

Introduction

Some fifty years ago, on 10 December 1948, the General Assembly of the United Nations adopted the Universal Declaration of Human Rights (UDHR). In commemoration of that event, the Netherlands School of Human Rights Research and the Royal Netherlands Academy of Arts and Sciences organized an academic colloquium on 11 and 12 December 1998. The colloquium was preceded by a public session on 10 December at Utrecht University.

This volume contains the contributions of the participants to the public session and to the colloquium. The colloquium received many thought-provoking presentations and commentaries reflecting the participants' diverse perspectives, nationalities and disciplines, including international relations, law, philosophy, political science, history, social policy, and sociology. The meetings involved useful exchanges of views among the participants with regard to their different strategies for improving human rights performance. The conference also benefitted from astute commentaries of young, aspiring academics, including a number of doctoral candidates.

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Following are some thoughts that occurred to the editors, while preparing the contributions for publication. The text of this introduction is based on the contributions to this volume, to which reference is made. It may convey to the readers some of our enthusiasm about the usefulness of the exercise. At the same time, it may be of help in the perusal of the contributions. Discussions about the UDHR like the present one tend to bring up all major issues and controversies in the field of human rights. The editors are much indebted to *David Weissbrodt* who, acting as rapporteur to the colloquium, wrote the concluding remarks, at the end of this volume. Needless to say the responsibility for this introduction rests solely with the editors.

The research presented involves both looking back at what fifty years of UDHR has accomplished, as well as looking forward to the future. Is the state of human rights performance now better than it was in 1948? Is it worse? At least it is clear that the past fifty years have witnessed a large degree of development and codification of international human rights standards. The UDHR is a 'living instrument' in the sense that its meaning and interpretation have developed over time. It is *not* a 'sacred text', and *Michael Freeman* is quite correct in warning us against 'human rights fundamentalism'. Indeed, *Rosalyn Higgins* examines some of the current challenges of the universality of the human rights as articulated in the UDHR – challenges from the West, challenges based on so-called 'Asian values', the Islam or tribal cultures, and the

issue of sovereignty as for instance adhered to in China. She ends by appealing to listen to the people whose rights are at stake. Indeed ‘people matter’, as a collection of speeches by Theo van Boven, published back in 1982, was entitled. The rights contained in the UDHR are supposed to be all inclusive, as *Theo van Boven* points out: they should be applicable to everyone without distinction of any kind, such as race, colour, sex or gender, language, religion, political or other opinion, national or social origin, property, birth or other status.

The universality of human rights is based on what *Abdullahi An-Na'im* calls in a felicitous phrase ‘a shared consciousness of vulnerability’: we all need the protection of human rights, as we are all, in his words, ‘potential, if not actual victims of the violation of our rights’. With the coming into being of the UDHR, there is at least the possibility for people to know these standards and to be aware of when and how they are being violated.

What about the future? We do not know what the future is, but, as *Michael Freeman* reminds us, we do know that it is partly ours to make. That may be cause for some measure of optimism, as expressed by *David Forsythe*, who expects the onehundredth anniversary of the UDHR as likely to be more joyous than the fiftieth. It may also be cause for considerably less optimistic thinking, as shown by *Katarina Tomaševski* when looking at the economic costs of human rights. The UDHR is, among other things, meant to prevent a recurrence of the Holocaust. However, events in such countries as Cambodia, Rwanda, Bosnia, and Sierra Leone – to name only some of the worst cases – have shown that that objective has by no means been achieved as yet.

The UDHR contains a set of standards by the States’ own making, which restrict their freedom of action towards their own citizens and other residents as well as non-residents. Not only have they developed these standards, they themselves are also involved in the supervision of the actual implementation of those very standards. Such supervision is not left to some neutral, non-partisan ‘international community’, as is often suggested. The international community consists of these very same States. In other words, they devise the standards for measuring their own behaviour and then act as policemen to supervise their own performance. That is a paradox which sets the parameters as well as the limitations of the UDHR and the other declarations and binding treaties that have emerged from it. One should not be disappointed at the lack of success in the implementation of the standards contained in the UDHR; one should rather be pleasantly surprised at whatever results that have been achieved. Non-governmental human rights organizations, to whose explosive growth *Theo van Boven* is referring, serve to remind governments of their obligations. The UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (‘Human Rights Defenders’),¹ serves as a formal recognition of the valuable efforts of such individuals and NGOs. There is reason for caution *vis-à-vis* present efforts to curtail their rights and privileges under the pretext of rationalization of decision-making in international human rights bodies.

¹ General Assembly Resolution 53/144, adopted on 9 December 1998.

