| Chapter 1 |

The History of Human Rights Law: Generations of Human Rights

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ABSTRACT

This chapter provides a study of the historical evolution and conceptual framework of international human rights law. It begins by defining human rights as universal and inalienable entitlements rooted in human dignity, before tracing their philosophical and legal development from ancient times through national milestones like the Cyrus Cylinder, the Magna Carta, the English Bill of Rights, and revolutionary documents from France and the United States. The chapter then explores the transformation of national-level protections into a structured international system following World War II, primarily under the umbrella of the United Nations. The second part of the study aims to classify human rights into four generations: first-generation civil and political rights; second-generation economic, social, and cultural rights; third-generation collective or solidarity rights; and the emerging fourth-generation addressing the challenges of digital technology, artificial intelligence, and biotechnology. Throughout, this chapter emphasises the indivisibility, interdependence, and universality of all human rights. It concludes by underlining the ongoing necessity to adapt human rights law to contemporary technological and societal developments while maintaining its foundational principles of liberty, equality, and human dignity.

KEYWORDS

history of human rights law, generations of human rights

1. Introduction

For the purposes of this chapter, human rights refer to the fundamental rights and freedoms inherent to all individuals, recognised as such within the framework of international treaties, declarations, and customary international law. Human rights, as a socio-legal concept, form the foundation upon which modern international law is built,[1] with the purpose of protecting the dignity and well-being of all individuals, regardless of their nationality, race, religion, or other distinguishing factors. This concept, which draws upon various philosophical, political, and legal theories, plays

1 Forsythe, 2006, pp. 29 et seq.

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a pivotal role in the implementation and development of international relations, often shaping policies, laws, and interactions between states.

Human rights are typically divided into three main generations, each corresponding to different historical contexts and values. The first generation of human rights, primarily advocated by developed nations, consists of civil and political rights, which include freedoms such as the right to life, liberty, freedom of speech, and the right to vote. These rights have been markedly influenced by the values of individualism, democracy, and personal autonomy. The evolution of these rights has focussed on limiting government intervention in individual freedoms and safeguarding citizens from state overreach.

The second generation of human rights, favoured by many developing countries, is composed of economic, social, and cultural rights, which include, for example, the right to work, the right to education, and the right to an adequate standard of living. These rights require a more proactive state role, obligating governments to ensure that their citizens have access to basic social services and equal opportunities to participate in society.

The third generation of human rights, often championed by countries in the Third World[2] includes solidarity rights such as the right to self-determination, the right to development, and the right to a healthy environment. These rights are collective in nature, reflecting the interconnectedness of individuals within societies and the global community. Solidarity rights emphasise the idea that individual rights cannot be fully realised without addressing broader social, economic, and environmental concerns that affect the entire international community.

In addition to these three generations, discussions have emerged around the fourth generation of human rights, which concerns issues arising from technological revolution and globalisation. This generation may include rights related to the human genome, biotechnology, ethical implications of artificial intelligence, and other emerging technologies. The rise of digital platforms, and global communication has introduced new challenges and opportunities for human rights, necessitating the expansion of legal frameworks to address these issues.

Despite the distinctions among these generations of human rights, it is essential to recognise that all human rights are inherently indivisible, interdependent, and interrelated.[3] This interdependency reflects the complexity of human rights as a comprehensive system aimed at ensuring the dignity and well-being of all individuals. Attempts to prioritise one generation of rights over another undermines the holistic nature of human rights and risks creating inequalities in their protection and enforcement.

Moreover, although it might be argued that the human rights framework reflects an "imperialist" agenda, where so-called Western states exert their influence over

2 David, Sladký and Zbořil, 2008, p. 246.

3 Preamble to the Vienna Declaration and Programme of Action adopted at the World Conference on Human Rights on 25 June 1993, para. 8.

the global community, or that the universality of human rights undermines local customs or traditions, this universality of human rights remains a core principle, as it transcends cultural, political, and historical differences.[4] If human rights were solely based on the politics or culture of individual states, they would lose their universal character and would be reduced to a set of regionally contingent privileges rather than fundamental rights guaranteed to all individuals.[5] In this regard, the UN Human Rights Committee has affirmed that the rights enshrined in the International Covenant on Civil and Political Rights (ICCPR), are inherent to individuals living within the territory of state parties. This implies that human rights protection is comprehensively applicable regardless of changes in government or the potential dissolution of a state.[6]

The area of international law specifically focusing on the protection of human rights is known as international human rights law.[7] This field of law differs from the natural law area, despite sharing its foundation in the recognition of inherent human dignity.[8] Whereas natural law points out that human rights exist independently of government recognition, positive law, which is the basis of international human rights law, requires the consent and recognition of states to enforce human rights protection. This consent is typically formalised through the ratification of treaties and the acceptance of international legal norms that establish obligations for states toward individuals within their jurisdiction.

It is important to distinguish between the philosophical concept of human rights and the legal framework of human rights law. The natural and philosophical understanding of human rights asserts that all humans possess these rights by virtue of their humanity and intrinsic dignity. In addition, human rights law is a set of legal obligations that states must adhere to in both domestic and international contexts. As has already been pointed out, these obligations are defined through treaties which provide the mechanisms for individuals to seek protection and redress for claimed violations of their rights. To be understood properly, these obligations do not constitute the rights of an individual as such, rather they constitute the positive legal obligations of a state concerning protection of these rights.

A useful illustration of this distinction can be found in the right to life. While the right to life is inherent in every individual by virtue of their existence and human dignity, the legal entitlement to protection of this right depends on the state's recognition of relevant international agreements and their implementation within national legal systems.[9] For example, a state may be obligated to protect the right to life under the ICCPR, provided it has ratified the treaty and enshrined its principles within

4 Freeman, 2002, p. 172.
5 Higgins, 1994, p. 96.
6 See: General comment of the UN Human Rights Committee No. 26 on Continuity of Obligations of State Parties to the Covenant on Civil and Political Rights, para. 4.
7 Brownlie, 2008, p. 554.
8 Douzinas, 2000, pp. 23 et seq.
9 See e.g.: Donnelly, 2003, pp. 7 et seq.

domestic law. International treaties, therefore, serve as a bridge between the philosophical concept of human rights and the legal mechanisms that ensure their protection. This approach is specific in its acknowledgement that all human beings are born free and equal in dignity and rights, and therefore a state is called upon to protect them.[10] This liberty and equality is also a red line throughout the whole chapter: how has been the concept of liberty and equality developed throughout the human history and how has it been specified during specific phases of this development?

The aim of this chapter is not to analyse different human rights international treaties[11] but to explore in context key historical milestones in the development of human rights law and to provide an overview of the different generations of human rights. By examining the evolution of human rights, this chapter will look at the challenges and opportunities for their protection in a rapidly changing global context. The chapter will also emphasise the importance of maintaining the universal, indivisible, and interdependent nature of human rights as we face the complexities of the 21st century.

1.1. Predecessors of International Human Rights Protection System

The establishment of the United Nations is a milestone for the international protection of human rights, but it does not mark the first steps in the protection of the rights of an individual. Before the Second World War, international law was already familiar with the concept of diplomatic protection, the protection of minorities, the protection of aliens or the protection of victims of armed conflicts. However, the status of nationals was understood as a domestic matter, i.e. a matter of national jurisdiction of sovereign States.[12] The importance of the determination and development of international human rights protection after the establishment of the United Nations integrated the previous ad-hoc response of the international community to the status of aliens, the slave trade, the status of workers and other groups or individuals into a coherent system at a universal level that could affect every individual. Nevertheless, the internationalisation of the protection system does not change the fact that the essential actor in the protection of human rights – whether at international, regional or national level – remains the state. National authorities have the primary responsibility for the protection of human rights; the role of the UN and other organisations is secondary and subsidiary. It was also at a national level where the predecessors of the current system of the protection of international human rights might be found and looked into in more details to understand the positive law importance and influence within the current international legal framework.

Before the creation of an international framework, the protection of human rights was predominantly seen as a national matter. Many of the principles that guide today's human rights laws evolved through legal and political struggles within states,

10 Cf. Art. 1 of the Universal Declaration of Human Rights, UN GA res. 217 A, 10 December 1948.
11 Azud, 2003, p. 222.
12 Harris, 2004, p. 654.

where human rights protection systems were developed in response to oppression, injustice, and demand for basic freedoms. These predecessors set the foundation for the broader, universal human rights framework that exists today.

