Universality in the Interpretation of International Human Rights Treaties

The Right to Health as a Case Study

By

Olivia Serrano Núñez

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Acronyms

GA	General Assembly
CAT	Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
HRC	Human Rights Council
CED	Convention against Enforced Disappearance
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CS	Civil Society
ECHR	European Convention on Human Rights
IC	International Community
ICJ	International Court of Justice
CJEU	Court of Justice of the European Union
ICHR	Inter-American Court of Human Rights
CRC	Convention on the Rights of the Child
CRPD	Convention on Persons with Disabilities
CSW	Commission on the Status of Women
DESA	Department of Economic and Social Affairs
ESCR	Economic, social and cultural rights
DESCA	Economic, social, cultural and environmental rights
IHRL	International Human Rights Law
UDHR	Universal Declaration of Human Rights
ECOSOC	Economic and Social Council
UPR	Universal Periodic Review
FAO	Food and Agriculture Organization of the United Nations
GC	General Comment
HABITAT	United Nations Human Settlements Program
ICCPR	International Covenant on Civil and Political Rights
ICERD	Convention Against Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICPD	Program of the International Conference on Population and Development
ICRMW	Migrant Workers Convention
ILC	International Law Commission
NGO	Non-Governmental Organization
NHS	National Health Service

OHCHR	Office of the United Nations High Commissioner for Human Rights
OCHA	Office for the Coordination of Humanitarian Affairs
OAS	Organization of American States
SC	Security Council
IO	International Organizations
ILO	International Labor Organization
WHO	World Health Organization
UN	United Nations
OSAGI	Office of the Special Advisor on Gender Issues and the Advancement of Women
NATO	North Atlantic Treaty Organization
UNDP	United Nations Development Programme
UNHRS	United Nations Human Rights System
ECTHR	European Court of Human Rights
IHRT	International Human Rights Treaties
AU	African Union
UNAIDS	Joint United Nations Programme on HIV/AIDS
UNCHR	Office of the United Nations High Commissioner for Refugees
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNFPA	United Nations Population Fund
UNICEF	United Nations Children's Fund
VCLT	Vienna Convention on the Law of Treaties

Preface

My journey toward this project began at a transformative moment in my life. In 2009, at just 18 years of age, I had the extraordinary opportunity to serve as a youth delegate at the United Nations headquarters in New York, representing a non-governmental organization (NGO) committed to the promotion of human rights. That experience marked a profound turning point, both personally and professionally, inspiring me to pursue a degree in International Relations, which I completed in 2013, and to dedicate myself wholeheartedly to the international defense of human rights.

Between that pivotal moment and the start of my doctoral studies, I engaged deeply in the practical world of human rights advocacy. I participated in numerous international forums, from the Commission on the Status of Women (CSW) to the General Assembly of the Organization of American States (OAS). The active role of our NGO within international organizations also opened the door for me to join Mexico's official national delegation in 2017 and 2018 for the Commission on the Status of Women and the Commission on Population and Development under ECOSOC.

These opportunities granted me a unique perspective on the inner workings of the international system, particularly its relationship with civil society. However, they also brought to light significant challenges and tensions that deepened my critical understanding of the field.

One issue that stood out with increasing clarity was the disproportionate influence of certain voices and agendas within the international human rights discourse. It became evident that actors with greater financial and political resources often wielded outsized influence, prioritizing their narratives while sidelining alternative perspectives. I also observed a subtle yet significant shift in language and priorities over time.

This troubling pattern raised critical questions for me: How can we ensure that the international human rights discourse remains truly inclusive and representative of the diverse voices and communities it seeks to serve? How do we prevent certain interpretations from monopolizing the conversation, undermining the universal principles on which the human rights system is founded?

As an internationalist, I realized that addressing these questions required a dual approach—one that examined the sociopolitical forces shaping human rights standards and the legal frameworks governing international bodies. To strengthen this perspective, I complemented my studies in International Relations with a legal approach to human rights, completing a Master's degree in Human Rights at the University of Navarra.

The legal training I received at Navarra not only solidified my understanding but allowed me to organize and refine my ideas. It reinforced my initial insight that a significant tension exists between the universal aspirations of the international human rights system and its practical implementation. Motivated by this realization, I embarked on the doctoral research that I present in this book, determined to critically analyze the legal and political functioning of the United Nations Human Rights System. The resulting work offers practical pathways to improve its integrity and effectiveness, ensuring greater transparency, institutional coherence, and a renewed commitment to universality.

This research is both the culmination of my personal and professional journey and the foundation for further action. The University of Navarra provided me with the intellectual space to structure these ideas, and now, through the Be Human Association, I am committed to bringing this vision into practice. This work is more than a theoretical contribution—it is an invitation to reimagine a human rights system that remains faithful to its ideals while respecting the rich diversity of cultures and perspectives. It is a call to foster a more balanced, inclusive, and truly universal human rights discourse, ensuring that no voice is left unheard and no principle is distorted.

Introduction

1 Purpose

In 1945, the United Nations (UN) was founded with the core mission to "promote respect for human rights and fundamental freedoms for all."[1] This led to the establishment of the United Nations Human Rights System (UNHRS) three years later. However, it wasn't until the 1990s that human rights discourse began to gain significant momentum within the International Community (IC). This shift occurred largely due to a series of UN-sponsored international conferences that set out broad principles and programs to guide states in shaping their development policies, aiming to address the new challenges brought about by globalization and evolving concepts of development.

During this period, two notable trends emerged: a significant increase in civil society's role in international dialogue and a surge in the production of non-binding guidelines, or "soft law" documents.[2] These developments, however, were not without consequences. Divergent views on the nature of human rights became more apparent, and a particular perspective started to dominate international discussions. This dominance pushed opposing views into the background and sparked doubts about the universality principle—an essential element of human rights.

