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The geopolitics of fundamental rights

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The geopolitics of fundamental rights¹

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Sommario:

1. Introductory remarks. - 2. Sources of international law: further developments from 1948 - 3. Final remarks.

1. Introductory remarks.

Geopolitics is a specific approach of scientific research in international relations and foreign policy of individual countries or groups of countries.

It focuses the influence of various factors connected to the territory of those countries on foreign policy and international relations, such factors having a geographic or territorial relevance (economy, energy, resources, population) as well as

a relevance connected to ideal factors still related to the territory(ies), such as ideologies, religions (or atheism), social and cultural fabric of the population (such as main cleavages as to language, religion, ethnic or national minorities).

The geopolitical framework explains an approach to the study of constitutionalism according to geographical areas – on the assumption of shared elements, such as European constitutionalism, or Scandinavian constitutionalism, or common law constitutionalism, or Islamic constitutionalism – as well to the study of legal families, such as common law, civil law, religious law, customary law etc.

Consider the expansion of the civil law and of the common law legal systems along with the expansion of colonial power.

The same approach with constitutional transitions (Central and Eastern Europe).

See the mapping in <https://www.juriglobe.ca/>

¹ Il testo riproduce una lezione resa nel corso BA Degree: Comparative, European and International Legal Studies (CEILS) presso l'Università degli Studi di Trento. Course: International and Supranational Protection of Fundamental Rights (Prof. Marta Tomasi), March 9th, 2026. Titolo: *National, Regional and International Protection of Fundamental Rights and the Geopolitics of (Il)liberal Régimes.*

Geopolitics does not belong to legal science, although it is founded on knowledge and understanding of legal phenomena.

The issue of fundamental rights (or human rights) is one of such ideal factors that qualify and distinguish the foreign policy and international relations of most if not all nation-states and groups of states.

The focus of this class is (i) on the different options in favour of one particular system of protection of fundamental rights (whether national (only), or regional (continental), or international) by individual countries and groups of countries under different political *régimes* (whether liberal or illiberal).

international and national vs. regional

In other words, it is held that (ii) there is a distinction between political *régimes*, that are open to *non*-nation-state-centric protection of fundamental rights, inclusive of *judicial* international (ECHR+ECtHR) and supranational (CFREU+CJEU) protection, on the one hand; and, on the other hand, other political *régimes*, whose emphasis is on nation-state-centric protection of fundamental rights, while their reference to sources of international law does not entail any recognition of higher legally binding effects and is therefore rather based on a sort of lip-service routine acknowledgement.

non-nation-state-centric vs. nation-state-centric systems

Furthermore, it is held that (iii) there is a connection between *non*-nation-state-centric options and the liberal character of the corresponding countries, on the one hand, and, on the other, nation-state-centric options and the non-liberal or illiberal character of the countries,

non-nation-state-centric liberal option vs. nation-state-centric non-liberal [rather than illiberal] option

Such statements (a) are, obviously, the result of a generalisation that does have its limits and its exceptions, as all generalisations; and (b) are based on general and intuitive premises, on the assumption, however, that they would hold true also if checked through a quantitative research producing a combined taxonomy.

Even though geopolitics is not a common framework of legal analysis, it is useful for law students to be aware of such reality and have one more key of interpretation of legal phenomena.

The reasoning will be developed (x) by a short survey of sources of international law and its limits on the domestic effects, that are directed equally to all political *régimes* (from the United States and Canada, to India, to China and Russia); followed (y) by reference to regional systems of protection of fundamental rights, distinguishing

between those offering judicial protection (Europe x 2, Latin America, Africa²) and those that do not (South East Asia).

Such surveys of sources of law are going to be integrated with comments affecting their respective meaning for a geopolitical approach.

Furthermore, it is inevitable that both in practice as well as in scholarship a new trend focused on comparing the three regional courts will be developed.

See:

On 3 and 4 March 2026, the fourth International Human Rights Forum between the African Court on Human and Peoples' Rights, the European Court of Human Rights and the Inter-American Court of Human Rights took place in Arusha, the United Republic of Tanzania.

