
Protection of Cultural Diversity as an Ethical and Moral Imperative for Politics of Human Rights Standards and Human Security: Legal and Axiological Issues

Submitted 20/12/22, 1st revision 25/01/23, 2nd revision 11/02/23, accepted 28/02/23

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Abstract:

Purpose: The theory of human rights implies a number of interesting themes, with cultural issues such as individualism or relativism coming to the foreground. Furthermore, anthropological reflection, which focuses on the human being and their condition in the world, as well as their identity, plays a crucial role in this respect.

Design/Methodology/Approach: In this article, we take note that the protection of religious identity, centuries-old traditions, and ethnic groups is an ethical and moral imperative for human rights standards based on the principles of universality and equality.

Findings: Today we are witnessing brutal attacks on cultural heritage. Ultimately, such forms of aggression can lead to an irreversible loss of cultural diversity. The implementation of human rights standards in these sphere is can lead a respect for such rights.

Practical Implications: The main purpose of this paper is to point to the pressing need for education for human rights and for the implementation of human rights standards which would strongly highlight the connection between culture and human dignity, respect for otherness, openness, and dialogue.

Originality/Value: The publication systematizes the most important issues of human rights standards in building a cultural identity in a peaceful manner. Those initiatives aim at bolstering cultural heritage as an enabler of sustainable development in the spirit of respect for the rights vested in human beings. Ultimately, by attacking cultural heritage one violates cultural identity, human rights and freedoms, and safety.

Keywords: Human rights politics, human rights standards, human security, freedoms and rights, cultural heritage, pluralism, dignity, cultural cleansing.

JEL Classification: F5, K2, O3, K3.

Paper Type: Research Paper.

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1. Introduction

The theory of human rights implies a number of interesting themes, with cultural issues such as individualism or relativism coming to the foreground. Furthermore, anthropological reflection, which focuses on the human being and their condition in the world, as well as their identity, plays a crucial role in this respect. The literature on the subject consistently points to the importance of correlations between human rights and culture, and between a peaceful vision of the world and respect for cultural identity and cultural heritage.

As a result, the issue of cultural heritage, and therefore, of fundamental human rights and freedoms and human security, occupies a central place in these deliberations on human rights. The protection of religious identity, centuries-old traditions, and ethnic groups is an ethical and moral imperative for human rights standards based on the assumption of universality and equity. Openness to Otherness is a *sine qua non* part of diversity and promotion of cultural pluralism through the protection of tangible and intangible heritage, and, at the same time, it requires that human rights are protected and that the principles of freedom stemming from international human rights law are implemented.

In this article, the author aims to demonstrate that the appropriate protection of cultural heritage requires adopting a human rights based approach. In this context, human rights will serve as a means of describing reality, but also as the main element of thinking about crucial issues. Linguistic and stylistic analysis will serve as the fundamental research method with genetic and historical analysis used in an auxiliary manner. This article is composed of four parts framed between its introduction and conclusion.

2. Human Rights and Cultural Heritage: Historical Background

The Universal Declaration of Human Rights (UDHR) was adopted in 1948 after a vicious war against fascism and Nazism. This declaration was intended to constitute a manifesto (*soft law*).⁵ It was adopted in the spirit of idealism, thus focusing on rights rather than obligations. It was to constitute a joint accomplishment of all

⁵*The adoption of the Universal Declaration of Human Rights was without any doubt a great civilisational achievement. It is worth recalling here the words of E. Roosevelt who said in 1948 'We stand today at the threshold of a great event both in the life of the United Nations and in the life of mankind. This Universal Declaration of Human Rights may well become the international Magna Carta of all men everywhere. We hope its proclamation by the General Assembly will be an event comparable to the proclamation of the Declaration of the Rights of Man by the French people in 1789, the adoption of the Bill of Rights by the people of the United States, and the adoption of comparable declarations at different times in other countries'. ISHAY, Micheline. Human Rights. Reader. Major Political Esseys, Speeches, and Documents from ancient Times to the present, p. 21. New York, 2007.*

peoples and all nations, based on the fundamental premise highlighted in the Preamble and UDHR Articles 1 and 2 respectively.

The Preamble refers to the dignity and worth of the human person, and faith in human rights with an eye to preventing barbarous crimes against humanity. In turn, Article 1 states that all human beings are born free and equal in dignity and rights (UDHR Article 1), while Article 2 reads that everyone is entitled to human rights (UDHR Article 2). The word “everyone” unambiguously points to human rights being vested in every human being irrespective of their sex, race, origin, religion, etc.