This situation raises questions about the authenticity and representativeness of the prevailing human rights discourse and whether it truly reflects the needs and perspectives of affected communities and individuals. It also challenges the core notion of universality in human rights. If certain perspectives are consistently imposed, it suggests that influential actors might be shaping international standards based on their own interpretations, which could distance these standards from their intended universal meaning. Such a scenario may be further enabled by the use of interna-

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1 United Nations, *Charter of the United Nations*, Oct. 24, 1945, 1 UNTS XVI, available at: https://www.un.org/es/about-us/un-charter art. 1.

2 Cf. Clark, A. M., *Demands of Justice: The Creation of Global Human Rights Practice*, Cambridge University Press, Cambridge, 2022, p. 15.

tional legal frameworks and the principle of good faith among member states within relevant international organizations.

Building on this premise, and considering the expansion of the UNHRS, this study examines the legitimacy of non-jurisdictional bodies within the UNHRS and the legal criteria that support their function.[3] The central question here is: to what extent is this form of non-court-based human rights supervision legitimate, and what legal grounds support it? This analysis is conducted with an emphasis on the principle of universality and its embodiment in the concept of intercultural dialogue. Specifically, the hypothesis suggests an inherent tension between the principle of universality and the role of non-court-based human rights oversight. This tension arises from the need for rules to be interpreted as an essential condition for effective supervision, meaning that "an indispensable requirement for any rule to shape behavior is its own intelligibility and the epistemic capacity of its recipients to correctly identify and apply it." [4]

This tension has led to three distinct responses in the international context, where state sovereignty remains a core principle. These responses include: (i) frequent reliance on non-binding guidelines or "soft law" instruments, which lack legal force; (ii) the involvement of non-state actors, such as non-governmental organizations (NGOs) and independent experts, to ensure impartiality, democratic legitimacy, and broader representation in treaty monitoring; and (iii) language that allows states considerable leeway in interpreting and applying human rights standards, thereby easing the pressure on them. Although each of these approaches seeks to mitigate the tension, they often introduce new challenges that can directly impact the principles of universality and intercultural dialogue.

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[3] Garrido Rebolledo has also raised the question of the legitimacy of global authority and its political influence. Cf. Garrido Rebolledo, V., "La COVID-19 y la Ilusión de la Gobernanza Global frente a las Pandemias", in Moure, L./ Pintado, M. (coords.), *Transición de Poder y Transformaciones del Orden Liberal en Tiempos de Pandemia: Nuevos y Viejos Desafíos para la Teoría y la Práctica de las Relaciones Internacionales*, Tirant Lo Blanch, Valencia, 2022, pp. 294–297, [pp. 285–314].

[4] Cfr. Zambrano, P. "Comprender o Interpretar el Derecho: El Convencionalismo Semántico en su Laberinto", *Revista Chilena de Derecho*, vol. 48, no. 3, 2021, p. 134, [pp. 131–154].

2 Structure

To tackle this topic, we have structured the study around four core questions. The first question examines how the UNHRS embodies the aspiration for universality. Specifically, we explore how this aim is reflected in the system's structure and origins, as well as the tools it uses to pursue it. Chapter I traces the evolution of human rights within Western culture, emphasizing their relatively recent integration into political and legal systems. We highlight the UNHRS as the only international system dedicated to human rights protection without judicial authority that aspires to universality. This pursuit implies a quest for common principles across the cultures represented within the system, framing it as a mechanism for the coordinated protection of human dignity through intercultural dialogue.

Our analysis is presented in three parts: (1) a historical review of the UNHRS's origins, (2) an examination of its foundational texts (the UN Charter, the Universal Declaration of Human Rights, and the two Covenants), and (3) a systematic-teleological analysis that shows the aspiration for universality and intercultural dialogue in the production of both binding and non-binding sources, or "hard" and "soft" law, within the system.

In this context, we emphasize the use of non-binding instruments, generating what is known as "soft law," following definitions by scholars such as Abbott, Snidal, Goodman, Lagoutte, and Shelton.[5] Soft law documents tend to be less precise than formal international treaties, offering states considerable leeway to interpret human rights standards according to their own constitutions, legal frameworks, and political systems. Although these interpretations and recommendations lack binding legal force, they can still exert significant moral and political pressure on states, sometimes even

[5] Cf. Abbott, K. W./ Snidal, D., "Hard and Soft Law in International Governance", *International Organization*, vol. 54, 3, 2000; pp. 434–436, [pp. 421–546]; Goodman, R. / Jinks, D., "How to Influence States: Socialization and International Human Rights Law", Duke Law Journal, vol. 54, no. 3, 2004, pp. 630–633, [pp. 621–703]; Goodman, R./ Jinks, D., "Three Mechanisms of Social Influence," in *Socializing States : Promoting Human Rights Through International Law*, Oxford University Press, New York, 2013, pp. 21–22; Lagoutte, S. and Gammeltoft-Hansen, T. and Cerone, J., *Tracing the Roles of Soft Law in Human Rights*, Oxford University Press, New York, 2016; pp. 2–4; Shelton, D., "Compliance with International Human Rights Soft Law", *Studies in Transnational Legal Policy*, vol. 29, 1997, pp. 120–127, [pp. 119–143]; Shelton, D., "Soft law" in *Routledge Handbook of International Law*, Routledge Press, 2009, pp. 2–7, [pp. 1–29].

publicly shaming them into compliance. Ironically, what might seem to relieve pressure on states can, in fact, add another layer of political burden, while also setting the groundwork for customary international law.

In Chapter II, we address the second question, building on the perspective of professor Carraro. This section examines the impact of non-state actors—particularly "independent experts" and representatives from civil society organizations—on the principles of universality and intercultural dialogue.[6] According to scholars like Keller and Truscan, involving non-state actors in international law processes is an attempt to legitimize and democratize the international human rights regime.[7] While this idea may seem appealing, it raises a fundamental question: how can the involvement of civil actors, whose representativeness is not assured by institutional selection, be considered legitimate?