The opening speech of the President of the Court highlighted the importance of the Forum as an excellent opportunity to share knowledge and deepen ties. It also underlined the need for cooperation between the regional courts, for judicial unity, and for continued dialogue on case-law.

[...] The three regional courts also adopted the “Arusha Declaration,” agreeing, among other things, to continue and consolidate the International Human Rights Forum of the three regional courts. The next Forum will be organised by the European Court of Human Rights in Strasbourg in July 2027.

During the Forum, a Memorandum of Understanding was also signed by the courts. Through this Memorandum, the courts agreed to cooperate on a range of issues to enhance their shared objective of promoting and protecting human rights internationally, in a manner beneficial to the Member States of the African Union, the Council of Europe and the Organization of American States.

Do consider the reality of the frequent use of the comparative method by regional courts applied to the case-law of other regional courts.

Finally, the geopolitical approach is instrumental to reading critically and comparing different state and non-state sources of law in the field of protection of fundamental rights on the scenario of contemporary international relations.

² To be stressed that only nine state parties to the protocol have made a declaration recognizing the competence of the Court to receive cases from non-government organizations (NGOs) and individuals

2. Sources of international law: further developments from 1948

The 1948 Universal Declaration of Human Rights (United Nations, 1948) appeared – when adopted - to be a source of a shared world definition of what human rights are.

From the Preamble: “Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge”

The Declaration proclaims a full range of human rights (civil, political, social, economic, cultural), makes reference to some requirements for the legitimate establishment of limitations, and includes a provision on duties.³

The Declaration also proclaims a human aspiration to a world order that would enhance effective protection of human rights as a responsibility of nation-states but it frames it as an “entitlement” and not as a “right” and, indeed, as a non- justiciable right (= enforceable in court).⁴

But, on the contrary, the qualification of the Declaration as “universal” was either a “wishful thinking”, or an act of post WW2 cultural imperialism (on the assumption that those human rights are not the product of Western Euro-Atlantic liberal culture, or a projection of Christian ecumenism reaching the whole world), ignoring the alternative conception of human rights having rather a cultural origin.

In fact:

(i) the founding states were 51 and UN members are now 193 countries;

(ii) not all of the founding UN member states voted in favour of the Universal Declaration: for instance, the Soviet Union initially objected at having a provision on freedom of religion and Saudi Arabia did not agree on the provisions on equality between men and women and on freedom of religion.⁵

³ Article 29: 1. Everyone has **duties** to the community in which alone the free and full development of his personality is possible. 2. In the exercise of his rights and freedoms, everyone shall be subject only to such **limitations** as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

⁴ Article 28: “Everyone is **entitled** to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized”.

⁵ Article 2: “**Everyone** is entitled to all the rights and freedoms set forth in this Declaration, **without distinction of any kind, such as** race, colour, **sex**, language, religion, political or other opinion, national or social origin, property, birth or other status”.

(iii) When the UN decided to go further in establishing international standards and to give the 1948 Universal Declaration some foundations in international law, it could not avoid splitting such sources, into two distinct treaties:

The International Covenant on Civil and Political Rights (ICCPR, 1966-1976) concerns rights such as freedom of movement, equality before the law, right to a fair trial, freedom of thought/religion, and freedom of expression. It prohibits torture, slavery, and arbitrary deprivation of life.

The International Covenant on Economic, Social and Cultural Rights (ICESCR, 1966-1976) refers to rights related to work (including trade unions), social security, an adequate standard of living, health, and education.

The main political reason for adopting two separate documents was the “cold war” environment at that time opposing the “West” (US and Western Europe, the Euro-Atlantic Community, NATO) and the East (the Soviet Union and its allies mostly in Eastern Europe and later China).

The West strongly supported civil and political rights because (i) they are justiciable (judicially enforceable); and (ii) because they were incompatible with Marxist-Leninist theory and the constitutional setting of communist countries.⁶

Article 16.1: “Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution. 2. Marriage shall be entered into only with the free and full [consent of the intending spouses](#)”.

Article 18: “Everyone has the right to freedom of thought, conscience and religion; this right includes **freedom to change his religion** or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance”.