It is usually Magna Carta that is presented as the first predecessor among all predecessors of the international human rights protection system. However, it was in 539 B. C. when the first document was adopted that declared that all people had the right to choose their own religion and established racial equality.[13] Moreover, it also involved the protection of such rights as liberty and security and freedom of movement.[14] Since it was recorded on a baked-clay cylinder and announced by Cyrus the Great, the first king of ancient Persia, it is known as Cyrus Cylinder.[15] Cyrus the Great was a conqueror of the city of Babylon after which he freed the slaves, i.e. he made them free according to the law, and he allowed them to then choose their own religion. This declaration of slaves being free from their sovereign as the basis of a human rights concept travelled from here to India, Greece and Rome, where the natural law concept arose.[16] However, it took several years for the rights of individuals to be accepted as rights standing on their own, and not only derived from the will of a sovereign. This is why the concept is perceived as a predecessor of today's human rights concept.

A very influential predecessor to modern human rights protection is the Magna Carta, a charter of liberties that was prepared by the subjects of an English king. During his rule, King John of England had violated several traditions and rules, and the Magna Carta was a political and legal settlement granting liberties by the Crown to the Church, freemen and cities of the kingdom.[17] This settlement was achieved in 1215 and confirmed later several times. The Magna Carta was not a human rights document in the modern sense, but it marked a significant shift in the concept of individual rights *vis-à-vis* the authority of the state, represented by the King as the Sovereign. The Magna Carta placed limits on the powers of the monarchy and established the principle that no one, not even the king, was above the law. Within its 63 clauses it introduced important rights such as the right to a fair trial, protection from arbitrary imprisonment, and protection from excessive taxes without representation.[18] These rights were not awarded to all individuals however, the concept of free and equal at least among the nobility was introduced.[19] It was the momentum that marked the late medieval Magna Carta as one of the most important documents in the history of human rights law. Although the Magna Carta applied initially only to a limited group of barons and their heirs, its principles became fundamental to the development of constitutional law and justice systems in many countries. Moreover, over time, these

13 For more information, see: The Background of Human Rights.
14 Quansah, 2008, p. 488.
15 The Background of Human Rights, op. cit.
16 Ibid.
17 Arlidge and Judge, 2014, p. 21.
18 Ishay, 1997, pp. 57–59.
19 Ibid.

rights were expanded to include the populations of several countries, the document is therefore often regarded as a critical predecessor to the international protection of human rights based on the rule of law.

Since the issue of sovereignty and its limits, based on the contract between a sovereign and individuals was a matter of the philosophical thinking of several English philosophers in the late 17th century, it is not surprising that another significant predecessor to the modern human rights protection system was born also in England. After the Petition of Rights in 1628 that established certain rights for specific subjects, and was based on the work of John Locke,[20] the English Bill of Rights was sent in 1689 to a new monarch, named William of Orange, who was to replace James II of England who had forfeited the throne mainly for religious reasons. The Bill of Rights established the supremacy of Parliament over the monarchy and laid out specific rights for individuals, particularly in limiting the power of the Crown. Among its provisions, there were guarantees for the freedom of speech in Parliament, protection from cruel and unusual punishment, and the right to petition the government. The Bill of Rights established the constitutional monarchy in England and ensured that the government could not operate outside the law. It is therefore considered a milestone when ensuring individuals their rights independently from the sovereigns who were given power by God not by themselves as had been previously understood. Consequently, the English Bill of Rights was fundamental in shaping democratic governance and the protection of individual rights in Britain and its colonies. It directly influenced the framing of similar documents in other countries, particularly the United States of America (USA), where its principles were echoed in the Bill of Rights that is an appendix to the U.S. Constitution.

In the USA, the American Declaration of Independence dated 1776 and the United States Bill of Rights dated 1791 are two crucial documents in the development of human rights at a national, and consequently an international level. The Declaration of Independence, drafted by Thomas Jefferson, was revolutionary in asserting that all men are created equal and endowed with certain unalienable rights, including life, liberty, and the pursuit of happiness.[21] This declaration set a powerful precedent in the articulation of natural rights and the idea that legitimate governments are established to protect these rights.

Following the American Revolution, the United States Constitution was adopted in 1787, and the Bill of Rights was added to it in 1791. The Bill of Rights, consisting of the first ten amendments to the Constitution, enshrined essential civil liberties, including the freedom of speech, religion, and assembly, as well as protection against unreasonable searches, seizures, and self-incrimination. It also established the right to a fair trial, due process, and protection from cruel and unusual punishment. These rights became fundamental to the American legal system and have influenced

20 Schwoerer, 1990, pp. 533 et seq.

21 For more information, see: https://www.archives.gov/founding-docs/declaration (Accessed: 20 June 2024).

constitutional human rights protection worldwide. The American Bill of Rights, although only legally binding within the United States, has inspired many other nations to adopt similar rights in their own constitutions. Moreover, the language and structure of the Bill of Rights laid the groundwork for international human rights documents that would emerge in the 20th century, especially through the work of Eleanor Roosevelt, who was a Chairperson of the Commission on Human Rights that prepared the text of the Universal Declaration of Human Rights.[22]

Till we get to the international level itself, it is very important to point out another document adopted at the national level that is considered a predecessor of modern international human rights law, namely the French Declaration of the Rights of Man and of the Citizen, adopted in 1789 during the French Revolution. Based on the principles of liberty, equality, and fraternity,[23] the Declaration was a powerful assertion of the rights of individuals *vis-à-vis* the monarch as a sovereign and its rule. It declared that 'men are born and remain free and equal in rights' and established civil liberties such as freedom of speech, freedom of religion, and the right to property.[24] The French Declaration also emphasised the principle that sovereignty resides in the people rather than in the monarchy, an idea that would resonate in subsequent democratic movements across Europe and beyond. Its influence has extended to numerous countries, and its ideals inspired later documents such as the Universal Declaration of Human Rights, during the preparation of which prof. René Cassin, influenced by the French approach to human rights, cooperated with Eleanor Roosvelt and was awarded the Nobel Prize for his struggle to ensure the rights of man as stipulated in the United Nations Declaration of Human Rights.[25]

Throughout the 19th century, many countries adopted written constitutions that included protections for individual rights and freedoms. For example in Europe, the German Empire Constitution of 1871 guaranteed certain civil rights, though these were limited in scope when compared to modern human rights standards; the limits were framed especially by the German citizenship.[26] Similarly, in America, the Mexican Constitution of 1857 enshrined civil liberties such as the freedom of speech, assembly, and religion, as well as protection from arbitrary arrest and the right to a fair trial.[27] There have been many various attempts to spread the concept of human rights from the perspective that was introduced above and despite various cultural approaches, the inherent value of each human being has finally been recognised.[28] Furthermore, gradually all state constitutions have reflected a growing recognition

22 For more information, see: https://www.un.org/en/about-us/udhr/drafters-of-the-declaration (Accessed: 20 June 2024).
23 This slogan is considered a motto for identification of different generations of human rights, see hereinafter: Šmigová, 2026, pp. 48–57 (the subchapter 1.3.).
24 For more information, see: https://www.elysee.fr/en/french-presidency/the-declaration-of-the-rights-of-man-and-of-the-citizen (Accessed: 20 June 2024).
25 To understand the background of the whole process, see his Nobel Lecture.
26 Art. 3 of the Constitution of the German Empire (April 16, 1871).
27 For more information, see: Britannica, latest modification in 2026.
28 Gozzi, 2021, pp. 187–214.

of the need for formalised legal protections for an individual's rights, as well as the role of the state in upholding these rights. The gradual constitutionalisation of rights in various national systems has laid the groundwork for the later development of international human rights law.

