

Politeja

No. 2(71), 2021, pp.79-93

<https://doi.org/10.12797/Politeja.18.2021.71.04>

License: CC BY-NC-ND 4.0

Jerzy MENKES 

The Warsaw School of Economics

menkes.jerzy@gmail.com

Anna KOCIOŁEK-PEKSA 

The Warsaw School of Economics

annakociolek.peksa@gmail.com

(R)EVOLUTION OF THE AXIOLOGY OF HUMAN RIGHTS, POLITICAL FREEDOM AND SECURITY AS A DETERMINANT OF UN PRAGMATISM

METAPHORIZATION IN LAW

ABSTRACT

The state, under the Westphalian order, was both the creator and product of international law which determined its position as the central actor of this system. The norms of international law defined the normative content of the internal security regime, where state security was identical with security as such in international relations. The reality that laid the foundation for this logical syllogism has been subject to gradual transformation that had its climax in the early decades of the 21st century. The states, previously holding monopoly of using force in international relations, which allowed for prevention of wars by means of intergovernmental agreements or maintenance of peace through institutionalized intergovernmental cooperation, lost their exclusive authority to use force. Stipulating 'non-war' by means of an (intergovernmental) international treaty became impossible since the non-state actors who apply force pursue counter-systemic goals and reject the international (and internal) order based on the rule of law. The state sovereignty, whose significant albeit not exclusive referent was autocracy and total power, has been transformed from the title of claim to cease the violation by the state into the personal right to protection (vested in an individual or minority/people/mankind in general).

International law, which did not constitute a system until as late as the second half of the 20th century, not only obtained such character relatively quickly, but also has been subject to constitutionalization. The inherent unity of the international law as the common legal system of the international community is subject, along with this community, to fundamental divergence: into the law governing (internal) relationships between members of the, transatlantic, *security community*, which form a normatively and institutionally interrelated self-contained regime on the one hand, and the international law that governs the relations between the countries of the Western Hemisphere and other subjects of the international law on the other hand. These factors determine the shift of the security paradigm: new actors, new normative content, different binding effect of the norms and, above all, new rules. The new paradigm of security in the international law dimension correlates with the shift in metaphors that build concepts significant to the international law such as state, sovereignty, security, and international treaty. These transformations set the stage for the legitimization of actions taken by the subjects of legal protection in the international law dimension.

Keywords: human rights, political freedom, security, legal axiology, metaphORIZATION in law, legal philosophy, public international law

I. PRAXEOLOGICAL ROOTS OF 'COMMON' VALUES

Europe – the world (the 'entire world' since the rulers at the time did not know any other) in which sovereigns happened to live after the Peace of Westphalia – was for each of them a new reality demanding new faculties as well as a change of worldview. The general message of the Peace of Westphalia, which could be expressed as *if you want to live, let others live*, was indeed quite revolutionary. The Westphalian order in Europe effectively demanded tolerance from organized social groups and individuals that had no previous experience of tolerance (and in many cases, rejected it). It was to be a new and unknown Europe, in which there would be no more one truth, universal for everyone, and where everyone could be granted salvation in his or her own church. The fundamental sense of communion with the Absolute was shaken and substituted by a culture of tolerance that modern Europe and Europeans still do not always know how to cope with. While outside of the European space, which is founded on the experience of the Thirty Years War, the culture (of tolerance) is rejected (in the pessimistic view) or poorly internalized (at least in the radically positive view). Tolerance, according to the Westphalian order, wasn't a value-based choice, either: instead of 'I don't kill the one who has different beliefs because he has the right to have them' it was rather a choice of necessity – with no values attached to it – as in 'I don't kill the one who has different beliefs, for I'm not able to do so; and if I tried to, it would be at the risk of

total destruction for both sides.' Only much later, those who tried to reformulate the Westphalian armistice into peace produced the norms of tolerance, the axiology of tolerance, and the culture of tolerance. They also worked on praxeology¹ as it determined their existence, impact, efficacy and effectiveness in shaping relations between states and nations, and foremost, between societies.