⁶ See the method of setting **positive limits**: 1977 Constitution of the Soviet Union: Article 50. **In accordance with the interests of the people and in order to strengthen and develop the socialist system**, citizens of the USSR are guaranteed freedom of speech, of the press, and of assembly, meetings, street processions and demonstrations. Exercise of these political freedoms is ensured by putting public buildings, streets and squares at the disposal of the working people and their organisations, by broad dissemination of information, and by the opportunity to use the press, television, and radio. Article 51. **In accordance with the aims of building communism, citizens of the USSR have the right to associate in public organisations** that promote their political activity and initiative and satisfaction of their various interests.

The East just as strongly supported economic, social and cultural rights because (i) justiciability was not theoretically regarded as essential to a legal definition of a right; and (ii) the West was (and is) divided over the recognition of “social rights” as judicially enforceable rights.

In fact, common law constitutionalism is generally reluctant to codify social rights (UK not having a written general Constitution, the US having an older Constitution (1789) although many member states have incorporated some social rights such as health and education). However, social policies are or have been present (social legislation in the UK since the end of the 19th century, the US having experienced President F. D. Roosevelt’s social policies named “New Deal” during the 1929 Great Depression in the 1930ies).

Social rights vs. social policies (the cost of [both])

Sources of social rights: Constitutions of Mexico (1917) and Germany (Weimar, 1919), Italy (1948), Poland (1997). Common law countries do not generally recognise them, if not as public State’s obligations, as in Ireland (1937)⁷.

Public organisations are guaranteed conditions for successfully performing the functions defined in their rules.

⁷ **DIRECTIVE PRINCIPLES OF SOCIAL POLICY**

ARTICLE 45

The principles of social policy set forth in this Article are intended for the general guidance of the Oireachtas. The application of those principles in the making of laws shall be the care of the Oireachtas exclusively, and shall not be cognisable by any Court under any of the provisions of this Constitution.

1. **The State** shall strive to promote the welfare of the whole people by securing and protecting as effectively as it may a social order in which justice and charity shall inform all the institutions of the national life.
2. **The State** shall, in particular, direct its policy towards securing:
 1. **i.** That the citizens (all of whom, men and women equally, have the right to an adequate means of livelihood) may through their occupations find the means of making reasonable provision for their domestic needs.
 2. **ii.** That the ownership and control of the material resources of the community may be so distributed amongst private individuals and the various classes as best to subserve the common good.
 3. **iii.** That, especially, the operation of free competition shall not be allowed so to develop as to result in the concentration of the ownership or control of essential commodities in a few individuals to the common detriment.
 4. **iv.** That in what pertains to the control of credit the constant and predominant aim shall be the welfare of the people as a whole.

The 1946 Constitution of France is more ambiguous as the State's obligations are listed in the Preamble, recalled by the 1958 Constitution in force.⁸

5. v. That there may be established on the land in economic security as many families as in the circumstances shall be practicable.

3.

1. 1°. The State shall favour and, where necessary, supplement private initiative in industry and commerce.

2. 2°. The State shall endeavour to secure that private enterprise shall be so conducted as to ensure reasonable efficiency in the production and distribution of goods and as to protect the public against unjust exploitation.

4.1°. The State pledges itself to safeguard with especial care the economic interests of the weaker sections of the community, and, where necessary, to contribute to the support of the infirm, the widow, the orphan, and the aged.

1. 2°. The State shall endeavour to ensure that the strength and health of workers, men and women, and the tender age of children shall not be abused and that citizens shall not be forced by economic necessity to enter avocations unsuited to their sex, age or strength.

8“The people of France proclaim anew that each human being, without distinction of race, religion or creed, possesses sacred and inalienable rights. They solemnly reaffirm the rights and freedoms of man and the citizen enshrined in the Declaration of Rights of 1789 and the fundamental principles acknowledged in the laws of the Republic.

They further proclaim, as being especially necessary to our times, the political, economic and social principles enumerated below:

The law guarantees women equal rights to those of men in all spheres.

Any man persecuted in virtue of his actions in favour of liberty may claim the right of asylum upon the territories of the Republic.

Each person has the duty to work and the right to employment. No person may suffer prejudice in his work or employment by virtue of his origins, opinions or beliefs.

All men may defend their rights and interests through union action and may belong to the union of their choice.

