the States Parties as a whole and not in its own interest'.

Regrettably, the text of the CPUCH, which was the outcome of a difficult negotiation, could not be adopted by consensus. It was put to vote (87 States in favour, 4 against and 15 abstentions). Some states cast a negative vote or abstained because they could not accept the coastal state's right to adopt provisional measures and considered it as a sign of 'creeping jurisdiction'. Today the CPUCH, which entered into force in 2009, is binding for only 55 states.

In fact, the CPUCH may be seen as a reasonable defence of the underwater cultural heritage against the results of the counterproductive regime of the UNCLOS. If the looting of the heritage is the result of the UNCLOS regime, it is the UNCLOS that is wrong on this specific matter, irrespective of all the balances that it might wish to preserve.

Tullio Scovazzi

UNESCO

DEF: The United Nations Organization for Education, Science and Culture (UNESCO) was founded on 16 November 1945. It has 195 Members and 8 Associate Members (states) and is governed by the General Conference and the Executive Board. The Secretariat, headed by the Director-General, implements the decisions of these two bodies. The Organisation has over 50 field offices globally.

For UNESCO, culture encompasses 'art and literature, lifestyles, ways of living together, value systems, traditions and beliefs'. Recognising the transformative power of culture, the organisation protects heritage as the embodiment of identity and fosters creativity as a cornerstone for open, inclusive and pluralistic societies.

INSTR: The unique constellation of eight cultural conventions constitutes the bedrock on which UNESCO's action is founded, including the *Convention on the Protection and Promotion of the Diversity of Cultural Expressions* (2005); the *Convention for the Safeguarding of the Intangible Cultural Heritage* (2003); the *Universal Declaration on Cultural Diversity* (2001); the *Convention on the Protection of the Underwater Cultural Heritage* (2001); the *Convention for the Protection of the World Cultural and Natural Heritage* (1972); the *Convention on the Protection of Copyright and Neighbouring Rights* (1952, 1971) the *Convention on the Means of Prohibiting and Preventing the Illicit Traffic of Cultural Property* (1970); the *Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict* (1954).

To ensure culture is a constant reference in development strategies and processes, UNESCO pursues a three-pronged action:

(a) Leading worldwide advocacy in relation to the implementation of the 2030 Agenda for Sustainable Development;
(b) Engaging with other actors to set up clear policies and legal frameworks; and
(c) Supporting governments and local stakeholders to safeguard heritage, strengthen creative industries and encourage cultural pluralism.

CONCL: Issues of attention are: the elaboration of tools and approaches tailored to the specific needs within the 2030 Agenda; special provisions within humanitarian and peace-building frameworks to protect against attacks on cultural heritage; and the further entrenchment in human rights principles and standards in the context of implementing cultural conventions.

REFERENCES:

UNESCO (ed.): *Re|Shaping Cultural Policies – A Decade of promoting the diversity of cultural expressions for development*. 2005 Convention Global Report, Paris (2015).

UNESCO World Report – *Investing in Cultural Diversity and Intercultural Dialogue*. Paris (2009).

en.unesco.org/themes/protecting-our-heritage-and-fostering-creativity (accessed 5/2016).

Konstantinos Tararas

Universal Declaration of Human Rights (UDHR)

DEF: The Preamble to the Charter of United Nations (1945) reaffirms 'faith in fundamental human rights' and in 'the dignity of the human per-

son.' The *Universal Declaration of Human Rights* (1948) results from the mandate established in the Charter, which states that the 'General Assembly shall initiate studies and make recommendations for the purpose of … assisting in the realization of human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion'. Thus, one of the main traits of the rights contained in the UDHR is their universal character. This is why, as proposed by one of the drafters of the UDHR, R. Cassin, the title of the document uses the word 'Universal' instead of 'International' (Gross Spiell, 1998).

INSTR: Being a declaration, the UDHR has not the same legal value as a treaty. However, many of its dispositions are currently part of international customary law – that is, international law generated through states' practice (von Bernstorff, 2008). Some of them are even norms of *ius cogens* from which no derogation is permitted, e.g. in the case of the prohibition of torture.

The Cold War ideological division prevented the transformation of the UDHR into a whole and unitary treaty and, as a declaration, the UDHR does not provide for the monitoring of states' compliance. However, several United Nations HR treaties further developed its dispositions and Committees have been established for the monitoring of such treaties. This is the case, among others, of the → Human Rights Committee which monitors states' compliance with the *International Covenant on Civil and Political Rights* and the Committee on Economic, Social and Cultural Rights which does so with the → *International Covenant on Economic, Social and Cultural Rights*, both signed in 1966.