A similar view of a peaceful world was adopted by UNESCO, established by the International Committee on Intellectual Cooperation. The mission of the Committee revolved around the belief that intellectual and moral solidarity of mankind, and respect for the rule of law and the human rights are indispensable for building lasting international peace.

This notion is reflected in Article 1 of UNESCO Constitution, where one can read that ‘The purpose of the Organization is to contribute to peace and security by promoting collaboration among the nations through education, science and culture in order to further universal respect for justice, for the rule of law and for the human rights and fundamental freedoms’.⁶

UNESCO expressed its support for the universal values of human rights by contributing to the development of the Universal Declaration of Human Rights. It is worth pointing out that it was UNESCO which in 1947 created a committee on the theoretical bases of human rights. Its purpose was to analyse the philosophical foundations of human rights to create a common basis for respect for convergences, differences between various cultures and schools of thought and thereby devise a document which would serve as an axiological foundation for the protection human rights and values.

A questionnaire was sent out to politicians and scholars, such as Mohandas Gandhi or Aldous Huxley, soliciting their opinion on the idea of the Declaration. A main conclusion of the resulting report was ‘that – despite cultural differences – Member States of the United Nations shared a commitment to “the right to live a life free from the haunting fear of poverty and insecurity”’.⁷

The Universal Declaration of Human Rights was created as an objection to cruelty experienced by human beings, as a voice of the oppressed, excluded social groups crying for the protection of their cultural identity, customs and traditions against

⁶*UNESCO Constitution, Adopted in London, United Kingdom, 16 November 1945, <https://en.unesco.org/udhr>*

⁷*UNESCO and the Universal Declaration on Human Rights, <https://en.unesco.org/udhr>*

insults and abuse. This is confirmed in the Preamble where one can read that ‘disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind’.⁸ According to J. Morsink “The Commission on Human Rights, aware of the religious, philosophical, and ideological diversity of UN members, displayed little interest in the philosophical foundations of human rights.

Nevertheless, given that Nazism violated human rights in theory and practice, the adoption of the concept of human rights by the UN in opposition to Nazi ideology clearly implied the commitment to some kind of neo-Lockean political theory. The substitution of the term ‘natural rights’ by that of ‘human rights’ was probably to eliminate the controversial philosophical implications of grounding rights in nature”.⁹ Thereby, he pointed to the importance of striving towards a world which would be free from any pressures and any form of human abuse.

The concept of *freedom from fear*, which refers to the idea proposed by Isaiah Berlin and to freedom from external and internal compulsion by Wiktor Osiatyński, forms a component of such an order. As rightly indicated by M. Wyrzykowski¹⁰ “This distinction is based on the core and sense of the understanding of freedom as freedom from shackles, prison, and constrain; while in a political sense, this means the absence of persecution or domination.

Therefore, freedom is the essence of man, and it is measured by the absence of interference in an individual’s activities. ‘Freedom from’ is illustrated by the metaphor of the open door proposed by I. Berlin where everyone can stand in front of open doors but does not need to cross the doorstep ... we must preserve a minimum area of human freedom, which is freedom from fear, if we do not want to become vile or contradict our nature”¹¹, and thus our culture and centuries-old traditions.

⁸*Preamble to the Universal Declaration of Human Rights adopted by the General Assembly in 1948.*

⁹MORSINK, Johannes. *The Universal Declaration of Human Rights*, p. 283. *Since then ‘there has been no nation, culture or human being which was not involved one way or another in the systems of human rights (...) The Declaration has changed the international landscape, splashing over various, protocols, treaties, and all kinds of other declarations. (...) It has become the moral backbone of more than two hundred human rights instruments that are now a part of our world. The result of a truly international negotiating process, the document has been a source of hope and inspiration to thousands of groups and millions of oppressed individuals’ - see more J. Morsink, op. cit. p. 283, University of Missouri Press, 2017.*

¹⁰WYRZYKOWSKI, Mirosław. *Wolność obywateli od strachu przed własnym państwem. In: Trybunał Konstytucyjny na straży wartości Konstytucyjnych, 1986-2016. Warszawa 2017, p. 182*

¹¹*Ibid.*, p. 182.

3. The Axiological Foundation of Human Rights Standards

Those values are exemplified and protected in the Universal Declaration of Human Rights (e.g. Article 27 'Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits, Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author'¹²) and in international law related to human rights. Contemporary human rights based on the so-called three generations of human rights, mainly refer to the ideas of humanity, equity, and solidarity.