The right to strike shall be exercised within the framework of the laws governing it.

All workers shall, through the intermediary of their representatives, participate in the collective determination of their conditions of work and in the management of the work place.

All property and all enterprises that have or that may acquire the character of a public service or de facto monopoly shall become the property of society.

The Nation shall provide the individual and the family with the conditions necessary to their development.

It shall guarantee to all, notably to children, mothers and elderly workers, protection of their health, material security, rest and leisure. All people who, by virtue of their age, physical or mental condition, or economic situation, are incapable of working, shall have to the right to receive suitable means of existence from society.

See the Preamble of the ECHR (1950): “Being resolved, as the governments of European countries which are like-minded and have a common heritage of political traditions, ideals, freedom and the rule of law, to take the first steps for the collective enforcement of certain of the rights stated in the Universal Declaration”.

None of the social rights protected by the Universal Declaration is mentioned by the ECHR.

A similar approach is to be read in the Charter of Fundamental Rights in the EU⁹: social rights are mentioned but their protection is acknowledged to be within the competence of national authorities.¹⁰ However, the case-law of the two European Courts does offer some interesting developments.

The Nation proclaims the solidarity and equality of all French people in bearing the burden resulting from national calamities.

The Nation guarantees equal access for children and adults to instruction, vocational training and culture. The provision of free, public and secular education at all levels is a duty of the State.

The French Republic, faithful to its traditions, shall respect the rules of public international law. It shall undertake no war aimed at conquest, nor shall it ever employ force against the freedom of any people.

Subject to reciprocity, France shall consent to the limitations upon its sovereignty necessary to the organisation and preservation of peace.

France shall form with its overseas peoples a Union founded upon equal rights and duties, without distinction of race or religion. [...]

⁹ See the Preamble of the Charter: “This Charter reaffirms, with due regard for the powers and tasks of the Union and for the principle of subsidiarity, the rights as they result, in particular, from the constitutional traditions and international obligations common to the Member States, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Social Charters adopted by the Union and by the Council of Europe and the case-law of the Court of Justice of the European Union and of the European Court of Human Rights.

¹⁰ See the whole Title 4 on Solidarity and for example two provisions: Article 34 Social security and social assistance: “1. The Union recognises and respects the entitlement to social security benefits and social services providing protection in cases such as maternity, illness, industrial accidents, dependency or old age, and in the case of loss of employment, in accordance with the rules laid down by Union law and national laws and practices. 2. Everyone residing and moving legally within the European Union is entitled to social security benefits and social advantages in accordance with Union law and national laws and practices. 3. In order to combat social exclusion and poverty, the Union recognises and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources, in accordance with the rules laid down by Union law and national laws and practices”. Article 35 Health care: “Everyone has the right of access to preventive health care and the right

The scenario here described leads to stress the exclusivity (monopoly) of East/West confrontation and control of international law, irrespective of the rest of the world (now: the Global South).

But

(iv) The process of decolonisation and a previously unexperienced assertion of “underdeveloped” later “developing” countries or Third World (Africa, Asia, Latin America) raised the issue of the “cultural” (and ultimately political, national and/or regional) rather than universal or international character of human rights and the East/West centred nature of the debate, irrespective of any concern for the priorities of that part of the world and of that world’s population.

The reaction to this form of (East/West centred) neo-colonialism prompted a few states to promote, organise and participate to the first Bandung Conference of **29 Asian–African States** (1955, Indonesia), representing a total population of 1.5 billion people, 54% of the world's population. A further development of the process was the origin of the [Non-Aligned Movement](#) (beyond the East-West divide).

In 2005 the 50th anniversary of the first Bandung Conference was held with the participation of 106 states (54 Asian and 52 African countries).

In 2015 the 60th anniversary of the Asian-African Conference was held with delegates from 109 Asian and African countries, 16 observer countries, and 25 international organizations participated. (see maps).

(To be taken into consideration the current development of the NICS+ group of countries, in spite of the many differences, with the participation - among others - of China and Russia. No impact so far on own conceptions of human rights)

This post-Bandung scenario provided a relevant impact of the international and comparative setting on human rights: in general, the emphasis was shifted decidedly from rights expressing the concepts of “*freedom of*” to rights connected to “*freedom from*”.