Before getting to the establishment of the international human rights protection system itself, it would be important to present two separate movements that have been influenced by the inherent value of every individual. Firstly, the abolition of slavery. Slavery as such exists in sharp contradiction with the concept of human rights in its essence. Slaves are neither free nor equal with others. This is why the abolitionist movements of the 18th and the 19th centuries marked a significant milestone in the development of human rights at a national level. While the practice of slavery had existed for millennia, the gradual focus on human dignity and equality led to growing calls for the abolition of slavery. In countries like the United Kingdom and the United States, abolitionist movements gained momentum that culminated in the adoption of milestone legislation such as the British Slavery Abolition Act of 1833, and the Thirteenth Amendment to the U.S. Constitution in 1865, both of which outlawed slavery. These legal acts represent a profound recognition of the inherent rights and dignity of all individuals, regardless of race. It marked the beginning of the modern human rights movement and set the stage for further advancements in the recognition and protection of civil rights for marginalised groups.

Secondly, the movement initiated by Henry Dunant that led to the creation of modern international humanitarian law should be discussed here. In terms of the development of individual legal areas, international humanitarian law was the first to develop, since the basic rules and principles of the so-called law of armed conflict were already established in antiquity if international custom is considered,[29] and the First Geneva Convention adopted in 1864 is considered the first international treaty that set up obligations to provide care without discrimination to wounded and sick military personnel. The origins of the modern international human rights law only date back to the period after the Second World War. On the other hand, in contrast to international humanitarian law, where there is no specific protection provided by an institutional framework established and functioning at an international level, there is a well-established institutional framework at both the universal and regional international levels for the protection of human rights. Ultimately however, although the state is still the primary subject of obligations in both these areas, one can see also within the development of the minority rights protection system after World War I, that absence of institutional control at international level usually mean that protection system functioning less efficiently.

The last selected milestone in the development of human rights law from the perspective of its predecessors is the developments in the early 20th century. This is very specific, since when compared to the previous milestones, it already includes both national and international levels and their interaction. The horrors of World War

29 Cryer, 2010, p. 267.

I and the atrocities committed during the conflict highlighted the need for stronger protections of human rights at both national and international levels. The Treaty of Versailles that was adopted following World War I in 1919 and the establishment of the League of Nations reflected the international community's first efforts to address human rights violations, particularly in relation to the rights of minorities.[30] The established system aimed to protect ethnic, religious, and linguistic minorities, primarily in newly formed or restructured states in Eastern Europe and the Balkans, following the break-up of the Austro-Hungarian Empire, and the Ottoman Empire respectively. The Treaty of Versailles and subsequent treaties, such as those of Saint-Germain and Trianon, imposed obligations on countries like Poland, Czechoslovakia, and Hungary to safeguard the rights of their minority populations. These treaties included provisions for equal treatment, non-discrimination, and the right for minorities to use their language and practice their religion. The League of Nations played a crucial role in monitoring the implementation of these obligations, creating the mechanisms for minorities to petition the League if they believed their rights were being violated. However, the minority protection system faced several challenges, including limited enforcement powers and the reluctance of some states to fully comply with their treaty obligations.[31] Furthermore, tensions between national sovereignty and international oversight often undermined the system's effectiveness. While the system did not prevent the rise of nationalism and ethnic conflicts in Europe, it laid an important groundwork for later human rights protections. It was considered important for the international community since otherwise it could cause a threat to international peace and security.[32] Moreover, it was even pointed out by the Permanent Court of International Justice, a judicial body of the League of Nations, that the idea underlying the treaties for the protection of minorities was to secure for minorities the possibility of living peaceably alongside that population and cooperating amicably with it, while at the same time preserving the characteristics which distinguish them from the majority, and satisfying the ensuing special needs.[33] The minorities protection system thus had two functions: to assure respect for the special rights of minorities, and to prevent discrimination against them in case they were not nationals of the respective state that had jurisdiction over them.[34] Equality and liberty were thus the principles that also governed the minorities protection system after World War I, and are considered a cornerstone of the international human rights protection system established after World War II.

30 So-called Little Treaty of Versailles, the treaty with Poland, became a model for 13 minority treaties.
31 Rosting, 1923, pp. 641 et seq.
32 Zyberi, 2013, pp. 327 et seq.
33 Minority Schools in Albania, PCIJ Series A/B (1935), No. 64, 17.
34 Cf. Advisory Opinion given by the Court on 10 September 10 1923 on certain questions relating to settlers of German origin in the territory ceded by Germany to Poland, PCIJ Series B (1923), No. 6, p. 25.

1.2. Establishment of the International Human Rights Law

It is notable and generally common for international law to develop following those phases of the history of humankind that involve revolutions or rather, using the language of international law, armed conflicts. The establishment of modern international human rights law is linked to World War II, when German nationals were treated by Germany in an unacceptable, inhuman way that was required to be dealt with by the international community. Efforts to prevent future wars were a driving force in establishing an international organisation that would unite the strength and power of all its member states to maintain international peace and security.[35]

According to the Preamble to the UN Charter, the protection of human rights is both a means and an end to achieving other goals. At the same time, the new concept of human rights after World War II emphasised the belief that respect for human rights is closely linked to the maintenance and safeguarding of international peace and security.[36] Therefore, it can be submitted that the objective stated in the UN Preamble is a kind of "constitutive" principle for the actions of every UN body:

> 'We, the people of the United Nations (...) determined (...) to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small... and for this end, to practice tolerance and live together in peace with one another as good neighbours, to unite our strength to maintain international peace and security(...)'.

The universal system of human rights protection under the auspices of the United Nations has several levels and dimensions. It consists of both institutions and mechanisms established by the UN Charter, and institutions and mechanisms established by human rights treaties adopted under the umbrella of the UN.

From the perspective of a systematic approach, this part of the chapter will firstly deal with the main bodies of the United Nations that are explicitly mentioned in the UN Charter, and later with the specialised organisations that are explicitly referred to in the UN Charter, and finally with the bodies whose existence can be directly inferred from the UN Charter.

When the UN Charter was adopted, an international organisation was established whose aim was a political one, i.e. to maintain international peace and security, to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, to achieve international co-operation in solving international problems of different character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction towards race, sex, language, or religion; and to be a centre for harmonising the

35 Cf. the Preamble of the UN Charter.
36 Potočný and Ondřej, 2003, p. 78.

actions of nations in the attainment of these common ends.[37] Nevertheless, people understood that the newly established organisation was to ensure the protection of their rights. It was realised by a first step, namely the adoption of the Universal Declaration of Human Rights, a milestone that gave birth to modern international human rights law and continues to evolve into other documents.[38] Although not legally binding as such, world leaders decided to complement the UN Charter with a road map to guarantee the rights of every individual everywhere. The document they considered, and which would later become the Universal Declaration of Human Rights, was taken up at the first session of the General Assembly in 1946 and adopted during the General Assembly session on 10th December 1948.[39]

Since this monograph devotes a separate chapter to this landmark document of international human rights law, from an historical point of view it is important to point out that although nowadays the human rights perspective is considered in any decision UN takes, it has not always been the case. Nevertheless, the protection of human rights is present in decision taking by any of the UN main bodies. Each of these (the General Assembly, the Security Council, the Economic and Social Council, the Secretariat, the Trusteeship Council, and the International Court of Justice) plays an indispensable role in the UN's objective of promoting respect for human rights.

Despite the political challenges posed by a forum such as the UN General Assembly, it is a body that also serves as a forum for human rights debates. It has coordinated human rights activities in relation to, for example, decolonisation, apartheid policies, dictatorial regimes in Africa, and enforced disappearances in Latin America. The UN General Assembly cooperates with the other principal bodies of the UN as well as with specialised organisations and the UN Human Rights Council.[40] It is also the body to which the human rights committees send their annual reports. Art. 13 of the UN Charter explicitly gives the UN General Assembly the task, in relation to human rights, of initiating studies and making recommendations with a view to facilitating the realisation of human rights and fundamental freedoms for all without distinction of race, sex, language or religion.