HIST: It has been claimed that the UDHR uses a Eurocentric understanding of HR. Sometimes, such critiques confuse the principles of the UDHR with justifications of 'imperialist' actions, which sadly have been not infrequent. In fact, concerning the text of the UDHR itself, it must be noted that it was achieved through a process dominated by acute awareness of the need for an intercultural basis for HR, following their neglect during WW II. Moreover, the text is silent concerning the identification of the cultural / philosophical / ideological 'foundations' of such rights. The UDHR establishes in its Preamble that 'a common understanding of these rights and freedoms is of the greatest importance for the full realization [of their respect and observance]'. The drafters were thus aware that finding common grounds of HR is essential to achieve their effectiveness. Only on the basis of these common grounds can its universal application be legitimated. But, as mentioned above, the UDHR did not identify this 'common understanding' of the HR that it recognises. The text does not even refer to human dignity as the source of HR, as would be done later by other HR instruments (Gross Spiell, 1998). Such a lack of identification of the 'common understanding' of human rights was intentional: the impression that a specific understanding might have priority over others was to be avoided. Such silence can rightly be seen as a refreshing opportunity for the intercultural embodiment of HR and also as a convincing argument against those claiming the absolute Eurocentric approach of the UDHR.

Indeed, it can legitimately be said that Western ideas were overrepresented in the genesis of the UDHR. Supporting this interpretation is the Western education of Charles Habib Malik (from Lebanon) and P. C. Chang (China), members of the Commission charged with the formulation of the UDHR. Other members of the Commission were Alexandre Bogomolov (Soviet Union), René Cassin (France), Eleanor Roosevelt (USA), Charles Dukes (United Kingdom), William Hodgson (Australia), Hernan Santa Cruz (Chile), John P. Humphrey (Canada).

However, the diversity of the origins of the members of the Commission is not the sole indicator for the intention of creating a culturally universal text. The importance of the Report on 'The grounds of an international declaration of human rights' of the Committee on the Philosophic Principles of the Rights of Man to the Commission on Human Rights of the United Nations (UNESCO, 1947) must be emphasised, in that context. The General Director of → UNESCO at that time, Julian Huxley, sent a questionnaire concerning the principles that might sustain a future declaration to several philosophers as well as to governments. Based on the answers received, this Report was elaborated and sent to the United Nations. Among the philosophers asked were Mahatma Gandhi,

Jacques Maritain, Aldous Huxley and Pierre Teilhard de Chardin. The final report of the Committee set down 'a schematic formulation of basic rights which in its opinion can and should be vindicated by all men' (ibid). The open character of the common grounds of HR and the implicit inappropriateness of identifying precise and definitive grounds of HR were both noted in the final report of the Committee which called for a deeper re-examination of the bases of HR. In fact, enriching HR or their interpretation, based on new developments and insights, should be seen as a never-ending process.

In his answer to Julian Huxley's question of where he would place the basis of HR, Gandhi wrote: 'I learned from my illiterate but wise mother that all rights to be deserved and preserved come from duty well done.' (UNESCO, 1969). This view proves the intercultural embodiment possibilities of such rights and is far from Western concepts, in which human duties have a role for the guarantee of HR, as derived from them, but not in their foundation, which is only of a 'individualistic' nature. The differences between the Western and the Indian conception of HR are evident. There is not, in fact, a translation in Sanskrit for the word 'Rights': following Pandeya, there exists only the word 'Adhikara' (just claim) that is used 'in the context where one has performed some act, or performed a duty' (Patel, 2005). 'Adhikara' must be understood in the light of a central doctrine of Hindu thought: 'Dharma', where Human Rights lawyers and philosophers place the grounds of HR in Indian culture. This word 'means to uphold, sustain and nourish. It is a comprehensive term, which includes duty, morality, ritual, law, order and justice… It is a mode of life or a code of conduct, which regulates a man's work and activities as a member of society and as an individual.' (ibid).

Therefore, it is clear that philosophical ideas other than the European were taken into account in the elaboration of the UDHR. Concerning the Indian ideas and Gandhi's aforementioned contribution it must be emphasised that the UDHR in its Article 29 specifically establishes that 'everyone has duties to the community in which alone the free and full development of his personality is possible.' It is not by coincidence that the very first article of the UDHR establishes that 'all human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood'. Other cultural regions like Latin America were also important in giving philosophical foundation to the UDHR (Sikkink, 2015). If the European ideas were important, they were not the only ones. Nevertheless, the UDHR was finally approved with the abstention of the communist countries, as well as South Africa and Saudi Arabia.