A new geopolitical approach to human rights has implied different priorities and a renewed conceptual framework quite different from the European view and experience.

The following are some of the main characters of this new conceptual framework.

to benefit from medical treatment **under the conditions established by national laws and practices**”.

(i) The “indivisibility” of human rights has been elevated to being a key concept of public debate (to be recalled that there is no European judicial instruments of protection of social rights: divisibility is exactly what the ECHR has achieved).

Such an approach has been incorporated also by Resolution adopted by the General Assembly on 15 March 2006 establishing the Human Rights Council: “The General Assembly [...] Reaffirming further that all human rights are universal, indivisible, interrelated, interdependent and mutually reinforcing, and that all human rights must be treated in a fair and equal manner, on the same footing and with the same emphasis [...]”.

See: American Convention on Human Rights, "Pact of San Jose", Costa Rica (1969-1978)

Preamble:

Reiterating that, in accordance with the Universal Declaration of Human Rights, the ideal of free men enjoying freedom from fear and want can be achieved only if conditions are created whereby everyone may enjoy his economic, social, and cultural rights, as well as his civil and political rights; [...]

See African Charter on Human and Peoples' Rights (1981-1986)

Convinced that it is henceforth essential to pay particular attention to the right to development and that civil and political rights cannot be dissociated from economic, social and cultural rights in their conception as well as universality and that the satisfaction of economic, social and cultural rights is a guarantee for the enjoyment of civil and political rights;

See ASEAN Human Rights Declaration (2012)

7. All human rights are universal, indivisible, interdependent and interrelated. All human rights and fundamental freedoms in this Declaration must be treated in a fair and equal manner, on the same footing and with the same emphasis”.

(ii) Rules on duties (“international protection of duties (??!!).

Effective protection of political rights requires the rule of law, pluralism, freedom of expression and association, an independent judiciary, all conditions not frequently present in Asian, African and Latin American countries (with due exceptions): the justification has gone so far as to claim that “*we cannot afford political rights*”.

No provision downgrades political rights or the values that they incorporate and yet the emphasis is unequivocally on duties (never even mentioned in the ECHR, although provisions on limitations imply reference to responsibilities and duties).¹¹

The implicit conceptual danger is a legal approach conditioning the enjoyment of rights to previous performance of duties.

See: American Convention on Human Rights, "Pact of San Jose", Costa Rica (1969-1978)

CHAPTER V - PERSONAL RESPONSIBILITIES

Article 32. Relationship between Duties and Rights: "1. Every person has responsibilities to his family, his community, and mankind. 2. The rights of each person are limited by the rights of others, by the security of the general welfare, in a democratic society".

See African Charter on Human and Peoples' Rights (1981-1986)

Preamble: Considering that the enjoyment of rights and freedoms also implies the performance of duties on the part of everyone;

CHAPTER II: DUTIES

ARTICLE 27

Every individual shall have duties towards his family and society, the State and other legally recognised communities and the international community.

The rights and freedoms of each individual shall be exercised with due regard to the rights of others, collective security, morality and common interest.

ARTICLE 28

¹¹ See art. ARTICLE 10 Freedom of expression 1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises. 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

Every individual shall have the duty to respect and consider his fellow beings without discrimination, and to maintain relations aimed at promoting, safeguarding and reinforcing mutual respect and tolerance.

ARTICLE 29

The individual shall also have the duty:

To preserve the harmonious development of the family and to work for the cohesion and respect of the family; to respect his parents at all times, to maintain them in case of need.

To serve his national community by placing his physical and intellectual abilities at its service;

Not to compromise the security of the State whose national or resident he is;

To preserve and strengthen social and national solidarity, particularly when the latter is strengthened;

To preserve and strengthen the national independence and the territorial integrity of his country and to contribute to his defence in accordance with the law;

To work to the best of his abilities and competence, and to pay taxes imposed by law in the interest of the society;

To preserve and strengthen positive African cultural values in his relations with other members of the society, in the spirit of tolerance, dialogue and consultation and, in general, to contribute to the promotion of the moral well being of society;

To contribute to the best of his abilities, at all times and at all levels, to the promotion and achievement of African unity.