The UN Security Council, which is primarily responsible for the maintenance of international peace and security, deals with the issue of the protection of human rights in a rather reactive manner, in relation to the most serious human rights violations. This is evidenced by its resolutions on situations in, for example, South Africa, Namibia, Syria, Somalia and the Middle East. A particular step in relation to

37 See: Art. 1 of the Preamble of the UN Charter.
38 Rivera, 2024, p. 4.
39 For more information, see: https://www.un.org/en/about-us/udhr/history-of-the-declaration (Accessed: 20 June 2024).
40 Human Rights Council was established by the General Assembly resolution 60/251 from 15 March 2006.

the protection of human rights by the UN Security Council was the creation of *ad-hoc* international criminal tribunals for the former Yugoslavia and Rwanda.[41]

Under the UN Charter, the UN Economic and Social Council was envisaged as the operational centre for human rights matters. This is evidenced by as many as three articles of the UN Charter, out of a total of seven articles of the UN Charter relating to human rights, which are found in the chapter on the status of the UN Economic and Social Council. The UN Economic and Social Council is empowered to 'make and initiate studies and reports'.[42] From this mandate, the UN Economic and Social Council created the UN Commission on Human Rights to implement the UN's Human Rights Strategy. Today, the direct involvement of the UN Economic and Social Council in the implementation of UN human rights policy has been radically reduced, as the Commission on Human Rights has been replaced by the UN Human Rights Council, which reports directly to the UN General Assembly.[43]

The UN Secretariat is involved in human rights issues through the Office of the High Commissioner for Human Rights (hereinafter referred to as the 'OHCHR'), which is part of the UN Secretariat. The OHCHR is the personification of the UN's human rights policy and primarily provides administrative support to the Human Rights Committees and the Human Rights Council. Moreover, it conducts good offices for governments to focus on fulfilling their human rights obligations.

Although the International Court of Justice only resolves disputes between States and its opinion can only be requested by UN organs and UN specialised agencies, it has also addressed human rights issues in its own decisions, e.g. in its opinions Legal Consequences of the Construction of the Wall in the Occupied Palestinian Territory (2004), or Legal Consequences for States in the Matter of the Continued Presence of South Africa in Namibia, despite the Relevant UN Security Council Resolution 276 (1970),[44] or Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide (1951). Examples of its judgments are the Barcelona Traction case (1970), the Iranian Hostages case (1980), and the LaGrand (2001), Avena (2004) and Diallo (2010) cases. All these decisions have helped to articulate more precisely the content of obligations concerning human rights protection at an international level.

Apart from the UN main bodies, since the establishment of the United Nations, several specialised organisations have affiliated themselves to this universal organisation through cooperation agreements. Their focus is narrower than the general human rights protection of the UN as such. The areas of focus of these expert organisations

41 UN SC res 827 (1993) of 25 May 1993 for the ICTY, UN SC res 955 (1994) of 8 November 1994 for the ICTR.

42 See: Art. 62 of the UN Charter.

43 For more information, see the chapter upon human rights protection in the UN.

44 In this case the International Court of Justice explicitly stated that the UN Charter imposes legal obligations on member states regarding human rights. Therefore, in relation to Art. 2(7) of the UN Charter on the exclusion of interference in matters which fall substantially within the internal competence of States, the UN organs reject States' claims of interference in their domestic affairs when the matter concerns the protection of human rights.

are for example, health (The World Health Organisation, WHO), culture (The United Nations Educational, Scientific and Cultural Organisation, UNESCO), agriculture (The Food and Agriculture Organisation, FAO), working conditions (The International Labour Organisation, ILO), children's welfare (The United Nations Children's Fund, known until 1953 as the United Nations International Children's Emergency Fund, UNICEF), etc.). On the part of the United Nations, space for such cooperation has been created by Articles 57 and 63 of the UN Charter.

Although the primary role of specialised human rights organisations may be questioned in relation to their institutional system or material focus, their activities nevertheless form part of an integral system of human rights protection. For example, the International Labour Organisation, which focuses on the protection of labour rights, is unique not only because it was founded before the UN itself in 1919, and only became a UN-affiliated organisation in 1946, but above all because its bodies are composed based on a tripartite system of representatives of workers, employers and governments. The ILO oversees the implementation of over 100 treaties and several other recommendations, and in carrying out its functions it not only uses diplomatic negotiations and expert reviews but has also set up a complaints system to achieve the effective protection of its standards.[45]

It would be incomplete to list the expert organisations affiliated to the United Nations without mentioning the International Monetary Fund and the World Bank Group. The mandates of these institutions do not cover the issue of an effective strategy for the protection of human rights; rather, they focus on other aspects of their work in the economic sphere.[46] Over time, however, both institutions have had to recognise the important human rights aspect in the exercise of their functions. Both the World Bank and the International Monetary Fund now stress the importance of poverty reduction in their programmes and call for the implementation of the principles of good governance. For example, the World Bank set up an independent panel of experts to review complaints concerning human rights implications in its projects.[47]

Apart from the UN main bodies and specialised organisations, it is important to mention another UN Charter based body, namely the UN Human Rights Council. Established in 2010, the Human Rights Council (HRC) is a relatively young body in the UN system for the promotion and protection of human rights. However, the Council did not start out without any predecessor. As has already been pointed out, the establishment of the UN apparently signified for many individuals the notion that they would finally be able to claim their rights.[48] However, this interstate organisation was not empowered by its members to address complaints of human rights violations directly. Nevertheless, under art. 68 of the UN Charter, which empowered the UN

45 For more information about the complaint procedure, see: the ILO Constitution, Arts. 26–34.
46 For more information, see e.g: Skogly, 1999, p. 231.
47 See, for example: the mandate of the Panel of Independent Experts on its 10th anniversary from 1 October 2012 and the established follower with the B-Ready Project.
48 Cf. Jankuv, 2006, p. 51.

Economic and Social Council to set up commissions for the promotion of human rights, the Commission on Human Rights was established in 1946. The Commission was originally tasked to draw up a catalogue of human rights and a proposed mechanism for their protection, which it accomplished by drafting the Universal Declaration of Human Rights, and then later by drafting the International Covenant on Civil and Political Rights, and the Optional Protocol to the Covenant (both adopted in 1966), and the International Covenant on Economic, Cultural and Social Rights (also adopted in 1966). Over time however, it has acquired broader powers through resolutions of the Economic and Social Council, especially through ECOSOC Resolution 1235 of 1967 that allowed the Human Rights Commission to address situations of gross and systematic human rights violations through public inquiries and through the ECOSOC Resolution 1503 of 1970 that empowered the Commission to deal with complaints by individuals or groups against systematic and massive human rights violations, through a private and confidential procedure conducted in writing.[49] In addition to these procedures, the Commission also created thematic mechanisms, namely Special Rapporteurs and Working Groups, which either dealt with a specific area, such as torture, child trafficking, or were responsible for a specific state, such as North Korea.

The withdrawal of the Commission on Human Rights in 2006 was coupled with the establishment of the aforementioned Human Rights Council, which unlike the Commission, falls directly under the UN General Assembly. In its first year, the Council was mandated, *inter alia*, to evaluate and, where necessary, improve and rationalise the tasks of the previous Commission, including the complaints and investigations mechanism and special mechanisms. The biggest change was the introduction of the so-called Universal Periodic Review (UPR), which introduced regular monitoring for all UN Member States. The Council has also maintained the existence of specific independent experts, whether appointed to monitor a specific topic or to monitor the situation in a specific country.[50] Although it is still true that the Council is an intergovernmental body, it is desirable that it should be a forum of experts and not of representatives of States, and that it should therefore avoid the mistakes that were most often blamed on its predecessor, the Commission, and that it should be a forum for real solutions from the UN side for the protection of human rights.

The very nature of the Universal Declaration of Human Rights and the international community's focus on creating a genuine system of human rights protection has made the adoption of legally binding norms a foregone conclusion. However, due to growing tensions between the Eastern and Western blocs, this was not realised until 1966, although the Commission on Human Rights had already fully accomplished its task back in 1954, when it submitted the texts of the proposed covenants to the UN General Assembly. In addition to the International Covenant on Civil and Political Rights (1966), and the International Covenant on Economic, Social and Cultural Rights

49 For more information, see the chapter upon Human Rights protection in UN.
50 For more information, see the website of the UN Human Rights Council within the website of the UN High Commissioner for Human Rights.