CASES: Consistent with the erroneous failure to take into account the diversity of foundations of the UDHR is the trend to place the controversies regarding the universal nature of human rights only in 'cultures' other than the European. The truth is that, fortunately, there is not a wholly homogenous 'culture' where perfect agreements regarding all social issues exist. Europe is not exempt from such controversies, as can be seen in the ECtHR case-law [JOHNSTON, 1986].

VIEWS: As already mentioned, there are many criticisms of the UDHR, and specifically of the universal character of the rights it contains. Such criticisms are more broadly criticisms of the intended →universalism of HR and sometimes, for that reason, also of the very notion of human rights itself.

Two of the most important criticisms were, firstly, that formulated by the American Association of Anthropology (AAA) in 1947 and, secondly, that stated by some Asian countries in the context of the Vienna World Conference on Human Rights in 1993. Both are linked to the often manipulated and misunderstood debate between universalists and cultural relativists. In opposition to universalism, which maintains that common HR standards can apply to all human beings, →cultural relativism has been generally understood by international HR lawyers to mean the rejection of the possibility of making moral judgements – and thus, of establishing common human rights – for all human beings regardless of the culture to which they belong. However, the debate between universalists and cultural relativists seems to have arrived at an impasse. B. de Sousa Santos rightly describes this blocked situation: 'The debate … is an inherently false debate,

whose polar concepts are both and equally detrimental to an emancipatory conception of human rights. All cultures are relative, but cultural relativism, as a philosophical posture, is wrong. All cultures aspire to ultimate concerns and values, but cultural universalism, as a philosophical posture, is wrong …' (de Sousa Santos, 2004). Ultimately, the misconception of what culture truly is, is at the bottom of such an impasse.

The criticism of the UDHR formulated by the AAA in 1947 was wrongly understood by international HR lawyers as 'a denial of the ability to make moral judgements' instead of as an assertion 'of moral values that includes tolerance for cultural difference as one of those values' (Merry, 2003). Besides, criticisms of the AAA statement tend to forget the context in which it was issue which was the pressures experienced by minority societies to 'change under influence of euro-american expansion and colonialism' (ibid; see also Goodale, 2003).

The criticisms of the notion of human rights (including those contained in the UDHR) during the Vienna World Conference on Human Rights (1993) were made by some Asia states through the 'Bangkok Declaration' in the name of the preservation of their own culture. The final Declaration of the Vienna Conference recognised that 'while … cultural particularities …must be borne in mind, it is the duty of states, regardless of their … cultural systems, to promote and protect all human rights.' Such a recognition was not meaningful in practical terms. The actors involved have assumed a wrong concept of culture.

It is only very recently that international HR law can be said to definitively abandon such and attitude and start to put into question the wrong conceptions of culture that have been used. During several years, international HR law has been using an essentialist conception of culture, which understood it as 'a coherent, static, and unchanging set of values' (Merry, 2003). Like current anthropology, which considers culture as something 'fluid, contested, and connected to relations of power' (ibid.), current international HR law recognises that 'actual (cultural) practices on the ground are usually more varied than suggested by formalised versions projected in discourse as well as under the law' (Special Rapporteur in the field of cultural rights, 2012). This shift in the concept of culture within international HR law is neatly represented by the approach to culture of the United Nations Special Rapporteur in the field of Cultural Rights, who was appointed in 2009.

CONCL: Actions to overcome the problems and misunderstandings concerning HR and 'culture' need to be taken by different players, beyond those belonging to the cultural sphere:

There is a need to emphasise the extra-European elements present at the genesis of the UDHR. This action, together with that of critical reflection of the real enforcement of 'our' European cultural values would contribute to a more accurate and fair description of the reality of how people truly live their cultures. It might be useful to stress the internal diversity of each culture which is also present in 'European culture', and to avoid the use of the old-fashioned essentialist concepts of culture which tend to contribute to the creation 'imagined communities' (Roy, 2006).

Emphasising the dynamic role of culture in 'the questioning by human beings of (their) own achievements, and in their seeking untiringly for new meanings' (*Mexico City Declaration on Cultural Policies*, 1982) can be helpful to recognise the relevance and the need of including the diversity of cultures in the foundation and the creation of common human rights standards.