The Peace of Westphalia induced the creation of states, understood as closed areas separated by frontiers within which people constituted nation-states. These states (or up to a certain time, sovereigns) 'had' territories and subjects (at some time, citizens). Each of these states executed self-governance (and whole-governance) within the frontiers. Every one of these states had to respect the borders, self-governance and whole-governance of the others, but most of all, the very fact of the existence of the 'others.' This situation presented a challenge to the culture-nature of European universalism, to the conviction of predestination that resulted directly from rejection of Pelagianism.² Post-Westphalian Europe experienced for the first time in the history of the continent a creation of the norm of the right of the state to sovereignty and the obligation to respect that sovereignty by any other state (*inter pares*) and all states (*erga omnes*). This entailed the necessity to accept the fact that other states govern themselves and exert personal supremacy within their own borders, as well as the fact that a new and until now undefined (or lacking a regular definition due a vague meaning) sphere of "internal affairs" has thus been created. Everything that happened in Europe and in the world after this momentous event stems from it and in every case, it should lead to the confirmation or rejection of sovereignty. The norm of 'sovereignty' that constituted this new order whose actors (states) were separate entities, confirmed *de iure* the rejection of the community,³ which was rejected *de facto*.

Since the Westphalia Treaty, no community was built/rebuilt on the European continent until the European Union; post-Westphalian Christian Europe was relatively tightly-knit and coalesced toward non-Christian actors, but internally it had neither single values nor common institutions. This singularity of the state(s) was a formula for transferring the rights and liberties of an individual onto organized territorial communities, therefore, a rejection of collectivism. Liberty played the roles of condition and determinant, both in a positive and negative way. Liberty, in its negative sense,

¹ Praxeology in the meaning assigned by A. Espinas, "Les origines de la technologie", *Revue Philosophique de la France et de l'Étranger*, vol. 30 (1890), pp. 113-135.

² Pelagianism is a Christian theological doctrine claiming that God's grace is not necessary for salvation. It was introduced in the 5th century by a monk from Britain, Pelagius (354-420). The Church officially condemned it as heresy at the Council of Carthage in 418 and at the later Council of Ephesus in 431. One of the notable opponents of Pelagianism was Saint Augustine of Hippo (who expressed his opinion, among others, in his treatise *On Merit and the Forgiveness of Sins, and the Baptism of Infants*). Pelagius' teachings were based on the belief in the strength and quality of human nature. A. Baron, "Spór o Pawła, spór o człowieka czy spór o Boga? Refleksje na marginesie kontrowersji pelagiańskiej", in Pelagiusz, *Komentarz do Listu św. Pawła do Rzymian*, Kraków 1999, p. 64.

³ The term 'community' as we use it in the present text corresponds in its meaning, scope, and content of the notion to the term *Gemeinschaft* from the concept of F. Tönnies. For more see: F. Tönnies, *Community and Society (Gemeinschaft und Gesellschaft)*, transl. by C.P. Loomis, East Lansing 1957.

is understood as a lack of coercion and relative 'silence of the law'.⁴ This was the perspective on the notion of liberty adopted among others by T. Hobbes, and followed by Lord Acton (John Emerich Edward Dalberg-Acton), who defined the notion of liberty as *the assurance that every man shall be protected in doing what he believes is his duty against the influence of authority and majorities, custom and opinion*.⁵ The positive understanding of liberty means the possibility of 'self-determination',⁶ both in exerting and non-exerting the rights, duties, and interdictions individuals are entitled to. Differentiation of these two concepts of liberty in the law is reflected by two models of freedom: 'freedom from the law' and 'freedom because of the law'.⁷ Antinomy of these two dimensions constitutes an essential axiom of polarized discourse and debate about the way and range of executing sovereignty (which *de facto* equals freedom) and inseparably related issues of legal limits of self-determination.⁸ The right to self-determination, which became a rule of international law through the creation of the United Nations Charter (a right that appeared in international law in connection with the Great Wars that began in the early 20th century and was declared just after the First World War in the Treaty of Versailles in 1919), referred to and understood the freedom of a nation, a state, and individuals mostly in its public-legal or strictly state dimensions. The freedom of individuals and of a nation were mostly seen as a state-building factor, together with marginalization of the category and range of personal freedom. Nation is a 'substance/tissue' to build a new statehood, and human rights are reduced to a freedom with nation-state affiliation. International practice in supporting emerging statehood and its recognition by existing states clearly confirms the truth that the latter, in their decision to recognize⁹ an emerging politically organized entity

⁴ 'Silence of the law' refers to all the acts that an individual can perform without the risk of negative sanctions as the acts are not subject to application of the law in the proper sense. S. Blackburn, *Oksfordzki słownik filozoficzny*, J. Woleński (ed.), Warszawa 2004, p. 438.