(1966), which was entered into force in 1976, the following international agreements form the basis of the treaty system for the protection of human rights at the United Nations: the Convention on the Elimination of All Forms of Racial Discrimination (hereinafter: the CERD, adopted in 1965, and in force since 1969); the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter: the CAT, adopted in 1984, and in force since 1987); the Convention on the Elimination of All Forms of Discrimination against Women (hereinafter: the CEDAW, adopted in 1979, and in force since 1981); the Convention on the Rights of the Child (hereinafter: the CRC, adopted in 1989, and in force since 1990); the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (hereinafter: the CMW, adopted in 1990, and in force since 2003); the Convention on the Rights of Persons with Disabilities (hereinafter: the CRPD, adopted in 2006, and in force since 2008); the Convention for the Protection of All Persons from Enforced Disappearance (hereinafter: the CED, adopted in 2006, and in force since 2010).

The above-mentioned documents were preceded by a declaration adopted by the UN General Assembly in the form of a resolution. Such a soft-law document reflects the international community's attitude to the issue and in most cases implies the adoption of a legally binding international treaty.

This limited selection of the above-mentioned treaties is justified by the existence of the bodies established by them to oversee the implementation of the obligations imposed on the individual contracting parties by the specific treaties. However, in addition to the above-mentioned treaties, other international treaties relevant to the protection of human rights have been adopted at the United Nations, although no special committees have been established because of them: the Convention on the Prevention and Punishment of the Crime of Genocide (adopted in 1948, and in force since 1951); the Convention on the Suppression and Punishment of the Crime of Apartheid (adopted in 1973, and in force since 1976); Conventions relating to slavery, e.g. the Additional Protocol on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery (1956).

However, these conventions are specific in that they regulate *jus cogens* norms.[51] They constitute a special form of human rights protection in such a way that they require state parties to prosecute persons suspected of committing genocide or apartheid.

Although there is much overlap between the above treaties that have given rise to the special committees (and human rights are inherently indivisible anyway), each of these treaties focuses on a specific set of rights, or on a specific group of protected subjects.

The history of human rights law might be seen from a broader perspective: firstly, there was a phase of generalisation that awarded internationalisation, and that

51 The prohibition of genocide to be *ius cogens* was expressed by the International Court of Justice, for example, in its Advisory Opinion on Reservations to the Genocide Convention of 28 May 1951, ICJ Reports 1951, pp. 15 et seq.

followed the constitutionalisation of human rights at a national level. This phase was initiated by the adoption of the UN Charter and the related Universal Declaration of Human Rights. When the human rights concept implemented itself at international level, generalisation was at stake, i.e. the focus on *every* individual was the main approach of the adaptation of the principles of equality and liberty. This is one of the reasons why the International Bill of Human Rights consists of the Universal Declaration of Human Rights and two already mentioned Covenants, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights. They concerned all human beings. However, the following development is proof of the necessity of the international community to focus on some specific groups, such as children and women, and some specific realities, such as the prohibition of racial discrimination and torture. Treaties dealing with the status of specific groups (women, children, migrant workers, persons with disabilities) focus on the rights whose protection of those individuals in question is most needed to achieve the development and the protection of their human dignity. At this point, the phase of specialisation has thus been realised.

While the core UN human rights treaties create the normative foundation of international human rights law, a deeper legal analysis points out important limitations and ongoing debates regarding their scope, enforcement, and interpretive evolution. Separate adoption of the Covenants in 1966 has represented the division of rights into two categories: civil-political and socio-economic.[52] This dichotomy has been heavily criticised for implying a hierarchy of rights, with civil and political rights perceived as immediately enforceable and socio-economic rights viewed as progressively realisable and less justiciable. However, subsequent jurisprudence, especially by the UN Committee on Economic, Social and Cultural Rights, has sought to reinterpret the ICESCR as imposing meaningful obligations, including minimum core standards.[53]

Other effective implementation challenges have also been formulated towards treaties such as the CEDAW, CERD, and CRC that advance protection for vulnerable groups. In particular the CEDAW's approach to cultural relativism has generated scholarly debate.[54] By contrast the CRPD represents a shift toward rights-based approaches, while on the other hand it also raises complicated questions about state capacity and resource allocation, mostly in developing states. Moreover, even the CAT and CED treaties that are notable for their non-derogable norms challenge issues regarding state responsibility, extraterritorial application, or the non-refoulement obligations, especially in relation to the issue of state security.[55]

These universal human rights treaties have formed a very special legal area. They have created legally binding norms; however, their actual implementation depends heavily on state cooperation, interpretive practices of treaty bodies, and the evolving

52 Craven, 1995, p. 9.
53 International Committee on Economic, Social and Cultural Rights, general comment No. 3, 1990, para. 10.
54 Faturoti, 2016.
55 Goold and Lazarus, 2019, especially Chapters 2, 7, 11, 19.

dialogue between international law and domestic legal systems. This dialogue varies in different regions of the world which has resulted in establishing regional human rights protection systems that also play a very important role in promoting, protecting, and developing international human rights law. Although the aim of this book is to consider the universal protection of human rights, it is also necessary to mention these regional systems that not only complement the universal framework but also adapt it to specific cultural, political, and legal traditions of the respective regions.

The three most developed regional human rights systems are those in Europe, the Americas, and Africa. Being similar to the UN-based system, each of these regional systems has emerged out of its own historical context, often shaped by post-war development, decolonisation processes, and regional conflicts, and each proves to be sign of the recognition that while universal principles are fundamental, their implementation must often be localised in order to be effective.

Firstly, the European human rights system, under the Council of Europe, represents the most institutionalised and judicialized regional human rights mechanism. The European Convention on Human Rights (ECHR) established the European Court of Human Rights (ECtHR), which remains one of the few international courts with the competence to issue binding judgments on states in cases brought forward by individuals. Originally functioning along with the European Commission on Human Rights, this model was revolutionary since for the first time in history, individuals were given the right to bring complaints against their own states before an international tribunal. The jurisdiction of the ECtHR obligatory for all the members of the Council of Europe has resulted in a system that might be considered as a victim of its own success due to its case load.[56] However, this system has adopted landmark decisions e.g. on freedom of expression,[57] freedom of religion[58] and the right to a fair trial.[59] Moreover, it has also created interpretative approaches to protected rights, such as the positive obligations of a state, and the margin of appreciation or evolving interpretation.[60] The Council of Europe has also adopted other conventions relevant to human rights, such as the European Social Charter or the Framework Convention for the Protection of National Minorities. Although these instruments are less judicial in character than the ECHR, they provide crucial substantive protection and support regional human rights engagement in Europe.

Secondly, in the Americas, the Organisation of American States (OAS) has established a regional human rights system built around the American Declaration of the Rights and Duties of Man (1948), and the American Convention on Human Rights (1969).

56 Search within its database of decision.
57 See more detailed factsheet at: https://www.coe.int/en/web/human-rights-convention/expression1 (Accessed: 20 June 2024).
58 See more detailed factsheet at: https://www.coe.int/en/web/human-rights-convention/conscience1 (Accessed: 20 June 2024).
59 See more detailed factsheet at: https://www.coe.int/en/web/human-rights-convention/justice1 (Accessed: 20 June 2024).
60 McBride, 2021.