Each of those generations includes some elements of universalism, with which the *ius commune* of human rights appears to agree. Those are mainly rights which refer to the personal realm of human beings, i.e. their dignity, freedom, and even property. While the semantic fields of each of the notions can differ, when it comes to the principles of protection, it is agreed that those values are strictly protected and vested in every human being. The values in question occupy a central place in the dialogue between legal cultures, and legal and political systems, between the West and the East. They are an element of convergence among great cultures, systems, and legal regimes.

The universal values of UDHR were incorporated in the general system of human rights, i.e. in the International Bill of Human Rights¹³ which is based on two components – the International Covenant on Civil and Political Rights (ICCPR)¹⁴ and the International Covenant on Economic, Social and Cultural Rights (ICESCR)¹⁵, creating the foundation for universal human rights standards.

Jerzy Zajadło states "Human rights are ... one great axiology, since there is a value behind every right and every freedom". Dignity occupies a central place among those values. While there is a dispute in the literature on the subject on whether to consider dignity as a value in itself or to regard it as a derivative of value¹⁶,

¹²*Universal Declaration of Human Rights," the Declaration was proclaimed by the United Nations General Assembly in Paris on 10 December 1948 (General Assembly resolution 217 A) as a common standard of achievements for all peoples and all nations"- see more-<https://www.un.org/en/universal-declaration-human-rights/>*

¹³Cf. KWIECIEŃ, Roman. *Teoria i filozofia prawa międzynarodowego. Problemy wybrane*. Warszawa 2011.

¹⁴*Journal of Laws of 1997. No. 38, item 167.*

¹⁵*Journal of Laws of 1997. No. 38, item 169.*

¹⁶"*Becoming a super-standard of sorts in the varied space of ius commune of human rights, it encourages reflection by delineating the directions for critical thinking, comparative analyses concerning both law and rights, different legal systems and cultures. In order for it not to become merely a symbolic accent of human rights, the contexts, in which dignity is invoked should be carefully analysed. Thereby, it points to the extent to which law and rights are rooted in the diversity and richness of local cultures, often incomprehensible to a*

undoubtedly, it is a cornerstone of the whole axiology expressed in respect for a specific anthropological vision of human being, who deserves respect and to have his or her rights and most precious values protected, irrespective of his or her religion, beliefs, race, and sex.

In addition to dignity, the catalogue of axiological foundations also includes freedom and equity, which are its crucial elements and constitute specific human rights standards. At the same time, they comprise the modern vanguard of international law and are *ius cogens* and *erga omnes* in nature.

It is worth noting that the idea of dignity which serves as the source of rights and freedoms, derived from the proclamation of UDHR, was reflected in the Preamble to ICCPR of 1966, reading ‘The States Parties to the present Covenant, Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world, Recognizing that these rights derive from the inherent dignity of the human person, Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights, Considering the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms, Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant’.

The signatories to the Covenant undertook to respect and to ensure to all individuals within their territory and subject to their jurisdiction the rights in question, without distinction of any differences there may be among people (ICCPR Article 2). At this level, this is the realisation of the provisions and goals of the Charter of the United Nations (UN Charter Articles 1, 13, and 55) related to respect for human rights without distinction as to race, sex, religion, and culture.

Strengthening the category of dignity in international human rights law was intended to eliminate all anti-equality and discriminatory behaviours, indicating that all human beings are equal in dignity. The International Convention on the Elimination

spectator. This is especially important from a transcultural point of view, where even in the days of widespread globalisation and a high degree of generalisation, human dignity shows that all phenomena of inclusion, exclusion, and diversity of legal and axiological, as well as philosophical and cultural discourse, typical of postmodern ius commune of human rights, should be taken into account”. BIENKOWSKA, Daria. Spór o godność w prawach człowieka. In: Prawa człowieka w funkcjonowaniu administracji publicznej, red. PARENTE, Ferdinando, SITEK, Bronisław, FLOREK, Iwona. Warszawa 2018, p. 12.

of All Forms of Racial Discrimination adopted in 1965¹⁷, the Convention on the Elimination of all Forms of Discrimination Against Women of 1979¹⁸, and the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by way of General Assembly Resolution of 1984¹⁹ occupy a significant place in this respect. Dignity forms a basis for so-called equality rights formed on the concept derived from general principles of equality proclaimed in UDHR, UN Charter, and ICCPR. It is also worth noting that “UDHR was regarded as a common way for progress in terms of protecting the value of human dignity and personality”.²⁰