See ASEAN Human Rights Declaration (2012)

GENERAL PRINCIPLES

“6. The enjoyment of human rights and fundamental freedoms must be balanced with the performance of corresponding duties as every person has responsibilities to all other individuals, the community and the society where one lives”.

8. The human rights and fundamental freedoms of every person shall be exercised with due regard to the human rights and fundamental freedoms of others. The exercise of human rights and fundamental freedoms shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition for the human rights and fundamental freedoms of others, and to meet the just requirements of national security, public order, public health, public safety, public morality, as well as the general welfare of the peoples in a democratic society.

(iii) priority has been given to social and economic rights and on the commitment to fight poverty and social problems, thus framing the elaboration of “new rights”, such as the “right to development” (and the “right to peace” – both of them structurally not justiciable);

See: American Convention on Human Rights, "Pact of San Jose", Costa Rica (1969-1978)

CHAPTER III - ECONOMIC, SOCIAL, AND CULTURAL RIGHTS Article 26. Progressive Development “The States Parties undertake to adopt measures, both internally and through international cooperation, especially those of an economic and technical nature, with a view to achieving progressively, by legislation and other appropriate means, the full realization of the rights implicit in the economic, social, educational, scientific, and cultural standards set forth in the Charter of the Organization of American States as amended by the Protocol of Buenos Aires”.

Compare the one provision above and the several articles (3- 25) in CHAPTER II - CIVIL AND POLITICAL RIGHTS.

See African Charter on Human and Peoples' Rights (1981-1986)

Preamble: Convinced that it is henceforth essential to pay particular attention to the right to development and that civil and political rights cannot be dissociated from economic, social and cultural rights in their conception as well as universality and that the satisfaction of economic, social and cultural rights is a guarantee [a conceptual priority?] for the enjoyment of civil and political rights;

See ASEAN Human Rights Declaration (2012)

33. ASEAN Member States should take steps, individually and through regional and international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realisation of economic, social and cultural rights recognised in this Declaration.

34. ASEAN Member States may determine the extent to which they would guarantee the economic and social rights found in this Declaration to non-nationals, with due regard to human rights and the organisation and resources of their respective national economies.

RIGHT TO DEVELOPMENT

35. The right to development is an inalienable human right by virtue of which every human person and the peoples of ASEAN are entitled to participate in, contribute to, enjoy and benefit equitably and sustainably from economic, social, cultural and political development. The right to development should be fulfilled so as to meet equitably the developmental and environmental needs of present and future generations. While development facilitates and is necessary for the enjoyment of all human rights, the lack of development may not be invoked to justify the violations of internationally recognised human rights.

36. ASEAN Member States should adopt meaningful people-oriented and gender responsive development programmes aimed at poverty alleviation, the creation of conditions including the protection and sustainability of the environment for the peoples of ASEAN to enjoy all human rights recognised in this Declaration on an equitable basis, and the progressive narrowing of the development gap within ASEAN.

37. ASEAN Member States recognise that the implementation of the right to development requires effective development policies at the national level as well as equitable economic relations, international cooperation and a favourable international economic environment. ASEAN Member States should mainstream the multidimensional aspects of the right to development into the relevant areas of ASEAN community building and beyond, and shall work with the international community to promote equitable and sustainable development, fair trade practices and effective international cooperation.

RIGHT TO PEACE

38. Every person and the peoples of ASEAN have the right to enjoy peace within an ASEAN framework of security and stability, neutrality and freedom, such that the rights set forth in this Declaration can be fully realised. To this end, ASEAN Member States should continue to enhance friendship and cooperation in the furtherance of peace, harmony and stability in the region.

(iv) on cultural rights, cultural differences and cultural/national identity. In such a perspective, there is a clear shift of emphasis from shared universality centred on individuals to shared diversities centred on groups (nations).

See the Resolution adopted by the General Assembly on 15 March 2006 establishing the Human Rights Council: “The General Assembly [...] “Reaffirming that, while the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, all States, regardless of their political, economic and cultural systems [however] have the duty to promote and protect all human rights and fundamental freedoms”.