With this question in mind, we conduct a systematic analysis of the norms governing civil society's role in the UNHRS, focusing on relevant UN resolutions and regulations of treaty-monitoring bodies. Our goal is to identify the principles that regulate the involvement of independent experts and civil society in creating both soft and hard law sources. More specifically, we explore how this participation is limited by the principles of universality and intercultural dialogue.

Once the normative framework for civil society action within the UNHRS is established, Chapter III delves into the "core" and "periphery" (or "penumbra") of international health law as a case study. This analy-

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[6] Cf. Carraro, V., "The United Nations Treaty Bodies and Universal Periodic Review: Advancing Human Rights by Preventing Politicization?", *Human Rights Quarterly*, vol. 39, 4, 2017, pp. 946–947, [pp. 943–970]; Carraro, V., "Electing the experts: Expertise and independence in the UN human rights treaty bodies", *European Journal of International Relations*, vol. 25, 3, 2019, pp. 835–842, [pp. 826–851].

[7] Cf. Keller, H. and Ulfstein, G., *UN Human Rights Treaty Bodies: law and legitimacy*, Cambridge University Press, Cambridge, 2012, pp. 6–9; Truscan, I., *The Independence of UN Human Rights Treaty Body Members*, Geneva Academy of International Humanitarian Law and Human Rights, Geneva, 2012, pp. 7–15; Truscan, I., *Diversity in Membership of the UN Human Rights Treaty Bodies*, Geneva Academy of International Humanitarian Law and Human Rights, Geneva, 2018, pp. 4–9.

sis draws on the work of scholars like Chapman, Tasioulas, Toebes, and Tobin,[8] among others.[9]

To approach this issue, we start with the premise of H.L.A. Hart,[10] as interpreted by Marmor,[11] which suggests that every concept has a "core of certainty." According to Zambrano,[12] this core represents the inherent clarity that makes both the meaning and reference of concepts universally understandable. As interpretations of a concept extend further from its core, they become more culturally influenced and consequently less universally applicable. This chapter aims to map out the areas of consensus and debate surrounding the right to health, distinguishing between its core and peripheral aspects.

The analysis examines the "minimum core" of the right to health, its application as a public good, the minimum obligations states must uphold, and the formulation of public health policies based on human rights. All of these elements are evaluated through the lens of universality and intercultural dialogue within the UN system.

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[8] Cf. Chapman, A., "The Foundations of a Human Right to Health: Human Rights and Bioethics in Dialogue", *Health and Human Rights*, vol. 17, 1, 2015, pp. 7–9, [pp. 6–18]; Chapman, A., *Global Health, Human Rights and the Challenge of Neoliberal Policies*, Cambridge University Press, Cambridge, 2016, pp. 2–9; Tasioulas, J., *The Minimum Core of the Human Right to Health*, Nordic Trust Fund, 2017, pp. 23–27; Tobin, J., *The Right to Health in International Law*, Oxford University Press, New York, 2012, pp. 49–54; Toebes, B., "Introduction", in Toebes, B./ Ferguson, R./ Markovic, M./ Nnamuchi, O. (eds.) *The Right to Health: A Multi-Country Study of Law, Policy and Practice*, Springer, The Hague, 2014, pp. 13–15.

[9] Cf. Castleberry, C., "A Human Right to Health: Is There One and, if so, What Does it Mean?", *Intercultural Human Rights Law Review* Vol. 10, 2015, pp. 190–193, [pp. 189–232]; Clapham, A./ Robinson, M., *Realizing the Right to Health*, rüffer&rub, Berne, 2009; Forman, L. and Luljeta, C. and Chapman, A. and Lamprea, E., "Conceptualising Minimum Core Obligations under the Right to Health: How Should We Define and Implement the "Morality of the Depths"", *The International Journal of Human Rights*, vol. 19, Feb, 2016, pp. 5–13, [pp. 1–19]; Hunt, P., "Interpreting the International Right to Health in a Human Rights-Based Approach to Health", *Health and Human Rights*, vol. 18, 2, 2016, pp. 4–11, [pp. 1–30].

[10] Cf. Hart, H.L., *The Concept of Law,* Clarendon Press, 2nd. Edition, New York, 1994, pp. 152- 253.

[11] Cf. Marmor, A., "Is Literal Meaning Conventional?", *Topoi*, vol. 27, 2008, p.105; Marmor, A., *Social Conventions. From Language to Law*, Princeton University Press, Oxford, 2009, pp. 86 and 93.

[12] Cf. Zambrano, P., "Comprender o interpretar el Derecho. Semantic conventionalism in its labyrinth", pp. 138–151.

In Chapter IV, we present a case study assessing how treaty bodies' interpretations of the right to health align with the core defined in Chapter III, and thus whether they uphold the principles of universality and intercultural dialogue. This chapter focuses on general comments by treaty bodies, drawing on theories by scholars Lesch and Reiners.[13] These scholars suggest that treaty bodies use general comments to set interpretative standards for rights. Specifically, we examine standards established by the Committee on the Elimination of Discrimination against Women (CEDAW) in General Recommendation 24, the Committee on Economic, Social, and Cultural Rights (CESCR) in General Comments 14 and 22, and the Committee on the Rights of the Child (CRC) in General Comment 15.

The study blends insights from human rights theory with those from international relations theory and practice. Using a systemic approach, it identifies actors and systems and analyzes their interconnections. This research is situated within a complex international system where legal and political boundaries often blur, with legal measures sometimes serving as political tools and vice versa. This fluidity between legal and political realms highlights the need to differentiate the legal framework of non-jurisdictional bodies from the valid space for political action. Accordingly, this study situates itself at the crossroads of these dynamic interactions.

