rights enshrined in the Declaration with great significance, profoundly impacting people’s lives in many ways throughout the 75 years of its existence.

In this regard, several important developments have taken place concerning the protection of human life, the prohibition of sex-based discrimination, as well as rights of victims and available remedies. Nevertheless, despite the proliferation of human rights, serious challenges still exist. After many positive human rights developments in the 1990s, the world changed dramatically in 2001 with the attack on the Twin Towers in New York. Emblematic of the human rights crisis that arose in the aftermath of that watershed moment was the opening of Guantanamo Bay prison where a state that recognized the Universal Declaration detained people without any form of rights. In the period that followed, a broader trend among states towards securitization at the

1. The insights discussed below are derived from the opening plenary session of the ‘Toogdag’ with contributions by leading human rights scholars Prof. Theo van Boven, Prof. Brigit Toebees, Prof. Cees Flinterman, and Prof. Nico Schrijver.

2. Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III) (UDHR) preamble.

3. Ibid.

expense of human rights was witnessed. In addition, the international human rights community has failed to find lasting solutions to seemingly perpetual problems, notably the Israel-Palestine conflict.⁴ Concerns also arise regarding the adequate standard of living and the right to seek asylum.

Furthermore, despite the fact that the rights included in the Declaration are indivisible, in reality and in practice, they often remain second and third generation rights. The strength of the Declaration lies in its function as the fundament for all categories of rights. However, for too long the value of certain types of rights has been underestimated while other rights have been prioritised. Even though the 1993 Vienna Declaration reaffirmed that all human rights are indivisible, interrelated, and interdependent, it remains a challenge to finally overcome the reluctance of states to truly recognize this. Lastly, triggered by climate change and the increasing loss of biodiversity, there is increasing criticism that the Declaration might suffer from an anthropocentric obsession. Critics argue the nearly exclusive focus on the interest of human kind and humanity as a global value should be reconsidered and that our relation to the environment should be reevaluated.

Despite the abovementioned challenges, there is no question about the relevance of the UDHR's during its first 75 years. First, in spite of its colonial legacy, the Declaration oversaw and influenced the era of decolonization. It also prepared the ground for other human rights treaties. For example, it paved the way to the drafting and adoption of the treaties that, together with the Declaration, became part of the Universal Bill of Rights, and arguably served as a basic blueprint for the 1950's Refugee Convention.⁵ Moreover, the UDHR's influence was palpable during discussions about important geopolitical conflicts. For instance, discussions in Europe during the highest tense moments of the Cold War led to détente and rapprochement between the super-powers through the adoption of the 1975 Helsinki Act, which specifically referred to the UDHR in its decalogue of principles.⁶ Moreover, the Declaration was mentioned during discussions addressing the problematic dictatorships in the Americas, Apartheid, and the Palestinian question in the 1970s.⁷ Last, the enduring significance of the Declaration was evident in the years that passed between the first and second UN-sponsored world conferences on human rights in 1968 and 1993.⁸

One can also speculate about the role of the Declaration in the collapse of the Soviet Union and the fall of the Berlin Wall, raising questions about the nature and value of the UDHR from a political perspective (Western values trumping over others?). Yet, the end of the Cold War spearheaded the adoption of new and more diverse human rights treaties that faithfully point towards

4. As illustrated by the currently ongoing devastating violence in Israël, Gaza and other locations in the region.

5. Kathryn McNeilly, 'If Only for a Day': The Universal Declaration of Human Rights, Anniversary Commemoration and International Human Rights Law' (2023) 23 HRLR 1, 7–9.

6. Final Act of the Conference on Security and Co-Operation in Europe (adopted 1 August 1975 Organization for Security and Co-operation in Europe (Helsinki Act) principle VII: 'In the field of human rights and fundamental freedoms, the participating States will act in conformity with the purposes and principles of the Charter of the United Nations and with the Universal Declaration of Human Rights.'

7. Consider, for example, the ironic reference to the UDHR by the representatives of the German Democratic Republic about measures it planned to adopt to mark the 30th anniversary of the Declaration and 'for the struggle being waged against the racist oppressors in southern Africa, the fascist regime in Chile and against the policy of aggression pursued by Israel.' See: Report of the Secretary-General, 'Observance of the thirtieth anniversary of the adoption of the Universal Declaration of Human Rights' (1979) UN Doc E/CN.4/1312, 7.

8. McNeilly (n. 5), 8 and 14.

the UDHR.⁹ Nonetheless, the Cold War also resulted in a major challenge. The approach of the Declaration as a single framework had to be abandoned during the Cold War, leading to the fragmentation of human rights procedures. As the 75th anniversary of the Declaration approaches, there is an urgent need to reform this complex and fragmented infrastructure. It is worth noting that unprecedented progress has already been made in setting standards and implementing supervision, leading to more than a dozen human rights treaties, supervisory bodies, and special procedures.