See: American Convention on Human Rights, "Pact of San Jose", Costa Rica (1969-1978)

CHARTER OF THE ORGANIZATION OF AMERICAN STATES (1948-1951, including Canada and the United States)

Chapter II - PRINCIPLES

Article 3 “The spiritual unity of the continent is based on respect for the cultural values of the American countries and requires their close cooperation for the high purposes of civilization”.

A further significant development has taken place with regard to the rights of indigenous populations, mostly in Latin America, in North America (Native Americans in the US, First Nations in Canada, Sami in Scandinavian Europe);

But see also the American Convention on Human Rights, "Pact of San Jose", Costa Rica (1969-1978)

Preamble: “Recognizing that the essential rights of man are not derived from one's being a national of a certain state, but are based upon attributes of the human personality, and that they therefore justify international protection in the form of a convention reinforcing or complementing the protection provided by the domestic law of the American states”;

See African Charter on Human and Peoples' Rights (1981-1986)

“Taking into consideration the virtues of their historical tradition and the values of African civilization which should inspire and characterize their reflection on the concept of human and peoples’ rights”

See ASEAN Human Rights Declaration (2012)

7. “[...] the realisation of human rights must be considered in the regional and national context bearing in mind different political, economic, legal, social, cultural, historical and religious backgrounds”.

In this context, do consider also the amended Preamble of the ECHR: “Affirming that the High Contracting Parties, in accordance with the principle of subsidiarity, have the primary responsibility to secure the rights and freedoms defined in this Convention and the Protocols thereto, and that in doing so they enjoy a margin of appreciation, subject to the supervisory jurisdiction of the European Court of Human Rights established by this Convention”

See also the Preamble and art. 4.2 of the treaty on the European Union:

“DESIRING to deepen the solidarity between their peoples while respecting their history, their culture and their traditions,

Article 4.2: “The Union shall respect the equality of Member States before the Treaties as well as their national identities, inherent in their fundamental structures, political and constitutional, inclusive of regional and local self-government”.

3. Final remarks.

3.1 Human rights and world order: the post WW2 world order based on Western (Europe and North America) views and concepts has been able “to set the agenda” – introducing and establishing the principle of international concern for the domestic protection of human rights, while respecting the equal sovereignty of all states – but proved to be unable to “set the rule” and to “set a system of judicial protection of individual cases”.

In fact, the issue has divided since the early days the West itself: on the one side, Europe establishing its own standards, priorities and judicial control, on the other side, Canada and the US not going beyond a thoroughly political framework, along with the rest of the world.

Furthermore, a tension was introduced also with some Islamic states, since an early stage of their process of growing assertiveness.

Other elements of differentiations were provided by the debate on “African values” and mostly “Asian values” (since Bandung).

There are sufficient structural elements to indicate that “human rights” was (and is) an issue fit to being part of a geopolitical view.

3.2 The distinction between the UN system and regional systems founded on judicial enforcement in Europe, Latin America and Africa has become more and more visible.

3.2.1 The commitment by the UN is expressed by its own sources: the UN Charter, the Universal Declaration, the two Covenants, the Resolution establishing the Human Rights Council.

As assessment of the legal setting of such relevant sources.

Main Purposes:

(i) definition of human rights – through political compromises and adjustments [indivisibility, emphasis on duties, inclusion of the right to development] - according to a shared international common understanding to be gradually and eventually achieved in the future through an open (and uncertain) process of consensus;

(ii) preservation of member states' sovereignty and exclusive jurisdiction in the field of human rights (highly sensitive to political and ideological [religious] backgrounds (See Charter, art. 2.7)

(iii) indifference to any claim of authority in order *to provide for an effective remedy to a single violation of human rights in individual cases* = protection of human rights

The three main purposes indicated above suggest that the UN system of normative instruments in the field of human rights is of a political and cultural nature: political as it does set goals to be gradually achieved and cultural as it does raise the awareness of member states and the international community at large on the importance of human rights per se as well as on the relevance of human rights for peace and development.

The UN system of normative instruments in the field of human rights may have also a legal nature to the extent that individual member states – individually or collectively – are willing to recognize such legal nature and establish procedures and institutions that would provide for an effective protection of human rights through ensuring remedies in individual cases.