3 Theoretical framework

This analysis is conducted within the framework of the UNHRS, the only human rights protection mechanism with aspirations for universal reach. The UNHRS is built on the foundational principle that every individual, without exception, possesses inherent dignity and a full spectrum of human rights, a notion most prominently expressed in the Universal Declaration of Human Rights (UDHR). Since its adoption in 1948, the system has continually evolved, seen in the creation of new entities and monitoring mechanisms, expanded membership, and the inclusion of diverse actors.[14]

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[13] Cf. Lesch, M./ Reiners, N., "Informal human rights law-making: How treaty bodies use 'General Comments' to develop international law", *Global Constitutionalism*, vol. 12, no. 2, 2023, pp. 381–383.

[14] There is an extensive literature on the UNHRS. The following are some of the most relevant authors for the present research. Cfr. Alston, P., "Conjuring up New Human Rights : A Proposal for Quality Control", *The American Journal of*

The UNHRS emerged as a response to the challenges of protecting human rights solely at the national level, sparking a fundamental debate about how to achieve universality and, more specifically, the feasibility and role of intercultural dialogue. Given its primary purpose of protecting individuals from abuses by their own states, the involvement of non-state actors in human rights monitoring has been justified as a way to depoliticize the process. In this context, NGOs play a significant role as representatives of civil society, alongside independent experts who bring specialized knowledge, training, and experience to the table.

The involvement of these actors is embedded in the founding documents of the Human Rights Council (HRC) and is visible throughout its structure, which includes two main types of monitoring bodies: UN Charter-based bodies and international human rights treaty bodies, commonly referred to as "treaty bodies." Charter-based bodies encompass the HRC as the main organ, along with subsidiary bodies like the Special Procedures Mandates, the Universal Periodic Review (UPR) Working Group, and the Advisory Committee. In contrast, the treaty bodies consist of ten committees of independent experts, each responsible for monitoring compliance with international human rights treaties by issuing recommendations, general comments, and other guidance.

Although both categories aim to protect human rights, their nature and functions differ in two key ways. First, Charter-based bodies are accountable to an intergovernmental organization, the HRC, while treaty bodies are made up of independent experts whose primary role is to interpret treaty obligations and guide states in fulfilling them. Second, Charter-based

International Law, vol. 78, no. 3, 1984; pp. 607–621; Alston, P., "Reconceiving the UN Human Rights Regime: Challenges Confronting the New UN Human Rights Council", *Melbourne Journal of International Law*, vol. 7, no. 1, 2006, pp. 185–224; Buergenthal, T., "The Evolving International Human Rights System", *The American Journal of International Law*, vol. 100, no. 783, 2006 pp. 783–807; Freeman, M., *Human Rights: An Interdisciplinary Approach*, Polity Press, Cambridge, 2006; Glendon, M. A., *A World Made New*, Random House, New York, 2001; Goodman, R./ Jinks, D., "Measuring the Effects of Human Rights Treaties", *European Journal of International Law*, vol. 14, no. 1, 2003, pp. 171–183; O'Flaherty, M., "The Strengthening Process of the Human Rights Treaty Bodies," , *American Society of International Law Proceeding* Vol. 108, 2014, pp. 285–288; O'Flaherty, M./ O'Brien, C., "Reform of UN Human Rights Treaty Monitoring Bodies: A Critique of the Concept Paper on the High Commissioner's Proposal for a Unified Standing Treaty Body," , *Human Rights Law Review*, vol. 7, no. 1, 2007, pp. 141–172.

bodies operate under a broad mandate to promote and protect human rights worldwide, addressing general situations of rights violations. Treaty bodies, however, focus on interpreting the specific treaties that established them, functioning independently of state influence.

In essence, treaty bodies are unique in their composition: they consist of non-state actors tasked with interpreting international human rights standards. These interpretations generate new standards used to assess state compliance with respective treaties. This setup makes treaty bodies attractive to those looking to shape the development of international human rights norms. Furthermore, this influence enhances the legitimacy of their oversight work, as treaty bodies are generally seen as less politicized than their Charter-based counterparts, which underlines the importance of studying them.

Within this framework, the work of treaty bodies on the right to health serves as a case study, due to its unique features that make it particularly relevant for analysis. Firstly, given the nature of this right, any interpretation of its application has administrative implications. According to the principle of progressiveness in Article 2 of the International Covenant on Economic, Social, and Cultural Rights (ICESCR), states are obligated to "take steps... by all appropriate means, including particularly the adoption of legislative measures," to achieve the full realization of the right to health, to the maximum of their available resources. In this context, it is essential that the guidelines established by treaty bodies remain grounded in core legal principles.

Secondly, it is well-recognized that the right to health has sparked extensive debates on topics such as the beginning and end of life, genetics, mental health, and pandemic management—each reflecting fundamental differences in the scope and obligations tied to this right.[15] While there is broad international consensus on the importance of health protection, translating this principle into specific practices reveals significant discrepancies. This raises critical questions: Do these differences suggest that the right to health lacks a universally recognized core that transcends cultural contexts? Or have interpretations drifted so far from this core that they

[15] Cf. Chapman, A., "The Foundations of a Human Right to Health: Human Rights and Bioethics in Dialogue", pp. 7–9, [pp. 6–18]; Chapman, A., *Global Health, Human Rights and the Challenge of Neoliberal Policies*, pp. 2–9; Tasioulas, J., *The Minimum Core of the Human Right to Health*, pp. 23–27; Tobin, J., *The Right to Health in International Law*, pp. 49–54; Toebes, B., "Introduction", pp. 13–15.

have polarized positions? This study seeks to explore these questions by comparing specialized scholarship on the international right to health with the standards established by the relevant committees.

The legality and legitimacy of non-jurisdiccional bodies have been examined from various perspectives by different authors. For instance, scholars such as Samnoy,[16] Morsink,[17] Glendon,[18] and Pallares,[19] through originalist analysis of human rights, investigate the meaning of these rights by examining the drafting debates of the Universal Declaration of Human Rights (UDHR). They aim to identify the foundational ideas embedded within the Declaration, reconstructing its underlying legal-philosophical framework. Building on their premise that the competence of non-court-based supervisory bodies is limited by the objective meaning of the legal statements they interpret, this study complements the originalist view by applying the "core and penumbra" concept.