The Inter-American Commission on Human Rights (IACHR) and the Inter-American Court of Human Rights (IACtHR) are the principal organs overseeing the application of human rights in the region, although the judgments of the IACtHR are binding only on states that have accepted its jurisdiction. Despite this, they have had a broader persuasive authority globally, including within UN treaty bodies, especially in the areas of indigenous rights and enforced disappearances.[61]

Thirdly, the African regional system, operating under the African Union (originally under the Organisation of African Unity), is rooted in the African Charter on Human and Peoples' Rights (1981) which adopts a unique approach, emphasising not only individual rights but also peoples' rights and duties. It is grounded in African legal traditions and recognises collective entitlements such as the right to development and the right to a satisfactory environment. The African Commission on Human and Peoples' Rights and the African Court on Human and Peoples' Rights play central roles in interpreting and enforcing the charter under which they have issued important decisions e.g. on indigenous rights.[62]

The African system demonstrates a broader normative approach to human rights, embedding socio-economic, cultural, and environmental concerns from its establishment, which is an aspect that was only incorporated in other systems later. Its scope has influenced the development of soft-law instruments at the UN level, such as declarations on the rights of indigenous peoples, and the right to development.[63]

Apart from these three main systems, other regional initiatives have also emerged. The Arab Charter on Human Rights, adopted under the League of Arab States, and the ASEAN Human Rights Declaration, adopted by the Association of Southeast Asian Nations, represent efforts to formulate human rights standards in their respective regions. While often criticised for weak enforcement mechanisms and vague formulations, their existence nonetheless affirms a global consensus on the value of human rights protection.[64]

1.3. Generations of Human Rights

The concept of human rights has developed fundamentally over time as societies have advanced and new challenges have emerged. One way of understanding this development is through the generations of the human rights framework, which divides the development of rights into distinct phases, each corresponding to the social and historical context under which they arose. Another way of understanding the concept of human rights generations depends on the extent of state involvement to achieve the realisation of particular rights. Typically, human rights are categorised into three

61 See the landmark decision in *Velásquez Rodríguez v. Honduraz* case on enforced disappearances adopted by the Inter-American Court of Human Rights on 29 July 1988.
62 *African Commission on Human and Peoples' Rights v. Republic of Kenya* (Application No. 006/2012), judgment on merits adopted by the African Court on Human and Peoples' Rights on 26 May 2017.
63 Declaration on the Right to Development, General Assembly resolution 41/128 adopted on 4 December 1986.
64 Davies, 2014, pp. 107–129.

main generations, although some scholars and theorists have begun discussing a potential fourth generation.[65] Each generation represents a different aspect of human dignity and protection, reflecting shifting priorities and values as universal dynamics change.

This subchapter aims to provide an analysis of the three classical generations of human rights and the emerging fourth generation, analysing their historical origins, philosophical foundations, and practical implications of these generations in both national and international contexts. After having presented basic milestones from a historical perspective, it is easier to summarise the historical aspects of the division of the human rights into three generations.

This classical division of human rights was first introduced by a French lawyer of Czech origin, Karel Vašák, at the International Institute of Human Rights in Strasbourg during his inaugural lecture at the 10th session of the institute,[66] and later captured in writing in the UNESCO Courier.[67] Although there have been many critics of this division, it is generally acknowledged that it is of a practical nature.[68] A very good approach to understanding this division is by materialised in the slogan of the French Revolution – Liberty, Equality, Fraternity – a methodology that was used by Karel Vašák himself when reframing the context of three human rights generations.[69]

1.3.1. First-Generation Human Rights

The first generation of human rights, also known as civil and political rights, encompasses those freedoms that are essential for individual autonomy and participation in the public life. These rights are typically considered "negative rights" because they require states to refrain from interfering in the individual's freedoms, rather than demanding active intervention by the state. The origin of these rights can be traced back to the political revolutions of the 18th century, as has already discussed above in the historical background subchapter, in particular to the American and the French revolution. The notion of liberty is seen only by a negative approach from the state, since the state is required "only" to respect the rights of individuals, and to let them be free and enjoy their liberty.[70]

The philosophical roots of first-generation rights are closely tied to the works of philosophers such as John Locke (Second Treatises on Government),[71] Thomas Hobbes

65 See e.g. : Perepolkin et al., 2021, pp. 91 et seq.
66 Wellman, 2000, p. 639.
67 Vašák, 1977, pp. 29–32.
68 See some examples in Domaradzki, Khvostova and Pupovac, 2019, p. 424.
69 Jensen, 2017.
70 This negative approach has been later accomplished by so-called positive obligations of a State to create effective legislative framework that would protect and promote enjoyment of first-generation rights also vis-a-vis other individuals and also in case when a claimed violation has occurred to investigate it. For more information about the duty to respect, protect and ensure, see e.g.: Ramcharan, 2011, pp. 123 et seq.
71 Locke, 1690.

(Leviathan),[72] and Jean-Jacques Rousseau (Social Contract).[73] These philosophers emphasised the importance of individual liberty, natural rights, and social contract as foundational to legitimate governance. John Locke's theory of natural rights, including the right to life, liberty, and property, became fundamental in shaping our modern understanding of civil and political rights. Locke argued that these rights are inalienable and inherent to all individuals by virtue of their humanity, and that the role of government is to protect them, not to infringe upon them.[74]

First-generation human rights include a wide array of civil liberties and political freedoms, such as the right to life, the right to liberty and the security of person, the right to a fair trial, freedom of speech, freedom of assembly and association, and the right to vote and to be elected.

The principles of civil and political rights have been enshrined in numerous international legal instruments, especially in the International Covenant on Civil and Political Rights. One of the manifestations of the Cold War was the acceptance of the ICCPR, mostly by Western states. Nevertheless, even after the Fall of the Berlin Wall, and despite the widespread recognition of first-generation rights, challenges to their full realisation are still present in many parts of the world, e.g. in the form of authoritarian regimes. Moreover, even in democratic countries, challenges such as surveillance, discrimination, and the erosion of privacy rights continue to pose significant threats to civil and political rights.

1.3.2. Second-Generation Human Rights

If compared to the first-generation, the second generation of human rights was mostly welcomed by the Eastern Bloc. These are often referred to as economic, social, and cultural rights. This generation reflects a shift in focus from individual freedoms to a broader social and economic well-being. These rights are sometimes described as "positive rights" because they require active intervention from the state to provide certain services and to ensure basic standards of living for individuals. Second-generation rights have emerged in response to the recognition that political freedoms alone are insufficient if people lack the means to live with dignity.[75]

The development of second-generation human rights is closely linked to the rise of the socialist and labour movements in the 19th and early 20th centuries when equality was emphasised to achieve the full enjoyment of first-generation rights.[76] The call for the redistribution of wealth and resources as a means to achieving social

72 Hobbes, 1660.
73 Rousseau, 1762.
74 Przetacznik, 1978, pp. 195–216.
75 Inter-American of Human Rights in its decision *The "Street Children" Case (Villagrán Morales et al.).* Judgment of November 19, 1999. Series C No. 63 pointed out that evidence showed that street children detained arbitrarily were victims of aggravated violations of their rights, both because they did not enjoy the minimum conditions for a decent life and because the state not only did not provide them with these minimum conditions, but also arbitrarily deprived them of their liberty.
76 Cf. Steiner, Alston and Goodman, 2008, p. 269.

justice was then at stake. These ideas, combined with the growing influence of trade unions and social welfare advocates, led to the demand for rights that would address the material conditions of life, particularly for the working class.

The era after World War II also played a crucial role in the development of second-generation rights, as the devastation caused by the war led to widespread poverty. In this context, the establishment of the United Nations and the adoption of the Universal Declaration of Human Rights were considered a significant step towards recognising economic, social, and cultural rights as fundamental human rights. Despite the fact that originally the International Covenant on Economic, Social and Cultural Rights did not establish its own Committee, it was the Economic and Social Council that created a body to monitor the implementation of these rights.[77] As the established Committee has already held, second-generation rights are human rights as are other generations of rights. They are not rights of future; they belong to every individual already and at the time of being. These rights focus on ensuring that all individuals have access to the resources and opportunities necessary for a decent quality of life. Some of them are as follows: the right to work, the right to education, and the right to an adequate standard of living.

Second-generation human rights are, at the international level, mostly covered by the International Covenant on Economic, Social and Cultural Rights which obligates state parties to take progressive measures to ensure the full realisation of economic, social, and cultural rights. It is true though that the realisation of these rights remains a significant challenge for many countries, particularly in the Global South, even in the case of such a right as that to an education. On the other hand, the universal recognition of second-generation rights has contributed to their development through the adoption of international aid programs, and policies aimed at poverty reduction and equitable development. They are aimed at the achievement of at least an equitable if not equal access to various resources.

1.3.3. Third-Generation Human Rights

When referring to the third generation of human rights, one often uses a term of solidarity or collective rights which indicates the last part of the slogan: Liberté, Egalité, Fraternité. Fraternity involves sharing; solidarity rights emerged in the latter half of the 20th century as a response to issues that crossed national borders. These rights reflect the idea that individual rights cannot be fully realised without addressing broader social, environmental, and economic conditions that affect entire communities and nations. Solidarity rights are considered as "collective rights" because they pertain not just to individuals, but to groups of people or even to humanity as a whole.