⁵ Lord Acton, *Historia wolności. Wybór esejów*, Kraków 1995, pp. 37-38. Generally, we need to assume that liberty stands in opposition to determinism. Acton's definition is a crucial turn because the 19th century, when he was active, was dominated by natural science, which supported the theory of determinism and therefore played down man's freedom. Acton was ahead of his times since it was only in the 20th century when 'freedom' came to be absolutized by the rise of such theories as indeterminism and individualism.

⁶ I. Berlin, *Dwie koncepcje wolności i inne eseje*, Warszawa 1991, pp. 114, 129.

⁷ B. Malinowski, *Freedom and Civilisation*, New York 1994, p. 54.

⁸ The practical importance of the self-determination rule consists largely of focusing the awareness of the international community on the liberty of particular groups of the population, who can decide their own affairs, which led to the development of the international system of the protection of human rights. See also: A. Cassese, *Self-Determination of Peoples: A Legal Reappraisal*, Cambridge 1999; J. Tyranowski, *Integralność terytorialna, nienaruszalność granic i samostanowienie w prawie międzynarodowym*, Warszawa-Poznań 1990.

⁹ The circumstances governing the possibility to act according to self-determination by making a new state may be put in several categories: strictly de-colonial; taking place on decolonized territories but not part of the first category; and associated with the dissolution of socialist states (USSR, Czechoslovakia, Yugoslavia) and others. This objective division concerns states and events that took place in the period when self-determination was already acclaimed as a rule of international law.

(a state), are driven generally by premises of a political nature rather than legal or individual human considerations.

F.A. von Hayek believed that the goal of the law is solely the defense of freedom and that the actual norms of the law should be formulated exclusively as prohibitions since the law cannot impose anything but only forbid certain actions as a measure of respect to freedom of other individuals.¹⁰ Such a perspective, however, leads to a significant problem. B. Constant had already noticed that the supposition that freedom consists solely of being subject to the law is insufficient because it fails to indicate clearly *what laws can and cannot prohibit, and that is what freedom consists of*.¹¹ What is more, the liberty discourse in its legal dimension is not conducted within the traditionally accepted scale of the individual. While dealing with personal freedom, *we talk not about individual freedom as a fact and property of an individual remaining outside of the social relations, but rather of freedom within political society, that is, not a value but a fact*.¹²

The above-mentioned choice of axiology and its derivative order is in fact proper only to Europe, and probably only for the part of Europe affected by the Reformation, while collectivism is characteristic not only of Asian and African civilizations,¹³ but of everyone outside the Euro-Atlantic zone.¹⁴ It is also underrepresented in those parts of Europe where we see pre-modern societies with important feudal elements still alive. The existence of the nation-state is objected to not only in the Arabic sphere (ideology appealing to the notion of one Arabic nation¹⁵), but also Chinese¹⁶ – the experience of the French or American nations did not appear universal. Universalism of one's own values and message is the core of messianism, which is to a similar extent to be found at the base of policies in the U.S. and Russia (all the differences in the methods applied duly noted).¹⁷

¹⁰ F.A. Hayek, *The Constitution of Liberty*, Chicago 1960, pp. 106-107, 116.

¹¹ W. Bernacki et al., *Historia doktryn politycznych i prawnych. Wybór źródeł*, Sopot 1997, p. 225.

¹² M. Król, *Filozofia polityczna*, Kraków 2008, pp. 61, 92-93. In addition, the author reminds us about the existing current in political philosophy in which freedom is not a value in any sense.

¹³ See the attempt to produce a bridge between human rights as individual rights, and the collectivist culture in the African Charter of Human and People's Rights: *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... Firmly convinced of their duty to promote and protect human and peoples' rights and freedoms and taking into account the importance traditionally attached to these rights and freedoms in Africa* (passages from the Preamble).