The nature of soft law documents produced in non-jurisdictional bodies has also been studied from various angles. Scholars such as Shelton,[20] Lagoutte,[21] Pollack and Shaffer,[22] have critically examined soft law as a political

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[16] Cf. Samnøy, Å. "Human Rights as International Consensus. The Making of the Universal Declaration of Human Rights, 1945–1948," *CMI Report Series*, vol. 4, Bergen, 1993; available at http://www.cmi.no/publications/publication/?1365=human-rights-asinternational-consensus

[17] Cf. Morsink, J., *The Universal Declaration of Human Rights: Origins, Drafting, and Intent*, University of Pennsylvania Press, Philadelphia, 1999, p. 3.

[18] Cf. Glendon, M. A., *A World Made New*, Random House, New York, 2002, pp. 235–241.

[19] Pallares, P., *Un Acuerdo en las Raíces: Los Fundamentos en la Declaración Universal de Derechos Humanos, de Jacques Maritain a Charles Malik*, UNAM, Mexico, 2020, pp. 1–18.

[20] Shelton, D. (ed.), *Commitment and Compliance: The Role of Non-binding Norms in the International Legal System*, Oxford University Press, New York, 2000, pp. 1–2.

[21] Cf. Lagoutte, S./ Gammeltooft-Hansen, T./ Cerone, T. (eds.), *Tracing the Roles of Soft Law in Human Rights*, Oxford University Press, Oxford, Oxford, 2016, pp. 27–46.

[22] Cf. Pollack, M., "The Interaction of Formal and Informal Lawmaking," in Pauwelyn, J./ Wessel, R./ Wouters, J. (eds.), *Informal International Lawmaking*, Oxford University Press, Oxford, 2012, pp. 243–244; Pollack, M./ Shaffer, G., "Hard Law vs. Soft Law: Alternatives, Complements and Antagonists in International Governance," *Minnesota Law Review*, Vol. 94, No. 3, 2010, pp. 706–99; Pollack, M./ Shaffer, G., "Hard Law, Soft Law, and International Security: The Cases of Nuclear Weapons and the Responsibility to Protect," *Boston College Law Review*, Vol. 52, No. 4, 2011, pp. 1147–1241.

tool, analyzing the limits of legal authority and its position within the international framework. Additionally, Abbott and Snidal[23] have explored the role of non-state actors from multiple perspectives: private groups shaping national preferences and international outcomes; public officials seeking private rewards; and interactions between autonomous national governments and private actors.

Legally, a distinction exists between human rights codified in covenants (hard law) and human rights standards found in soft law instruments. These standards are not considered international norms per se but rather interpretations or recommendations that assist states in fulfilling these norms.

In this context, De Casas[24] argues that human rights statements have universal validity, whereas human rights standards may not necessarily carry the same weight. McCall-Smith, [25] on the other hand, posits that despite being soft law, the standards set by treaty bodies influence how national courts interpret international human rights norms, serving as critical interpretative tools. This study supports the view that treaty bodies' standards exert substantial political pressure on domestic legal development, essentially equating their impact with that of binding legal sources.

Regarding the increasing role of non-state actors in global governance, this study follows Scholte's perspective.[26] Unlike traditional views of international relations focused on nation-state interactions, contemporary global

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[23] Cf. Abbott, K./ Snidal, D., "Hard and Soft Law in International Governance," International Organization, Vol. 54, No. 3, 2000, pp. 450–451; Abbott, K./ Snidal, D., "Pathways to Cooperation," in Benvenisti, E./ Hirsch, M. (eds.), The Impact of International Law on International Cooperation: Theoretical Perspectives, Cambridge University Press, New York, 2004, pp. 50–84; Abbott, K./ Snidal, D./ Waltz, K., "The Governance Triangle: Regulatory Standards Institutions and the Shadow of the State," in Mattli, W./ Woods, N. (eds.), The Politics of Global Regulation, Princeton University Press, New Jersey, 2009, pp. 44–88.

[24] Cf. De Casas, I., "What are human rights standards?", *International Journal of Human Rights*, vol. 9, no. 2, 2019, pp. 291–301.

[25] Cf. McCall-Smith, K., "Interpreting International Human Rights Standards", in Lagoutte, S./ Gammeltooft-Hansen, T./ Cerone, T. (eds.), *Tracing the Roles of Soft Law in Human Rights*, Oxford University Press, Oxford, 2016, pp. 27–46.

[26] Cf. Scholte, J. A., *Building Global Democracy? Civil Society and Accountable Global Governance*, Cambridge University Press, New York, 2011, pp. 1–7; Dellmuth, L. M./ Scholte, J. A./ Tallberg, J./ Verhaegen, S., *Citizens, Elites, and the Legitimacy of Global Governance*, Oxford University Press, Oxford, Oxford, 2022, pp. 3–22.

governance involves a wide range of actors, including corporations, civil society, local governments, and regional agencies. Rather than merely serving states, international organizations today are also actors in their own right, influencing and being influenced by various stakeholders. In this light, civil society functions as a political space where citizens' associations seek to shape societal rules outside the realm of political parties.

Civil society's activities reflect the exercise of citizenship—individuals claiming rights and fulfilling obligations as members of a political community. These initiatives are inherently collective, as they bring people together around shared concerns in public affairs. Civil society associations aim to influence the rules governing specific issues. Through deliberate political actions, civil society engages in the ongoing struggle to shape the distribution and exercise of power in society. Unlike political parties, however, civil society groups pursue ideals rather than public office.

In summary, this research builds on existing theories by distinguishing between the "core" and "penumbra" of rights to define the scope of treaty bodies' authority. Issues that fall within the penumbra often spark moral and political debates, indicating that discussions on their legal nature should remain within the domestic, rather than the international, sphere. This approach has two main objectives: to clearly define the role of the committees and to guide state parties in understanding the extent of their international human rights obligations.