4. Culture, Dignity, and Human Rights

The significance of culture in the context of dignity and human rights was highlighted by M. Freeman²¹ by stating that the discussion on human rights should also include culture-related arguments.²² He noted that “Culture can participate in the implementation of human rights. While human rights principles are general and abstract, they must be realised in complicated and specific situations. These will also include local cultures. If the protection and promotion of human dignity serve as justification for human rights, the implementation of these rights must take into consideration local cultures and their contribution to human dignity ... Too often it was the case that respect for cultures was manifested in interpreting dominating elites and majorities as representing the cultures at the cost of subjugating other groups or minorities”.²³

We can observe such conflicts at the present time, with attacks on national minorities, ethnic groups and deliberate attacks on monuments and places of cultural or religious significance being very common. We are still witnessing populations being displaced in conflict zones. Destruction of culture is, in fact, an intentional attack on specific individuals because of their connection with a particular culture, ethnic group, or religious organisation. Systematic attacks on specific groups are aimed at the total eradication of cultural heritage, and thereby at the destruction of cultural identity, and consist in so-called *cultural cleansing*. This term was first introduced to the debate on the subject by UNESCO Director General, Irina Bokova, as part of her statement on the situation in Iraq in August 2014. It refers to all kinds

¹⁷Journal of Laws of 1969, No. 25, item 187.

¹⁸Journal of Laws of 1982, No. 10, item 71.

¹⁹Journal of Laws of 1989, No. 63, item 378.

²⁰BRODECKA, Aleksandra, *Supradyscyplinarna analiza praw człowieka*, p. 124, Gdańsk 2016

²¹FREEMAN, Michael. *Prawa Człowieka*. Warszawa, 2007, p. 132.

²²Cf. *ibid*, p. 132.

²³Cf. *ibid*, p. 132.

of attack and aggression against cultural heritage; however, thus far it has not been legally defined.²⁴

We always deal with cultural cleansing when force is used to eliminate cultural diversity and pluralism, thus violating one's dignity, the rights of cultural minorities and fundamental freedoms. This issue was addressed at the 30th session of the Human Rights Council of the UN General Assembly.²⁵ Document A / HRC / 30 / L.25 / Rev.1 states that "acts, methods and practices of violent extremism in all their forms and manifestations are activities that aim to threaten the enjoyment of human rights and fundamental freedoms, and democracy, and threaten territorial integrity and the security of States, and destabilize legitimately constituted Governments".²⁶ It is also worth noting that UNESCO has established cooperation with the International Criminal Court (ICC). This cooperation is aimed at criminal investigation into attacks which, in accordance with Article 8 (2) (e) (IV), are classified as attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments²⁷.

Indeed, such forms of aggression can ultimately lead to an irreversible loss of cultural diversity. Therefore, there is the pressing need for education for human rights and for the implementation of human rights standards which would strongly highlight the connection between culture and human dignity, respect for otherness, openness, and dialogue. This means that cultural initiatives play a vital role in building a cultural identity in a peaceful manner. Those initiatives aim at bolstering cultural heritage as an enabler of sustainable development based on respect for human rights. Consequently, it should be concluded that by attacking cultural heritage one violates cultural identity, and human rights and freedoms.

It is therefore of note that UNESCO, within their humanitarian actions, has made efforts to integrate peoples within cultures as well as to improve access to cultural life, participate in it and cultivate their traditions.

The main purpose and objective of UNESCO is to protect, restore, and preserve cultural heritage. Cultural heritage is crucial in this respect, since it refers to the

²⁴*The Struggle against Cultural Cleansing is a Security Imperative*,
http://www.unesco.org/new/en/member-states/single-view/news/the_struggle_against_cultural_cleansing_is_a_security_impera/

²⁵*The 30th session of the Human Rights Council of the UN General Assembly (Raport)*
<https://undocs.org/A/HRC/30/2>

²⁶*Document A / HRC / 30 / L.25 / Rev.1*,
https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/30/L.25/Rev.1

²⁷*Of note in this context is cooperation between UNESCO and ICI on Mali (2012) related to investigation into the purposeful destruction of cultural heritage of Timbuktu. Importantly, based on this case study, UNESCO has laid the foundations for further cooperation, including in particular countries which have not yet ratified the relevant conventions or are not State Parties to the ICC.*

promotion of universal respect for cultural rights by all human beings, while including, at the same time, a specific ethical and moral imperative for individual countries.