The inclusion of cultural diversity issues of the UDHR in its teaching need to be promoted. It would be interesting to teach it together with the *Universal Declaration of Cultural Diversity* (UNESCO, 2001). The design of adequate educational policies in cultural diversity is essential (Carbó, 2015). It would contribute to avoiding the creation of stereotypes which also concerns the relation of the diverse communities with human rights. Stressing the fact that the right to equitable →participation in cultural life is a human right recognised in the UDHR is also important, as well as insisting on the firm impossibility of invoking culture as an excuse for the violation of human rights. When addressing violations to human rights occurring in the context of minority cultures, power, economic and social issues need to be addressed together with the cultural ones (Cismas, 2014).

All this calls for a serious engagement in the study of such a complex relation between

cultural diversity and HR (Donders, 2010) as well as the decided will of different actors: designers of cultural policies, social activists, anthropologists, human rights lawyers and defenders, education professionals and politicians.

REFERENCES:

Bernstorff, Jochen von: "The Changing Fortunes of the Universal Declaration of Human Rights: Genesis and Symbolic Dimensions of the Turn to Rights in International Law", in *EJIL*, Vol. 19 nº 5 (2008).

Carbó, Gemma: "From intercultural education to critical education in cultural diversity: the UNESCO Diversity Kit for Youth", in *Revista de Educación*, Year 6, nº 8 (2015).

Cismas, Ioana: *Religious Actors in International Law*, Oxford: Oxford University Press (2014).

De Sousa Santos, Boaventura: "Toward a multicultural conception of Human Rights" in Felipe Gómez Isa and Koen de Feyter (eds.): *International Protection of Human Rights: Achievements and Challenges*, Bilbao: Universidad de Deusto (2004).

Donders, Yvonne: "Do Cultural Diversity and Human Rights Make a Good Match?" *ISSJ* (November 25, 2010).

Goodale, Mark: "Anthropology and the Grounds of Human Rights" in Dinah Shelton (ed.): *The Oxford Handbook on International Human Rights Law*, Oxford: Oxford University Press (2013).

Gross Spiell, Héctor: "Universality of *Human Rights* and *Cultural Diversity*", in *ISSJ, 158 Paris: UNESCO* (1998).

Merry, Sally: "Human Rights Law and the Demonization of Culture (And Anthropology Along the Way)", in *PolAR*, Vol. 26, nº 1 (2003).

Patel, D.: "The Religious Foundations of Human Rights: A perspective from the Judeo–Christian Tradition and Hinduism", in *Human Rights Law Commentary*, Vol. 1 (2005).

Roy, Oliver: *Globalized Islam: The search of a New Umah*, Columbia University Press (2006).

Special Rapporteur in the Field of Cultural Rights: *Report on the Enjoyment of Cultural Rights by Women on an Equal Basis with Men* (2012).

Sikkink, Kathryn: "Latin America's Protagonist Role in Human Rights" in *Sur*, 22 (2015).

UNESCO: *The grounds of an International Declaration of Human Rights* (31/07/1947), Doc. Phil/10.

UNESCO: "Ghandhi's views on education" in *The UNESCO Courier* (October 1969).

JOHNSTON v. IRELAND (ECtHR 18/12/1986, 9697/82).

Gemma Carbó/Beatriz Barreiro

Universalism and Cultural Relativism

DEF: The term 'cultural relativism' originally denotes a school in anthropology, in the first half of the 20th Century. Famous relativists include F. Boas, M. Herskovits, R. Benedict and W. Sumner. Relativists state that the principles used for judging behaviour are only valid inside a particular culture. Hence they reject the idea of universal human rights. Later, the same term was used to indicate culture-based critiques of human rights, expressed mainly by government representatives and scholars from East and Southeast Asia, Sub-Sahara Africa and the Islamic World. These critiques claim that human rights are overly Western, and should be allowed to take different shapes in other contexts. Relativism is generally opposed to universalism, i.e. the belief that universal norms are desirable.

INSTR: The 'universalism vs. cultural relativism' debate on human rights focused at its origins around the →UDHR. When the UN Commission on Human Rights was drafting the UDHR, the American Anthropological Association published a 'Statement on Human Rights' in 1947, advising to drop the whole idea of universal rights. In that sense, the adoption of the UDHR of 1948 can be read as a setting aside of cultural relativist objections.

More recently, the debate took centre stage in the course of the preparations for the UN World Conference on Human Rights in Vienna in 1993. In particular, the Asian regional conference issued a *Bangkok Declaration* that was largely perceived as relativist. Also, the Organisation of the Islamic Conference submitted the *Cairo Declaration on Human Rights in Islam*, a document that was widely seen to state the priority of Islam over human rights. The final document of the World Conference, the *Vienna Declaration*, explicitly confirmed