As a theoretical-documentary study, this work aims to provide a framework that upholds the universality of human rights, offering criteria to assess the legitimacy of non-jurisdictional human rights control within the international system.

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Chapter 1

The UNHRS and its Claim to Universality

1 Introduction

Although the concept of inherent human rights that stand above positive law has been part of Western culture since its origins in ancient Greece, its formal integration into political and legal systems is a relatively recent development.

To protect and promote human rights, various legal frameworks have emerged, which, for the purposes of this study, can be categorized along two main criteria: territorial scope and the method by which their binding authority is enforced. Regarding territorial scope, there are national, regional, and international systems. Independently of this categorization, these systems may enforce their authority through jurisdictional (court-based) or non-jurisdictional (non-court-based) mechanisms, or a combination of both. In this context, the UNHRS stands out as the only international non-jurisdictional protection system whose creation, structure, and procedures embody a claim to universality.

Both the system itself and its universal aspirations are the result of a relatively recent normative evolution, involving a variety of actors and marking a significant departure from the 19th-century legal paradigms of international law. To assess its unique contribution compared to other models for recognizing, protecting, and promoting human rights, it is essential to understand the nature of its claim to universality and how the structure and dynamics of the system make this feasible.

With this broad epistemic objective in mind, this chapter argues that the UNHRS represents a coordinated international effort to protect human dignity, with its claim to universality realized through a commitment to fostering intercultural dialogue.

To support this argument, we examine three levels of analysis. First, we explore the origins of the UNHRS through both historical and textual anal-

ysis. For the historical perspective, we draw mainly on the works of Villán Durán[27] and Bates,[28] who illustrate how the system, in its various stages of development, emerged as a response to the limitations of constitutional protection for human rights.

For the analysis of foundational texts, which reflect the core principles and consensus on international human rights protection, we examine the three pillars of the system: the Charter of the United Nations, the Universal Declaration of Human Rights (UDHR), and the two covenants—the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR).

The second and third levels involve a systematic-teleological analysis, which reveals how the structure and mechanisms for producing standards within the system reflect its commitment to universality and intercultural dialogue in all aspects. Lastly, we focus on how this claim to universality influences the work of non-jurisdictional oversight bodies, which play a critical role in creating international human rights standards. [29]

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[27] Cf. Villán Durán, C., *Curso de Derecho Internacional de los Derechos Humanos*, Trotta, Madrid, 2002, pp. 68–75.

[28] Cf. Bates, E., "History", in Moeckli, D./ Shah, S./ Sivakumaran, S./ Harris, D. (eds.), *International Human Rights Law*, 3rd ed., Oxford University Press, Oxford, 2018, pp. 4–21.

[29] According to Conde, international human rights standards are the result of a process in which international forums such as the United Nations establish a code of conduct for specific aspects of human rights. This process starts with an initial proposal made by one or several member states or NGOs, and after several negotiations, a non-binding document is created that gathers the agreed principles, with the purpose of eventually converting them into binding norms. Conde, V., *A Handbook of International Human Rights Terminology*, 2nd ed., University of Nebraska Press, Nebraska, 2004, p. 245. Likewise, for de Casas there is a substantial distinction between human rights norms and standards, the former referring to universally agreed covenants or declarations that form part of international law either as treaties, general principles or custom. While international human rights standards refer to the interpretations of these norms made by monitoring and implementation mechanisms, and which, ultimately, do not have a universal agreement. For the purposes of this research we will use this definition. Cfr, de Casas, I., "What are human rights standards?", *International Journal on Human Rights*, Vol. 9, No. 2, 2019, pp. 293–295, [pp. 291–301].

2 The Claim of Universality in the Genesis of the UNHRS

There is a widely accepted view in human rights literature that modern human rights are closely linked to the end of World War II, the founding of the United Nations, and the evolution of Western constitutionalism. However, elements of the belief that every person has rights beyond those granted by positive law can be traced back to ancient civilizations. Thus, it would be inaccurate to attribute the origins of human rights solely to any single culture, religion, or region.[30]

In the development of the UNHRS, two historical processes played a pivotal role: the expansion of Western constitutionalism and the rise of universal philosophical and political thought. Together, these factors created the challenge of integrating diverse views on human nature within a shared legal-political framework.

While there is no specific historical point marking the formal adoption of human rights into positive law, it is useful to distinguish the different stages through which human rights were incorporated into Western practice, leading to the creation of today's international system.

Scholars commonly identify four stages in this evolution: (i) human rights as a moral demand for justice, (ii) the constitutional recognition of human rights for citizens, (iii) the establishment of human rights as enforceable fundamental rights, and (iv) the internationalization of human rights.[31]

In the first stage, encompassing ancient civilizations, the concept of "human rights" as we know it did not exist. However, the idea that rulers' abuse of power was unjust was present in the principles guiding these communities. In ancient Greece, for example, tyranny was seen as the misuse of power by a ruler pursuing personal gain at the expense of justice. Values such as freedom were considered moral demands rather than rights. Sophocles' play Antigone reflects this, as the protagonist defies the king's orders to exercise

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[30] Cf. Bates, "History", p. 4–5.

[31] Some authors who have distinguished and systematized the stages of the development of human rights as a concept in political thought are cfr. Kreide, R., "Between Morality and Law: in Defense of a Political Conception of Human Rights", *Journal of International Political Theory*, vol. 12, no. 1, 2016, pp. 11–15, [pp. 10–25]; Hayden, P., *The Philosophy of Human Rights*, Paragon House, St. Paul, 2001, pp. 3–10; Beitz, C., *The Idea of Human Rights*, Oxford University Press, Oxford, 2009, pp. 7–12.

her religious duty of burying her brother, guided by her sense of what is morally right.[32] Although Antigone does not explicitly speak of religious freedom or other specific rights, it conveys an early intuition of justice that transcends social status.