3. CURRENT RELEVANCE OF THE UDHR

The importance of the UDHR, as well as its nature as a living instrument, is widely recognised in current human rights discourse. The Declaration is capable of being interpreted and invoked as a relevant standard setting instrument to changing circumstances spurred by historical, societal, economical, and technical developments. Certainly, from a symbolic, political, and legal perspective, the UDHR's relevance appears to be undisputed. The 1993 Vienna Declaration and Programme of Action reaffirmed the commitment of the participating states to the purposes of the UN Charter and the Universal Declaration,¹⁰ and restated the latter's conception of being a common standard of achievement, while noting that the Declaration should serve as a 'source of inspiration and (be) the basis for the United Nations in making advances in standard setting as contained in the existing international human rights instruments'.¹¹

The interplay between the UDHR and current and topical human rights issues was addressed during the 'Toogdag'. Discussions covered present challenges such as the recent refugee and migration crisis, climate change and environmental degradation, hate speech, business and human rights, the rights of persons with disabilities, and the perennial issue of the rights of peoples to self-determination. The UDHR's influence on two of these topics will be reflected upon.

First, the Declaration already referred to the right to leave one's country, as well as the right to seek and enjoy asylum.¹² The UDHR's impact on the development of refugee and asylum law is substantial. This is reflected in the preamble of the 1951 Refugee Convention, which makes a direct reference to the Declaration,¹³ and in the observation of the former UN High Commissioner for Human Rights, Mary Robinson, during the UDHR's 50th anniversary that this convention elaborates on the UDHR.¹⁴ Furthermore, academic contributions continually highlight the linkages between the UDHR and the persistent problems of refugee protection.¹⁵ More recently,

9. See preambles of the Convention on the Rights of the Child (1989), International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990), Convention on the Rights of Persons with Disabilities (2006), and International Convention for the Protection of All Persons from Enforced Disappearance (2010).

10. Vienna Declaration and Programme of Action, (adopted 25 June 1993 UNGA UN Doc A/CONF.157/23 (VDPA), preamble.

11. *Ibid.*

12. UDHR (n.2), arts. 13 and 14.

13. 'Considering that the Charter of the United Nations and the Universal Declaration of Human Rights approved on 10 December 1948 by the General Assembly have affirmed the principle that human beings shall enjoy fundamental rights and freedoms without discrimination.' Convention relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137 (Refugee Convention).

14. Mary Robinson, 'Welcoming the downtrodden' (1998) 111 *Refugees Magazine* (special issue on the Universal Declaration of Human Rights' 50th Anniversary).

15. See, in the context of the Declaration's 60th anniversary, Sibylle Kapferer, 'Article 14(2) of the Universal Declaration of Human Rights and Exclusion From International Refugee Protection' (2008) 27 *Refugee Survey Quarterly*, Asylum and

the General Assembly reaffirmed the importance of the Declaration in the context of the recent refugee and migration crisis.¹⁶ Despite the UDHR's arguably simplistic approach towards these issues, it is undeniable that the legal, social, and political discourse has been influenced by the overarching objectives that the Declaration set out to accomplish in this field.

Another equally current pressing issue is the problem of climate change and severe environmental degradation, especially in light of the last two years marked by rampaging fires in various countries around the world, and more recently, the disastrous flooding in Libya. Although the UDHR does not directly address the environment or climate change,¹⁷ the General Assembly has linked the Declaration to these issues by recently adopting a declaration recognizing the right to a clean, healthy, and sustainable environment, and acknowledging in the resolution's preamble that climate change and related problems 'constitute some of the most pressing and serious threats to the ability of present and future generations to effectively enjoy all human rights'.¹⁸ Moreover, the influence of the UDHR on the urgent matters surrounding the environment, climate change, and sustainability, is also palpable in the Sustainable Development Goals. The 2030 Agenda for promoting sustainable development is in the words of the General Assembly 'grounded in the Universal Declaration of Human Rights', among other things.¹⁹

Finally, the examination of the UDHR's current impact and function involves a discussion and assessment of its legal status and worth. Although it is widely acknowledged that the Declaration is not a legally binding instrument, it stands out as a prime example of a legal instrument that holds considerably more importance than its formal nature would suggest.²⁰ The status of the Declaration as a reflection of customary international law of human rights was a controversial proposition even at the time of its adoption and also immediately thereafter.²¹ However, it is now acknowledged that at least some of the rights it contains can also be regarded as customary in nature.²² Through its extended influence since 1948 at the international and national level,²³ the UDHR is arguably one of those General Assembly resolutions that 'may have normative value',²⁴ and as such may

the Universal Declaration of Human Rights. See also, Adrenne Anderson, 'On Dignity and Whether the Universal Declaration of Human Rights Remains a Place of Refuge After 60 Years' (2008) 25 *Am. U. Int'l L. Rev.* 115, 125–135.