In a geopolitical perspective, the role of the UN appears to be rather declaratory of human rights and mindful of the sovereign status of member states.

The same can be said for the ASEAN system, based on the ASEAN Declaration (2012) that aims not at protection but at performing political and cultural purposes rather than a legal one.

The political and cultural purposes of the international concern for human rights by the UN have general and planetary goals: violations of individual or collective human rights are not cases worthy of direct protection through effective remedies but have a more limited role of giving evidence to the phenomenon of human rights violations. A direct remedy would be incompatible with member states' sovereignty that provides a shield of protection for domestic jurisdictions.

The political and cultural purposes of the international concern for human rights by the UN are a resource – although limited – for the international community, as the long list of treaties and declarations confirms.

A legal purpose might be instrumental to a machinery of “world government” that is not necessarily a step forward.

The latest step has been the establishment of the Human Rights Council (2006, replacing the former UN Commission on Human Rights).

Membership: The Council is made up of 47 United Nations Member States which are elected by the UN General Assembly.

The Council's Membership is based on equitable geographical distribution. Seats are distributed as follows:

1. African States: 13 seats
2. Asia-Pacific States: 13 seats
3. Latin American and Caribbean States: 8 seats
4. Western European and other States: 7 seats
5. Eastern European States: 6 seats

The Universal Periodic Review is its main instrument.

The Universal Periodic Review (UPR) is a process which involves a review of the human rights records of all UN Member States. The UPR is a State-driven process, under the auspices of the Human Rights Council, which provides the opportunity for each State to declare what actions they have taken to improve the human rights situations in their countries and to fulfil their human rights obligations.

As one of the main features of the Council, the UPR is designed to ensure equal treatment for every country when their human rights situations are assessed. The ultimate aim of this mechanism is to improve the human rights situation in all countries and address human rights violations wherever they occur. Currently, no other universal mechanism of this kind exists.

Reference is to be made also to the Complaint Procedure which allows individuals and organizations to bring human rights violations to the attention of the Council.

The Human Rights Council also works with the UN Special Procedures established by the former Commission on Human Rights and now assumed by the Council.

These are made up of special rapporteurs, special representatives, independent experts and working groups that monitor, examine, advise and publicly report on thematic issues or human rights situations in specific countries.

The Advisory Committee: an independent think tank of academics and social workers.

3.2.2 On the contrary, we are to consider the European, American and African regional systems for judicial protection of human rights in individual cases.

Three regional systems of international law have been established in order to ensure what is to be regarded as an authentic international *protection* of human rights, to be identified – according to the definition indicated above - with *providing an effective remedy to a single violation of human rights in individual cases through an international court and its judicial guarantee*.

Key features of such systems are the adoption of a state-like permanent judicial organization,

whose functions are regulated under the inspiration of the judicial culture and practice of member states,

whose judicial officials share the same professional and personal features of the domestic judiciaries,

whose decisions are final and object of mandatory (although not automatically) execution,

whose features are in part derived from international law although they are not pervasive,

whose effects are beneficial to any individual irrespective of citizenship.

What is clear, is that such a framework of international judicial protection reproduces a domestic setting based on authentic rule of law, democracy and human rights, closer to liberal than to an illiberal model, although there are well noticeable exceptions – also in Europe, considering countries such as Hungary and Poland that have collected about a dozen decisions by the two European Courts for violating the principle of independence of the judiciary (the independence of the judiciary being the first target of a growing authoritarian illiberal *régime*, as experienced also by the democratic backsliding of the present Israeli government).

3.3.3 International pressure on the protection of human rights is an instrument of geopolitical soft power, along with (i) “geopolitical shaming” – public critical exposure of repressive political régimes (see Iran but more often also the United States – see ICE, Minneapolis, presidential pardon for January 6th 2025 assault on the Capital in Washington, DC, etc.); a policy of “conditionality” (subordinating benefits to improving the situation of human rights), or “threatening” economics or other sanctions for illiberal policies.

3.3.4 The emphasis on “human rights” as an instrument of geopolitics is likely to be replaced by the currently growing emphasis on “identity” and “identities” (from the

right of equality to the right of “equality of diversities”), identity playing a crucial role in the Zeitgeist of the 21st century (?).