The second stage in Western political thought on human rights began in the late 17th century, notably with the English Bill of Rights of 1689. This document established that citizens have certain rights and freedoms that justify political authority and structure the constitutional organization of the state. While primarily aimed at formalizing England's parliamentary system, it also introduced specific rights, such as the prohibition of cruel and inhumane treatment, thereby implementing the principle that "state power must be limited for the benefit of individuals." [33]

In the late 18th century, rights declarations, such as the Virginia Declaration of Rights (1776) and the French Declaration of the Rights of Man and of the Citizen (1789), emerged from political upheavals and advanced the idea of rights as both a political ideal and a legal framework. These documents referenced rights to life, liberty, property, and security—principles that have influenced modern international instruments. However, these early declarations reflected social structures where not all individuals enjoyed equal rights.[34] Nonetheless, they marked the spread of constitutionalism as a political model that eventually influenced Europe and Latin America.

The third stage represents a significant step in formalizing human rights: their establishment as enforceable constitutional rights. The landmark U.S. case of Marbury v. Madison[35] exemplifies this shift, asserting that govern-

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[32] The entire play is a classic for studying the history of political thought and human rights. Cf., Sophocles, *Antigone,* (trans. Luis Gil), Penguin Classics, Barcelona, 2015.

[33] Bates, "History," p. 5.

[34] Cf. Bantekas, I./ Oette, L., *International Human Rights Law and Practice*, 2ed , Cambridge University Press, Cambridge, 2016, pp. 8–10.

[35] *Marbury v Madison*, 5 U. S., 1 Cranch 137, 1803. This ruling is an important foundation, not only for human rights, but for the constitutional state as Justice Marshall questions the place of the Constitution vis-à-vis the law, and thus vis-à-vis the entire legal system. By establishing the principle of constitutional supremacy, the duty of the judge is to safeguard constitutional rights and thus limit the power of the government over its people. Cf. Bickel, A., *The Least Dangerous Branch: The Supreme Court at the Bar of Politics*, 2nd ed., Yale University Press, New York, 1986, pp. 1–33.

ment derives from the people, that the constitution must protect individual rights from government overreach, and that judicial remedies are necessary for enforcing these rights. Although national systems have evolved, this case established a blueprint for protecting human rights at the national level, as countries progressively recognized constitutional rights and developed mechanisms to enforce them.

The final stage in the political evolution of human rights came after the World Wars, with the universal recognition of the inherent value of every human being.[36] However, this recognition brought a paradox: for international human rights protection to exist above national jurisdictions, states must cede some of their sovereignty. This voluntary concession has transformed legal-political relations within the International Community (IC), creating a new world order.

In summary, the development of human rights protection at the national level reflects a historical process that sought to address the deficiencies and needs of political systems, culminating in the constitutional recognition and protection of rights. Nevertheless, as we will explore further, the internationalization of human rights brings new questions about their foundation, recognition, and enforcement. At the international level, human rights remain a political ideal, where the practical means for their realization create a complex system with certain limitations that continue to fuel contemporary debate.[37]

2.1 Internationalization of Human Rights

In contrast to the gradual constitutionalization of human rights, which began in the seventeenth century and solidified in Western political systems by the early twentieth century, the internationalization of human rights is a more recent and rapid development. Up until the mid-twentieth century, state sovereignty was the core principle governing international relations,

[36] There is a consensus in the academic community that the World Wars, in particular the World War II, showed that there is a universal awareness of human dignity. This awareness, although expressed in different words in each culture, appeals to a minimum starting point for community life. Cf. Mahmoudi, H., "Universal Consciousness of Human Dignity", in Mahmoudi, H./ Penn, M. (eds.), *Interdisciplinary Perspectives on Human Dignity and Human Rights*, Emerald Publishing, Bingley, 2020, pp. 17–26.

[37] Cf. Villán Durán, *Curso de Derecho Internacional de los Derechos Humanos*, pp. 67.

meaning that international law had limited influence on the internal affairs of states. While there were some early concepts of international responsibility, such as "diplomatic protection," these were based on protecting foreign nationals as citizens of another state rather than as human beings. Any harm against an individual was addressed by the state of origin rather than through universal human rights standards.[38]

Although not yet codified in international law, the World War I had a profound impact on the development of International Human Rights Law (IHRL), exposing the dire consequences of interstate conflicts and underscoring the need for international institutions to establish norms for peaceful conflict resolution. One notable outcome was the establishment of the League of Nations, whose mission was to promote international cooperation and uphold peace and security.[39]

Although the League did not directly incorporate human rights language, its membership criteria included provisions related to the treatment of minority groups, following a call from U.S. President Woodrow Wilson for basic protection guarantees.[40] The League also addressed several issues related to human rights, including regulating colonial mandates, abolishing slavery, protecting refugees, and advancing labor rights through the International Labor Organization (ILO).[41] Despite these efforts, the League ultimately failed to prevent the outbreak of the World War II, leading to its dissolution. As Villán Durán notes, several factors contributed to the eventual shift toward a unified human rights framework, including:

> "The repudiation of Nazi crimes, the desire for peace, the affirmation of democratic values, the re-establishment of an organized international society, the influence of public opinion through NGOs, and above all, the determined will of states to reach a political consensus on human rights, even against their immediate interests." [42]

These factors highlighted the inadequacies of purely national approaches to protecting human dignity and revealed the need for a global system that

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38 Cf. Bates, "History", pp. 10–16.

39 Cf. Bantekas / Oette, *International Human Rights Law and Practice*, pp. 12–14.

40 Cf. Bates, "History", pp. 10–16.

41 Cf. Villán Durán, *Curso de Derecho Internacional de los Derechos Humanos*, pp. 68–75.

42 Villán Durán, *Curso de Derecho Internacional de los Derechos Humanos*, p. 69.

transcends the sovereignty-based logic of international relations, adopting a universal approach to human rights protection.