¹⁴ There also appear differences stemming from the timing of the end of feudal relations in the society; generally, the more to the east from the English Channel, the more feudalism we find.

¹⁵ Recognition of the existence of the Palestinian nation contradicted Arab unity. It was based, though, on the self-determination right of that nation – the right to have a state; rejection of not only the right of the territory of Israel, but also of Jordan.

¹⁶ The 'one China' (one state, two systems) policy, allowing differences in the system.

¹⁷ Obviously, it is an essential difference. In Poland after 1945, there was the saying: "Cyril is Cyril, but the Methods..." alluding to the installation of the headquarters of the Milicja (the communist-era police force) on Cyril and Methodius street, in Warsaw's Praga district.

II. COMMON VALUES

There is no doubt that values play an essential and even determining role in the process of formation of social bonds within an organized community. The axiological and emotional aspects of national identity¹⁸ are pivotal, because the nation was, is, and will be a mythical community expressing general and universal, practically timeless values well-established in a given society while, on the other hand, national affiliation and its derivative axiological identification are dependent largely on emotional and extra-rational aspects.¹⁹ At the same time, regardless of the type of rule – legal, traditional, or charismatic – a lynchpin of the accepted way of acting is the existence and adoption of affective or purposeful-rational or valuable-rational motives.²⁰ In the pursuit of the UN system together with the UN organization as an autonomous²¹ association, those values were required. At the moment of its formulation, the catalogue of these adopted values was both striking and descriptive. During the war, peace was the manifest and desired value. However, in the situation when humanity was confronted with the existential challenge of Nazism, the formula for peace was ‘peace through victory’ rather than ‘peace now.’ This goal was achieved through an eclectic compromise of the Organization’s purpose: to ‘maintain international peace,’ set forth in the expression in the *Preamble* to the UN Charter *to save succeeding generations from the scourge of war*. Peace is a superior and instrumental value (*de facto* a value-goal) because its implementation (i.e. achieving, securing, preservation-protection and reproducing) determines the possibility of achieving other socially desirable goals, among them those pertaining to the stability and durability of the state – it posed, however, a reactionary threat to axiology, since it was a choice of the past (the present is tantamount to the past). Likewise this choice did not define the axiological basis for the organization of cooperation after the victory after the end of the war.

A potential counter-proposal for an anticipatory and prescriptive value was Theodore Roosevelt’s formula of a values hierarchy in which justice was the highest.

¹⁸ Jerzy Szacki rightfully remarks that *the notion of national identity would most certainly be extendable if it was to refer exclusively to so called ‘objective reality’ rather than manners, as it is perceived and sensed by people who consider its various elements as equally testifying to the distinctiveness of their own place in the social world as being worth of attention*. J. Szacki, “O tożsamości (zwłaszcza narodowej)”, *Kultura i społeczeństwo*, no. 3 (2004), p. 22.

¹⁹ See: W.J. Burszta, Świat jako więzienie kultury. *Pomyslenia*, Warszawa 2008, p. 88ff.

²⁰ Due to the evident character of these remarks at the current state of knowledge, we don’t elaborate or justify them, considering it sufficient to refer to Max Weber’s concept of power. M. Weber, *Gospodarka i społeczeństwo. Zarys socjologii rozumiejącej*, Warszawa 2002, pp.18-20, 37, 157-191.

²¹ The necessity expressed by the UN General Secretary in Tübingen: *Every society needs to be bound together by common values, so that its members know what to expect of each other and have some shared principles by which to manage their differences without resorting to violence*. See: *Universal Values – Peace, Freedom, Social Progress, Equal Rights, Human Dignity – Acutely Needed, Secretary-General Says at Tübingen University, Germany*, at <<http://www.un.org/press/en/2003/sgsm9076.doc.htm>>, 12 December 2003.

President Roosevelt declared: *We wish peace, but we wish the peace of justice, the peace of righteousness. We wish it because we think it is right and not because we are afraid. No weak nation that acts manfully and justly should ever have cause to fear us, and no strong power should ever be able to single us out as a subject for insolent aggression.*²² Evidently, the UN Charter's makers did not cast off justice – it is after all a primary norm of the Charter²³ – but they did so without emphasizing the idea.