The development of third-generation rights is closely tied to the process of decolonisation in the mid-20th century, and the emergence of newly independent states in Africa, Asia, and Latin America in the 1960s and 1970s. These decolonised states

77 ECOSOC Resolution 1985/17 of 28 May 1985.

emphasised the need for a more equitable international order that would address issues of poverty, and related inequalities between nations. In this context, third-generation rights were seen as essential in promoting justice and cooperation among states together and creating an international community.

Apart from the right to peace, the right to a healthy environment, the right to sustainable development, the right to self-determination is usually referred to since it granted colonised peoples the right to freely determine their political status and pursue their economic, social, and cultural development. This right is also a proof that the division of rights according to their legal inclusion into the Covenants is not always helpful since the right to self-determination is contained in both Covenants.[78]

As for the other third-generation rights at an international legally binding level, their recognition has been more contentious than the recognition of first- and second-generation rights.[79] Although there are various universal declarations, such as the Declaration of the Right to Development,[80] or the Rio Declaration on Environment and Development,[81] they have not been codified in binding international treaties at a universal level in the same way that civil, political, economic, social and cultural rights have been. One of the reasons for this situation might be that third-generation rights usually require significant changes to the international legal framework. For example, the right to development might imply that wealthier states have a responsibility to assist poorer countries in achieving sustainable development, a concept that has brought discussions over issues of sovereignty, responsibility, and resource and debt allocation.[82] Nevertheless, despite these challenges, the concept of third-generation rights has already been rooted in the concept of human rights, particularly in the context of global issues such as the need for environmental protection.[83]

1.3.4. Fourth-Generation Human Rights

Finally, as the world moves deeper into the 21st century, some scholars and human rights advocates have begun discussing the possibility of a fourth generation of human rights which would address the new challenges caused by rapid technological advancements. While the fourth generation of human rights is still an emerging concept, it usually considers rights related to digital privacy and data protection, rights to the access to internet, and the ethical implications of new technologies in the cases of artificial intelligence and biotechnology.[84] These four areas have been selected because of the challenges they have brought to the scene of the international

78 See: Art. 1 of the ICCPR and the ICESCR.
79 Some of the third-generation rights are incorporated into a regional international treaty: African Charter on Human and Peoples' Rights. See e.g.: Evans and Murray, 2008, p. 1.
80 General Assembly Resolution 41/128 from 4 December 1986.
81 Report of the UN Conference on Environment and Development A/CONF.151/26 (Vol. I) from 12 August 1992.
82 See e.g.: UK Debt Relief (Developing Countries) Act 2010.
83 See e.g.: Anton and Shelton, 2011.
84 Some argue that also reproductive and sexual rights are a part of the fourth generation of human rights. See e.g.: Barabash, 2024, pp. 13 et seq.

framework of human rights protection. The first two, the right to privacy and the the right to information, might be considered as a part of first-generation rights. Nevertheless, there are different aspects that must be analysed when talking about these rights in relation to the use of technologies. As for biotechnology and the use of artificial intelligence, one must analyse the same aspect: impact of technologies on a human being while keeping in mind the aim of the human rights protection framework, i.e. the fact that the fourth generation of human rights should focus on ensuring that individuals and their rights are continuously protected in the digital age and that new technologies are used in ways that reflect human dignity, i.e. respecting the liberty and equality of individual beings, and fraternity within the human community. Nevertheless, if compared to the first three generations of human rights, the fourth one provides more questions than answers and claims.

Although these fourth-generation rights are still in the early stages of their development, there has already been a growing recognition of the need for legal frameworks that address these specific challenges of the digital age. The well-known General Data Protection Regulation (GDPR) adopted by the European Union in 2016,[85] the AI Act[86] adopted by the European Union in 2024, and the Framework Convention on Artificial Intelligence and Human Rights, Democracy and the Rule of Law adopted by the Council of Europe 2024,[87] are probably the best examples of legal instruments trying to protect individuals' rights in the digital era.[88]

Not all fourth-generation rights are entirely new however, extensions of existing rights require reinterpretation, taking into consideration advances in technology.[89] Nevertheless, these not so new rights might be considered a part of the previous human rights generations: the best example is the right to privacy that originally belongs to the first-generation rights. However, because of increased interaction within digital platforms, vast amounts of personal data are collected, processed, and stored by governments and corporations. The rise of big data analytics has enabled unprecedented analysis of human behaviour, often without individuals' informed consent.[90] This raises significant concerns about the right to privacy.

In general, it has to be specifically emphasised that there are differences between the right to privacy if compared to the right to privacy in the digital age, especially concerning the issue of neither space nor time limitation (i.e. the fact that in a digital world, information published online is made public worldwide, incomparably quicker than is ever possible in the "real", physical world).[91] Nevertheless, these factual differences have no consequence on the legal protection requirements of examined rights

85 Regulation (EU) 2016/679.
86 Regulation (EU) 2024/1689.
87 Council of Europe Treaty Series No. 225, this treaty is in July 2025 not legally binding yet.
88 For others, such as Oviedo Convention, EU Charter on Fundamental Rights, see: Herdegen, 2023, pp. 57 et seq.
89 Sartor, 2020, pp. 705–719.
90 Zuboff, 2019, pp. 18, 23.
91 Cf. European Court of Human Rights, *Delfi v. Estonia*, 16 June 2015, No. 64569/09, para. 65.

as has been confirmed also by the Recommendation of the Committee of Ministers according to which the obligation of the member States to secure for everyone within their jurisdiction the human rights and fundamental freedoms enshrined in the Convention involves the assurance that existing human rights apply equally offline and online.[92] It means that the content of the right to privacy offline is the same as that of the right to privacy online.

However, a consent that is required nowadays, e.g. to gain access to most social media, might be considered in opposition to a truly valid consent according to the GDPR.[93] Although it might be given in a good faith, there are several conditions that need to be met.[94] Nevertheless, they are usually fulfilled only in a theory by ticking to agree to terms and conditions. However, by automatically ticking, people do not check whether the organisation asking for their consent does not require a consent to the processing of unnecessary personal data, data that is not necessary to provide searched service. Moreover, people online usually do not check the identity of the organisation processing their data, and purposes for which they are being processed, as well as the possibility to withdraw the given consent. They often give their consent also for profiling and even for their data being transferred to third countries that are not within the GDPR's application.[95] This raises the question as to whether such an act could be considered as an operation based on informed consent.

Apart from the right to privacy, the right to the access to information must be reinterpreted due to technical advancements. The internet has revolutionised the way people communicate and access information. Alternatively, it has also given rise to new challenges related to censorship and disinformation campaigns. On the one hand, social media platforms have democratised access to information, allowing individuals to share their views worldwide. On the other hand, these platforms have become fruitful grounds for the spread of misinformation leading to calls for greater regulation.[96]

Technical advancements are also responsible for the challenge of the so-called internet or digital divide that indicates the gap between individuals, and between countries as well, in their access to and use of the internet and digital technologies. This divide reflects disparities in the ability to participate in the digital world, creating therefore further inequalities in the access to information, education, economic opportunities, and even social engagement. This inequality in the access to the internet has been influenced by several factors, including an infrastructural, economic, and social lack of support which has given rise to insurmountable obstacles, e.g. for

92 Recommendation CM/Rec (2014)6 of the Committee of Ministers to Member States on a Guide to human rights for Internet users (adopted by the Committee of Ministers on 16 April 2014 at the 1197th meeting of the Ministers' Deputies).
93 See: GDPR, Art. 5.
94 See e.g.: Guidelines on Consent under Regulation 2016/679.
95 Custers, 2013, pp. 437 et seq.
96 Bradshaw and Howard, 2019.

the effective realisation of the right to education.[97] Moreover, without addressing the internet divide, economic inequality between countries will probably increase. That is why access to internet might be considered a part of third-generation rights, since it requires a combination of policy interventions, technological innovations, and international cooperation, especially in relation to supressed groups.[98] However, because of the cause of this phenomenon, it has been selected here as an example of fourth-generation rights.