Under this premise, U.S. President Franklin Delano Roosevelt and British Prime Minister Winston Churchill, in the Atlantic Charter, envisioned a world where all people could live free from fear. This sentiment was echoed in the United Nations Declaration, in which allied countries affirmed the principles of life, liberty, human rights, and justice across all territories, laying the groundwork for the United Nations Charter.[43]

Historically, there is a clear link between the emergence of the United Nations Human Rights System (UNHRS) and Western constitutionalism regarding the codification of human rights. However, the internationalization of human rights is also the result of a series of political and social events that revealed the limitations of national constitutional systems.

The roots of the UNHRS trace back to the pre-World War II era, when state sovereignty dominated international relations, and fundamental rights were bound to citizenship and the sovereign will of states. This context underscored the need to ground the recognition of rights in a fundamental human attribute rather than a contingent condition like citizenship. The recognition of human dignity and universal respect for human rights, foundational to the UN Charter, addressed this need.

Thus, a new juridical-political era emerged in the international arena, characterized by two key shifts. First, there was a new dialectic between sovereignty and human rights, asserting that states, precisely because they are sovereign, have international human rights obligations toward the International Community (IC) as a whole.[44] Second, individuals were recognized as rights-holders,[45] transforming the structure of international law by allowing individuals, not just states, access to international protection through human rights treaties.[46]

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[43] Cf. Bates, "History", pp. 16–21.

[44] Villán Durán, *Curso de Derecho Internacional de los Derechos Humanos*, p. 23.

[45] Freeman, M., *Human Rights: an interdisciplinary approach*, Polity Press, Cambridge, 2006, pp. 30–31.

[46] Mazzuoli, V., *Curso de Direito Internacional Público*, Ed. Forense, Rio de Janeiro, 2019, pp. 369–374.

In the codification of human rights, two distinct stages are evident: the national process and the internationalization process. It is essential to differentiate between the two. Although "the idea that human rights are fundamentally based on human dignity has been affirmed through the various stages of codification" (with early references including the Virginia Declaration of 1776 and the French Declaration of the Rights of Man and Citizen of 1789), the outcomes of each process differ substantially.

National codification led to legal systems framed within the structure of modern democracies, while the process of internationalization brought profound changes in political and diplomatic relations within the IC, the emergence of the individual as a legal subject in international law, and the consequent limitation of state sovereignty.

This global transformation could not have occurred from a single cultural perspective. Instead, it required the recognition and affirmation of fundamental values across cultures and an obligation to engage in intercultural dialogue.

Thus, from its inception, the international human rights system was conceived as a platform for intercultural exchange. This foundation created a new type of International Community—one where "the great ambitions of the Organization contrast with the enduring demands of people and governments, and the strong claims of states" [47] —which, while less sovereign, remain equally responsible for peace. Guided by the universal principles of respect for human dignity and cultural diversity, this new International Community embarked on the journey to build the UNHRS, the international human rights regime that continues to evolve today.

2.2 Universal Human Rights?

Thus far, we have seen how the UNHRS historically emerged to protect individuals from abuses by their own states. At the same time, as the system was being established, intellectuals and cultural leaders around the world were engaged in a profound debate on the universal nature of human

[47] Kennedy, P., *The Parliament of Humanity: The History of the United Nations*, (trans. García Pérez), Debate, Barcelona, 2007, p. 80.

rights.[48] In other words, although human rights are often described as "universal" and upheld by an international system, is a genuine cross-cultural dialogue on human rights truly achievable? To answer this, we must examine both the origins and content of the foundational texts, as these documents reflect a shared belief in the feasibility of such dialogue, even if only in the ordinary sense of the words used.

The drafting of these foundational texts revealed two main perspectives on reaching a consensus regarding the basis and content of human rights. On one side is the theory of cultural relativism, which asserts that values should be determined by cultural context alone. On the other side is the philosophical stance of universality, which advocates for values and rights that are morally valid regardless of cultural differences.[49]

Proponents of cultural relativism argue that true intercultural dialogue is impossible, viewing the UNHRS as a product of power dynamics rather than shared values. However, some scholars contend that the very existence of intercultural dialogue points to a common foundation, as such exchange would be impossible without shared ground.[50] Indeed, while the UNHRS has historically faced tensions between affirming diverse cultural identities and upholding a common foundation of values, this tension itself suggests a shared belief in a universal core of values that can coexist with cultural differences.

The drafting process of the Universal Declaration of Human Rights (UDHR) exemplifies this tension. Representatives from Western nations, such as France, Canada, and the United States, brought with them ideas of liberty,

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[48] For more on this debate on the universality vs. relativism of human rights cf, Griffin, J., "The Relativity and Ethnocentricity of Human Rights", in Cruft, R./ Liao, M./ Renzo, M. (eds), *Philosophical Foundations of Human Rights,* Oxford University Press, Oxford, 2015, pp. 129–146; Dundes, A., *International Human Rights: Universalism versus Relativism*, Quid Pro Books, New Orleans, 2013, pp. 65–67; Donders, Y., "Human Rights and Cultural Diversity: Too Hot to Handle?", *Netherlands Quarterly of Human Rights*, vol. 30, no. 4, 2012, pp. 377–381; Brems, E., *Human Rights: Universality and Diversity*, Martinus Nijhoff Publishers, The Hague, 2001, pp. 12–13; Pollis, A., "Cultural Relativism Revisited: Through a State Prism," *Human Rights Quarterly*, vol. 18, no. 2, 1996, pp. 319–320; Henkin, L., "The Universality of the Concept of Human Rights," *The Annals of the American Academy of Political and Social Science*, vol. 506, 1989, pp. 11–15; Donnelly, J., "Cultural Relativism and Universal Human Rights," *Human Rights Quarterly*, vol. 6, no. 4, 1984, pp. 402–406, [pp. 400–419].

[49] Cf. Donnelly, "Cultural Relativism and Universal Human Rights," p. 400.

[50] Cfr. Trujillo, I./ Viola, F., *What Human Rights Are Not (Or Not Only)*, Nova Scotia Publishers, New York, 2014, pp. 44–52.