This imperative reminds us of the need for engagement in respect for and protection of cultural rights in the field of cultural heritage. Since human rights were created and standardised to protect the interests of all human beings, it appears justified in this context to adopt a human rights based approach to cultural heritage.

5. Human Rights Based Approach to Cultural Heritage

The concept of human rights based approach in the UN forum initially referred to development.²⁸ The subjective scope of this term includes focusing on the most marginalised, excluded or discriminated people experiencing various forms of repression, aggression, and power imbalance.²⁹

The human rights based approach (HRBA) is based on international human rights standards and “operationally directed to promoting and protecting human rights. It seeks to analyse inequalities which lie at the heart of development problems and redress discriminatory practices and unjust distributions of power that impede development progress and often result in groups of people being left behind”.³⁰

In the research problem in question, the concept of HRBA refers mainly to ethnic groups and indigenous peoples in the protection and improving the visibility of their rights as well as highlighting their role and contribution to intangible cultural heritage. HRBA requires standards³¹ based on the fundamental principles of human rights, i.e. universality, indivisibility, equality and non-discrimination, participation, accountability “to guide United Nations development cooperation, and focus on

²⁸Cf. *FILMER- WILSON, Emilie. Human rights based approach to development : The Right to Water, Netherlands Quarterly of Human Rights, 2005.*

²⁹*Human Rights-Based Approach. <https://unsdg.un.org/2030-agenda/universal-values/human-rights-based-approach>.*

³⁰Cf. *Human Rights-Based... <https://unsdg.un.org/2030-agenda/universal-values/human-rights-based-approach>.*

³¹*The concept of human rights standards. According to the Polish language dictionary, the term standard means ‘an accepted norm, an average type, a model, a product meeting specific criteria, a prototype’. As regards the legal (constitutional, international) doctrine, the essence of the concept of human rights standards appears to be quite obvious prima facie – it means the standards of rights and freedoms of a human being resulting from the normative acts which formulate them. In this sense, the concept of human rights standards appears in the doctrine next to the terms of institution and procedure, with the leading UNESCO study serving as a typical example: A Guide to Human Rights. Institutions, Standards, Procedures- A Guide to Human Rights, eds. J. SYMONIDES, Janusz, VADIM, Volodim), passim. UNESCO, 2003.*

developing the capacities of both ‘duty-bearers’ to meet their obligations, and ‘rights-holders’ to claim their rights”.³²

The implementation of the aforementioned concept is especially important in the present day, as the growing inequalities, exclusions, and racial conflicts have become a cruel reality for some people.

Human rights require adopting an inclusive perspective, sensitising to other ethics, different cultures, and respect for other people’s cultures and traditions. If we are to respect other cultures, as rightly noted by M. Freeman, we must know what those cultures are. Consequently, as argued by Freeman, “It can be difficult for outsiders to acquire this knowledge. Governments and intellectual elites often act as ‘gatekeepers’, offering an official version of culture to the outside world. We have, however, reasons to be sceptical of the claims of elites to speak for people. We can hear the people only if they have a secure set of rights”.³³

6. Conclusion

The connection between human rights and culture, its major role in creating pluralistic societies, and openness to Otherness date back to the beginning of the 20th century. The growing importance of the impact of culture on human development and building dialogue-based societies is becoming a focal point of human rights.

Therefore, what is needed is the awareness of the culture of diversity and cultural pluralism being protected in terms of respect for tangible and intangible heritage of communities. This points to the urgent need for the protection of human rights and fundamental freedoms.

The implementation of human rights standards based on the human rights based approach for cultural heritage constitutes an ethical and moral imperative for the whole of international *ius commune* of human rights. It refers to general safety and human safety as regards the respect for and protection of the most valuable human values. In a sense, it also relies on humanitarian aid in conflicts, which is part of building a world based on peace and security.

UNESCO’s activities in the domain of human rights are related to strengthening the protection of and respect for participation in and access to culture and its living forms, including intangible heritage. These recommend strengthening the protection of cultural heritage to safeguard rights and freedoms in a transcultural world in the spirit of dialogue.

³² *Ibid.*, <https://unsdg.un.org/2030-agenda/universal-values/human-rights-based-approach>.

³³ FREEMAN, Morgan, *op. cit.* p. 133.

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