If compared to the previous rights selected as examples of the fourth-generation rights, the impact of technologies has been extremely present in challenges posed by artificial intelligence (AI),[99] especially in relation to the issue of informed consent. Many AI systems, particularly those based on machine learning, operate as "black boxes," where even their developers may not fully understand how they arrive at specific outcomes.[100] This lack of transparency can undermine an individuals' autonomy, as people may not be able to challenge or contest decisions made by AI systems that impact their lives which has been in stark contradiction with the overall aim of the establishment and development of human rights protection systems based on the protection of the very concept of an individual being independent and equal.[101] Human beings have fought for their collective freedom, but it seems that they wrested power from an absolute sovereign in antiquity, only to fall under the control of an automatic system of the evaluation of online information. This contradiction is not only designed to make us understand that AI is a good servant but a bad master. One must remember that the use of AI and its algorithms in decision-making processes has often been trained on historical data, which may contain biases related e.g. to race.[102] It means that even unintentionally, AI systems can be a reason that biased decisions can be made that disproportionately affect marginalised groups.[103]

For example, research has shown that AI systems used in police systems often target minority communities, leading to disproportionate arrests and incarceration rates.[104] This and similar examples point out the need for the regulation of AI systems to ensure that they do not violate individuals' rights to equality and non-discrimination. In response to these concerns, some scholars have called for the adoption of algorithmic accountability frameworks since accountability should not be transferred to machines.[105]

97 UNESCO, 2020, Global Education Monitoring Report: Inclusion and Education.
98 Hilbert, 2011, pp. 479–489.
99 The term of an artificial intelligence is used although it is not intelligent as such, it is just able to use all the human inputs, i.e. all the results of the human experience in an unimaginably quick way.
100 Pasquale, 2015.
101 Sartor, 2020, pp. 711 et seq.
102 Gravett, 2021, pp. 31 et seq.
103 Eubanks, 2018.
104 Narayan, 2023, p. 10.
105 Brożek, 2023, p. 403.

Finally, as for the examples of the fourth-generation rights, advancements in biotechnology, such as gene editing and reproductive technologies, also raise ethical concerns about autonomy, equality and informed consent. This is the usual example that this author provides when talking about fourth-generation rights. One can talk about the right to privacy, the right to information and the right to non-arbitrary decisions of any system, also by interpreting other generations of human rights while focusing on informed consent, yet, when technologies such as Clustered Regularly Interspaced Short Palindromic Repeats (CRISPR) allow for the precise editing of the human genome, this gives rise to technology's direct influence on the human genome, being the fundamental building blocks of the essence of a human being. The question arises, as to whether it has any radical influence on human beings and their rights. On the one hand, there is a potentially high chance to eradicate genetic diseases. On the other hand, these technologies also raise questions about the ethics of genetic manipulation and the potential for eugenics.[106] Ensuring that individuals have the right to make informed decisions about their own bodies, without coercion or manipulation, is a key challenge in the digital age.

Technological advancements in biotechnology and genetic engineering have largely influenced our understanding of the human genome and the use of unprecedented possibilities for medical treatments and disease prevention. Nevertheless, these technologies also present a significant challenge because of potential threats they give to the integrity of the human genome.

Researchers have already achieved significant breakthroughs in somatic gene editing, where DNA changes are made to non-reproductive cells, affecting only the individual and not their descendants. This form of gene therapy has shown promise in treating a range of genetic disorders. For example, CRISPR has been successfully used in clinical trials to treat patients with sickle cell anaemia by modifying the defective gene that causes the disease.[107]

However, while somatic gene editing raises only fewer ethical concerns, the potential for germline editing, i.e. altering the DNA of reproductive cells, which can be passed on to future generations, has provoked more widespread discussion. Germline editing could potentially eliminate hereditary diseases from entire family lines, but it also carries risks, including unintended mutations and unknown long-term effects on the human genome. The biggest challenges include off-target mutations, such as immunogenicity,[108] genetic inequality, and even the potential to practise eugenics.[109]

106 Council of Europe, DH-BIO/INF (2019) 13, Committee on Bioethics, Ethical and social perspectives on the use of gene editing in humans. Short report based on the report 'Overview of ethical and social issues of human gene editing as raised by policy documents' Howard and Niemiec (2019), 1 October 2020, p. 5.

107 Frangoul et al., 2020.

108 Adli, 2018, p. 10.

109 Council of Europe (DH-BIO), Ethical and social perspectives on the use of gene editing in humans, DH-BIO/INF(2019)13, 1 October 2020, p. 5.

The long-term effects of editing the human genome are still not well covered. Genetic changes introduced today may have unforeseen consequences for future generations, potentially causing new diseases or even deteriorating existing genetic weaknesses. This possibility also raises serious ethical issues about justice and fairness in the distribution of technological benefits. The creation of a genetically enhanced class could lead to new forms of discrimination or even social stratification based on genetic traits. Such inequalities would undermine the principle of human dignity, even possibly creating a society in which people are valued not for their intrinsic worth of being human and having inherent human dignity but for their genetically engineered abilities.

Despite all these challenges, on the one hand, there is no global thrive for consensus on the regulation of gene editing from the perspective of individual states. On the other hand, international organisations such as the World Health Organisation (WHO) have called for a framework for germline editing and established the Expert Advisory Committee on Developing Global Standards for Governance and Oversight of Human Genome Editing in 2018. In 2021 this committee recommended the regulation of genome editing or even moratoria until international guidelines were established.[110] Nevertheless, there have been scholars claiming that moratorium as such does not solve the challenge and calling for an informed adaptive consensus.[111] To sum up this subchapter, while the potential for curing genetic diseases and improving human health is undeniable thanks to technological advancements, the ethical and social challenges posed by technologies must not be overlooked. Safeguarding the human genome requires a careful balance between scientific progress and the protection of human rights.

2. Conclusion

To summarise the whole chapter, it is important to point out that before the establishment of the international human rights protection system, numerous national-level frameworks laid the foundation for what would later become universal human rights norms. From the Cyrus Cylinder through to the Magna Carta, and to the American and French revolutionary documents, these national systems played a crucial role in the development of the principles of liberty and equality that underpin contemporary human rights law. The expansion of constitutional rights throughout the 19th and early 20th centuries, the abolitionist movement, and respect for the sick and wounded during armed conflicts have contributed to an ever-growing recognition of the need for formal legal protections for individuals' rights at an international level. These attempts have been of crucial importance in the process of shaping the modern concept of human rights, which gained international recognition through institutions

110 WHO Expert Advisory Committee, 2021, p. 33.
111 Kaan et al., 2021, pp. 1 et seq.

such as the League of Nations in the area of minority rights protection systems, and more successfully through the United Nations and treaties adopted under its umbrella, such as the International Covenants. The lessons from these predecessors remain relevant even today, as they remind us of the importance of both national and international efforts in the ongoing struggle to protect human rights. Throughout the history of human rights law, the principles of equality and liberty have driven the development of this whole domain.

An analysis of generations of the human rights framework from an historical perspective provides a useful means to understanding the historical background of human right laws and their development. From the individual freedoms of the first and second generation through to the collective rights of the third generation, and to the emerging rights of the fourth generation influenced by technological advancements, human rights have expanded to address the changing needs of individuals and societies. While each generation of rights reflects a different aspect of human dignity, they are all interconnected and interdependent, underscoring the need for a common approach to human rights protection.

Nevertheless, the technological impact is very specific and currently undergoing strong momentum. During the whole process of human rights protection system development, the protection of human rights has had to remain the primary goal of all the efforts. Currently, this includes protecting individuals from unwarranted data collection, and the misuse of personal information in the digital sphere. Moreover, it aims at the protection of the right to access of information in relation to the internet, i.e. it includes resources available online. Furthermore, it concerns the right to protection from the potential harmful effects of AI technologies, such as arbitrary decisions because of a discriminatory data basis. Finally, the impact of technology on the human genome presents both possibilities and risks. Gene-editing technologies such as CRISPR have the potential to cure genetic diseases, but they also raise serious ethical concerns about off-target effects and genetic inequality, and maybe even the resurgence of eugenics.

Because of the principle of equality, the available benefits from scientific progress have to be ensured for everybody: it is important to ensure that all individuals have access to the benefits of new technologies and innovations, whilst also protecting them from any potential risks.

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