‘All human rights are universal, indivisible and interdependent and interrelated.’ This famous formula coined at the 1993 World Conference of Human Rights, while a most highly sounding and honourable statement, is at the same time the expression of some of the greatest problems in the field. How is one going to choose between two conflicting sets of human rights, as for example the right to full equality of women versus freedom of religion, as *Kevin Boyle* has shown? How should States, governments, groups or individuals act, if one set of human rights is being violated *in order to* secure another (supposedly higher) set of human rights? Is the prohibition of Holocaust denial a restriction of freedom of expression or should it be seen as a valid affirmation of human dignity? Is the prohibition of apostasy a support or a denial of freedom of religion? *Kevin Boyle* finds that many Islamic countries stand outside the international consensus on some related questions. Yet, *Abdullahi An-Na'im* is of the opinion that even the very notion of what is an Islamic State has by no means been decided – let alone what the prescriptions of Shari'a mean for human rights.

States are supposed not to be ranked (they are all supposed to be sovereign and legally equal), neither are human rights. Yet, consciously or unconsciously, perhaps even surreptitiously, people tend to engage in such ranking all the time. Would it be wise to come out and admit it? Would States ever be able to agree on such ranking? The answer is likely to be ‘no’ and the results of such an exercise might turn out to be much worse than to leave matters in limbo. In a similar way people always discriminate, in the sense that they make distinctions among human beings. Sometimes, this may have led to ‘separate but equal’ treatment, as in the case of separate facilities for men and women. There is nothing wrong with that. What is wrong is, what *Jack Donnelly* calls invidious discrimination – discrimination that tends to ill will or causes unjustifiable harm. The worst cases are those where the humanity of human beings is being denied, for various reasons – for being woman, Jewish, Chinese, coloured or homosexual. Such denial supposedly allows for discriminatory treatment of persons, as their ‘normality’ is put into question.

Basic to the UDHR is respect and acceptance of the rights and freedoms of all human beings – as long as they do not interfere with the rights and freedoms of others. For that reason the wearing of headscarves in schools may be accepted as a valid expression of freedom of religion, whereas the putting to death of non-conformists is not acceptable. However, as *Kevin Boyle* indicates, most religions claim exclusive truth for their tenets or doctrines. The problem which remains to be solved, is how to reconcile this with the essentially pluralist and neutral principles of the international human rights standards.

Jack Donnelly makes the point that all internationally recognized human rights are implemented differently in different countries. Indeed, *Abdullahi An-Na'im* even claims that *all* States have problems with one or other aspect of the principle of universality of human rights. This understanding raises the debate about the nature of universality of human rights above the supposed acceptability of notions of ‘cultural relativism’. Apparently, there exists some measure of relativism with regard to human rights in all societies.

Today, there should hardly be a need to emphasize the importance of economic, social and cultural human rights, though the United States remains one of the major exceptions to do so. While some 140 States, including 23 Western States, have by now

ratified the International Covenant on Economic, Social and Cultural Rights, the United States has so far refused to do so and continues to portray these rights as mere aspirations or ambitions rather than as human rights. In addition, *Katarina Tomaševski* points at the economic costs of human rights. She looks into the reasons why Western States have been unable or unwilling to provide better guarantees for improving respect for economic and social rights. Human rights policy does not come free of charge! Implications for governmental human rights obligations are wide-ranging: privatization has affected schools as well as prisons; budgetary cuts have affected the disabled as well as access to health care for the elderly; liberalization of the labour market has introduced obstacles to the equal treatment for women that were thought to have been already eliminated. ‘Will social and economic rights wither away in the 1990s?’, she asks. In the end, it will all depend on whether the rich nations are willing to make available the financial means which are necessary to guarantee economic and social rights. Electoral preferences in Western European countries would seem to demonstrate the importance of social and economic rights, ‘opening the way for their strengthening domestically, regionally and globally’.

Classic notions and distinctions remain always useful to discuss – at least if this is done by knowledgeable and insightful observers, as in the present case. *Ashbjørn Eide* looks at such classic notions as freedom and equality, from the perspective of minority rights. Minorities and indigenous peoples are among the various ‘clienteles subjects’ – and so are women and children – to which the UDHR is of major significance. Indeed, though majority rule is the very essence of democratic government, such majority rule must be coupled with respect for minorities, in order to enable such minorities to become the majority by peaceful means in the future.