16. See New York Declaration for Refugees and Migrants, UNGA UN Doc. A/RES/71/1 (19 September 2016) para 5.
17. One could, however, creatively link Article 25 on an adequate standard of living, and Article 28 entitling everyone to 'a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized', towards establishing a relationship with the issue of climate change and the environment.
18. UNGA Res A/76/L.75 (1 August 2022) UN Doc. A/RES/76/300. This resolution follows up on an earlier resolution adopted by the UN Human Rights Council in 2021 essentially using the same wording. See UN Human Rights Council Res 48/13 (18 October 2021) UN Doc. A/HRC/RES/48/13.
19. UNGA, 'Transforming our world: the 2030 Agenda for Sustainable Development' (21 October 2015) UN Doc. A/RES/70/1, para 10. The Agenda equally reaffirms the importance of the Declaration and other human rights instruments in para 19.
20. See for example Hurst Hannum, 'The Status of the Universal Declaration of Human Rights in National and International Law' (1995/96) 25 *Ga. J. Int'l & Comp. L.* 287, 289.
21. For an interesting discussion of the perception by legal scholars such as Dehousse and Lauterpacht on the legal nature of the Declaration at the time of its drafting and subsequently, see William A. Schabas, *The Customary International Law of Human Rights* (OUP 2013) 1, 16–18.
22. Hannum (n. 20), 340–351.
23. For example, inspiring and guiding the codification, and interpretation of various rights in national constitutions, as noted by Hannum (n. 20), 312–313.
24. *Legality of the Threat or Use of Nuclear Weapons* (Advisory Opinion) [1996] ICJ Rep 226 para 70. See also *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)* (Merits) [1986] ICJ Rep

provide evidence of *opinio juris* of some of its rights. If this constitutes the Declaration's most robust legal contribution to international human rights, then, as unassuming or unpretentious as it may seem, it remains a major one. This raises the question whether the content of the UDHR is relevant for the next 25 and more years to come.

4. NEED FOR NEW RIGHTS TO SUPPLEMENT THE UDHR?

The 'Toogdag' provided a platform for contemplating the future direction of human rights, looking beyond the horizon of what the UDHR currently offers. The opportunities related to the development of new human rights, the advent of new technologies, and future (energy, economic, and human) challenges were explored. This led to discussion on whether the UDHR might require a fresh coat of paint, potentially introducing new human rights to supplement its existing framework. Of course, this discussion has already received attention for some time. In 1984, Alston suggested that, in the light of the practical impossibility of devising common, universal, and acceptable criteria to identify and recognize new human rights, some sort of quality control procedure should be established to enable institutions, such as the UN General Assembly, to introduce new rights.²⁵ In recent times, academics have more seriously analysed what it would take to recognise 'new' human rights. For example, von Arnould, von der Decken, and Susi suggested three main elements to consider before moving towards recognizing new human rights: recognition, novelty and rhetoric.²⁶ This approach allows for the identification of developments that may require the introduction of new rights,²⁷ some of which may be derived from existing rights, or which are necessary to,

'redefine an established body of law from a human rights perspective (such as the right to a clean environment or the right to freedom from corruption), or even to apply the concept of rights to non-humans (animal rights, rights of the environment), thereby overcoming the anthropocentricity of 'human' rights as such.'²⁸

The international community has not been shy in proposing and pushing towards the recognition of 'new' rights. For instance, in 2010, the General Assembly adopted resolution 64/292 acknowledging the right to water,²⁹ which the Committee on Economic, Social and Cultural Rights already had derived from articles 11 and 12 ICESCR (the right to an adequate standard of living and the right to the enjoyment of the highest attainable standard of physical and mental health).³⁰ As mentioned above, the UN General Assembly also initiated the recognition of the right to a clean, healthy, and sustainable environment. Additionally, the General Assembly has established an open-ended working group aimed at strengthening the rights of elderly people and investigating the feasibility

14 para 188, and ILC 'Draft conclusions on Identification of Customary International Law, with Commentaries' (2018) UN Doc. A/73/10.

25. See Philip Alston, 'Conjuring up New Human Rights: A Proposal for Quality Control' (1984) 78 AJIL 607, 617–620.

26. Andreas von Arnould, Kerstin von der Decken, and Mart Susi, 'Introduction' in Arnould, Kerstin von der Decken, and Mart Susi (eds), *The Cambridge Handbook of New Human Rights: Recognition, Novelty, Rhetoric* (CUP 2020) 2.

27. The developments identified relate to changes in perception and political, or technological developments. *Ibid.*, 3.