Discrimination of sexual minorities – gays and lesbians more in particular – is the subject dealt with by *Jack Donnelly*. Such discrimination takes place in many societies, including, and perhaps in particular, in those where it is officially denied that there are such people with ‘deviating’ sexual behaviour. Some of the very same reasons that used to be advanced for discrimination of women or people of different racial or ethnic origin or religious persuasion, are currently being used to discriminate homosexuals. Sociologist *Rhoda Howard* also deals with homosexuals, yet in a somewhat different manner. Basing herself on research material collected in a Canadian community, she explains the negative attitudes in many societies toward homosexuals, viewed as posing a threat to the traditional family, and traditional social and sexual roles. This applies especially to homosexuals who claim a right to set up a family of their own. She also points to a new form of cultural imperialism in the sense that representatives of non-Western States are now called upon to accept the very behaviour they were once told was reprehensible and in violation of Christian morality. They see this as further evidence of a lack of Western sensibility to local cultures.

The issue of minority rights is directly related to the debate about individual rights *versus* collective rights, which was first entered into during the Cold War era, but which has continued ever since. The right of peoples of self-determination, as *Michael Freeman* reminds us, was one of the first, but certainly not the only manifestation of such collective rights. It runs counter to the way in which human rights were formulated in

the UDHR, that is only as rights of individuals, and it has developed into one of the major controversies debated among human rights scholars and activists.

Most nations tend to think well of themselves. They look at human rights violations in other States with a considerable measure of condescension – if not arrogance. This in turn leads to sentiments of irritation and anger in the States that happen to be targeted. *David Forsythe* presents some of the results of a research project initiated by United Nations University on comparative foreign policy and human rights. The United States turns out to be not the only State in the world that is faced with paradoxes and inconsistencies in applying human rights standards to its foreign policy. Moreover, governments that emphasize human rights in their foreign policy, will be faced with questions about the application of such human rights in their domestic policy. Governments cannot afford to be single-minded in the pursuit of human rights in their foreign policy. There are always other factors to consider. Only non-governmental human rights organizations can afford to be single-minded in that respect.

Impunity of human rights offenders is one of the greatest problems to be solved. In recent years, a modest beginning has been made with the setting up by the Security Council of international criminal tribunals, on the former Yugoslavia and on Rwanda, followed by the International Criminal Court with regard to which a treaty was adopted in Rome in 1998. Unfortunately, major powers such as the United States and China have so far shown little inclination to become parties to the latter treaty.

Complementary to these judicial bodies, so-called truth- and reconciliation commissions have sprung up in some twenty different countries. Their task is not to bring the culprits to justice – a task which is supposedly left to the courts – but to establish the factual truth of what has happened in the past. *Christian Tomuschat*, who himself was heading a similar body in Guatemala at the time of the conference, makes clear that it is mainly for the surviving victims and the relatives that the nature of the past suffering is documented and officially recognized. Only then, it is assumed, can a process of true reconciliation make a start. Establishing a truth commission is in the end a matter of national responsibility; it cannot and should not be the result of an order by the international community. Indeed, the establishment and operations of the truth commission may in itself become part of the process of reconciliation.

Setting up standards of behaviour and systems of supervising these standards, takes part at both the global and the regional level. The Inter-American system of human rights has been strongly developed in recent years, as is being shown by *Claudio Grossman*, himself a member of the Inter-American Commission on Human Rights. The two primary goals of the system are avoiding regression and expanding rights and freedoms. The Commission and the Inter-American Court of Human Rights are meeting with such obstacles as non-compliance, lack of funds and lack of staffing. In the end, it will depend on the willingness of the States that are parties to the regional human rights treaties themselves, to remove those obstacles. *Allan Rosas* shows that the UDHR now also plays a major role in the treaty relations of the European Union (EU), which at the time of its establishment had little or no involvement with human rights matters. During the 1990s, human rights have become a theme in the external policies of the EU, especially in its trade and co-operation agreements with third countries. The ‘human

rights clause' which is included in such agreements, is based on the assumption that the UDHR, while not legally binding, reflects existing general international law.

Islamic States, while not a 'regional' category in the strict sense, are often lumped together as a sub-global category. However, *Abdullahi An-Na'im* makes clear that the term 'Islamic States' is a misnomer, which is not practically viable at the present time. Few States with a Muslim majority have maintained a consistent position regarding the UDHR. The position of States regarding the UDHR is a product of factors such as the political system, ideological orientation, legal order and social organization of a State, rather than of a somewhat simplistic classification as 'Islamic' in one sense or another.

Whether in addition to the UDHR there should also be a Universal Declaration of Human Responsibilities, as a group of former heads of government and heads of State has proposed, a proposal which receives support from *Kevin Boyle*, is a matter of judgment and of taste. It may be acceptable, as long as it does not detract attention from the central role the UDHR should continue to play. Human rights are more necessary than ever, as the victims of its violations can testify. The chief of the security forces of a major European country was recently quoted as saying that in his country 'Nobody's human rights can be violated without a reason.' Closer observance of the Universal Declaration of Human Rights should help to remove such reasons.