28. *Ibid.*

29. UNGA Res 64/292 (3 August 2010) UN Doc. A/RES/64/292.

30. See CESCR, 'General Comment No. 15: The Right to Water (Arts. 11 and 12 of the Covenant)' (20 January 2003) UN Doc. E/C.12/2002/11.

of drafting a legal instrument aimed at promoting and protecting their rights.³¹ At the level of the UN Human Rights Council, a resolution on the ‘promotion, protection and enjoyment of human rights on the Internet’ was adopted in 2016.³² Although this resolution falls short of explicitly recognising an independent human right to access the internet, it does concede its importance vis-à-vis existing rights. Furthermore, the Council is hosting initiatives to draft treaties that will cover the rights of peasants and other individuals working in rural areas, the right to development, and a legally binding instrument on business and human rights.³³

It can be argued that the diversity of these initiatives does not necessarily signify a surge in ‘new’ or ‘modern’ human rights. Instead, it points towards recognising existing or new rights holders that, until now, may have been generally left out or whose rights had not been adequately protected under the current human rights legal framework, including the UDHR. Some scholars have controversially criticised this potential human rights inflation,³⁴ and have argued that adopting new human rights instruments does not make the reform of the UN human rights system and treaty bodies any easier. In addition, divergence of content and goals in recognising new human rights at the regional level as opposed to the universal level may potentially lead to further fragmentation in the field.³⁵

Although one can be sceptical of the need to introduce new rights, as it is already difficult to interpret, apply, and implement existing ones, new challenges, such as those posed by the energy transition, may demand new solutions. Other innovative and creative approaches to address and enhance some of the rights found in the UDHR can be envisaged. For example, the use of new technologies in agriculture with regard to the right to food (Article 25), and the adoption of digital museum collections to enhance the enjoyment of cultural life and the arts (as related to Article 27).³⁶ The paths that are available to either strengthen or supplement the UDHR are apparently myriad and arguably exciting.

6. CONCLUDING REMARKS

Although one could view the real-life impact of the UDHR with a hint of cynicism, a cautiously optimistic perspective towards the value and relevance of the Declaration into the future is warranted. Arguably, at the beginning of the twentieth Century one could not have predicted that individuals and states would agree upon a set of norms that would profoundly influence how individuals perceive and treat each other. Nor could one have expected that by the end of the

31. See ‘Open-ended Working Group on Ageing for the purpose of strengthening the protection of the human rights of older persons’ (*United Nations*) <<https://social.un.org/ageing-working-group/>> accessed 15 September 2023.

32. UN Human Rights Council Res A/HRC/32/L.20 (27 June 2016) UN Doc. A/HRC/32/L.20. The Human Rights Council has adopted subsequent resolutions on the same matter, resolution A/HRC/RES/47/16 of 26 July 2021 being the latest. See also Łukasz Szoszkiwicz, ‘Internet Access as a New Human Right? State of the Art on the Threshold of 2020’ (2018) 8 *Adam Mickiewicz University Law Review*; where the author also examines the practice of the various treaty bodies that have discussed access to internet as a human rights issue.

33. See ‘Human Rights Council Subsidiary Bodies’ (*United Nations*) <<https://www.ohchr.org/en/hr-bodies/hrc/other-sub-bodies>> accessed 15 September 2023.

34. See Eric A. Posner, *The Twilight of Human Rights* (OUP 2014), 94.

35. Although arguably this has not been that problematic in the past; see for instance the early adoption of a convention on enforced disappearances in the Americas and the later recognition of this phenomenon universally through its own UN treaty.

36. These challenges and creative ideas were inspired by various presentations and discussions during the Toogdag.

twentieth Century and the beginning of the 21st, the UDHR would have played a pivotal role in establishing an almost universal network of actors and institutions committed to realising the objectives set out on the 10th of December 1948. Yet here we are, with an admittedly imperfect system of human rights protection that nevertheless has managed to provide a voice to the individuals and groups that deserve protection and respect of their human dignity.

That being said, recent and ongoing crises, such as the Covid-19 pandemic, the war between Ukraine and the Russian Federation, and the distressingly unstable situation in the Middle East, along with the way in which individual states and the international community at large have responded to them, provide an opportunity to reflect on how far we have come in the protection of human rights since the UDHR's adoption. The often inadequate and insufficient response to these crises, which frequently and disproportionately affect the most vulnerable sectors of society, arguably runs counter to what the UDHR stands for: the protection of the human dignity of vulnerable individuals and groups who deserve equal and respectful treatment, and who should be consulted and heard with regards to their needs. This should serve as a reminder that that the project started by the UDHR in 1948 still requires continuous commitment and action, to address similar and future challenges.

The next 25 years present a clear path for human rights academics, activists, and policy makers to, through research and concerted action, further realise the hopes and goals of those who, 75 years ago, set out a course that would significantly help to shape the world as we know it today. It is pertinent to mention that in the future, human rights defenders deserve our utmost support and commitment. No doubt, without them, the rights enshrined in the Declaration would have become a dead letter.

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