At the same time, the importance granted to peace isn't in the least surprising: in non-homogenous communities, values (notions) tend to be blurred or not universal. And when one attempts to make them universal (for instance, by legislative acts or authoritarian public discourse), it results in difficulty defining their coherence and consistency, as well as socially acceptable or perceived notions of those values. In any case, the recognition of the existence of universal values in the real world is a prescriptive statement, by its nature both relative and gradual. Nevertheless, we can point to their existence and it is even reasonable to see them in the light of self-fulfilling prophecies.²⁴ The procedure of the universalization of the catalogue of values is often conducted by packing together individual values to make one package, with the suggestion that selection à la carte is not applicable. UN Secretary-General Kofi Annan gave his lecture at the University of Tübingen the subversive title, *Do We Still Have Universal Values?*²⁵ It comprised the trans-religious myth about the nature of community from before the Tower of Babel as an axiom. An affirmative answer to the question echoed Küng's work, *A Global Ethic for Global Politics and Economics*.²⁶ By answering 'yes' to his own question which he saw as merely rhetoric, Annan recognized this answer as proof of the existence and continuity of values articulated in the UN Charter, with the support of states that didn't respect them (that is, the Soviet Union at the height of Stalin's Reign of Terror and the colonial powers). Within this package of values, Annan placed peace, freedom, social progress, equality of rights, and human dignity.

²² *America and the World War (1915). Inaugural Address of Theodore Roosevelt*, at <http://avalon.law.yale.edu/20th_century/troos.asp>, 10 March 2021.

²³ *We the Peoples of the United Nations, determined (...) to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law (...).*

²⁴ Obviously, 'prophecy' more in the sense of politics than of science, as the statement was not formulated in relation to the future ('prophecy' doesn't apply necessarily to the future; for example, before opening a mine, owners will estimate the resources available for extraction) or with the use of scientific output. In the social sciences, the theory of self-fulfilling prophecy was formulated by Merton. (*The self-fulfilling prophecy is, in the beginning, a false definition of the situation evoking a new behaviour which makes the original false conception come 'true.'* This specious validity of the self-fulfilling prophecy perpetuates a reign of error. For the prophet will cite the actual course of events as proof that he was right from the very beginning.) Within the formulated statement, this theory was adopted as grounds for a definition of a possible but not exclusive way of making a prediction. R.K. Merton, *Social Theory and Social Structure. Toward the Codification of Theory and Research*, New York 1968, p. 477.

²⁵ *Universal Values...*

²⁶ The author goes from a critical analysis of eminent scientists' and politicians' views (Kissinger, Riche-lieu, Bismarck, Wilson, Morgenthau, pp. 3-48) and depicts a concise and holistic concept of universal ethics and postulates its incorporation into everyday life. See: H. Küng, *A Global Ethic for Global Politics and Economics*, New York–Oxford 1998, pp. 49 and others.

The controversial character of this statement – unintended by its author, as we may suppose – is revealed, paradoxically, by the very occasion the lecture was given on, the birthday of Professor Hans Küng. It seemed to be the most adequate moment to pronounce such an important message by the UN Secretary-General; it was Professor Küng himself who formulated the generally acclaimed program, *Towards a Global Ethic. An Initial Declaration*,²⁷ which constitutes an ethical choice for universal ethics. But it was also Küng, one of the greatest thinkers of the 20th and 21st centuries, who was revoked his canonical mission in 1979 due to his 'departure from faith.' This act – regardless of the intentions of the parties – blatantly questions universalism in the sphere of values.²⁸ The Catholic Church, in the name of its dogmatic reasons, disavowed the commonly accepted message (the evolution of Küng's opinions aside).

III. PRINCIPLES OF THE UN CHARTER – COMMON VALUES

The traditional content of § 7 art. 2 of the UN Charter (*Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.*) underwent fundamental change. The change, however, that was not unexpected, as the World Court already pointed to the temporary character of the catalogue of 'internal affairs' in its Advisory Opinion on the 'Nationality Decrees Issued in Tunis and Morocco.' The World Court stated the following: *The question whether a certain matter is or is not solely within the jurisdiction of a State is an essentially relative question; it depends upon the development of international relations. Thus, in the present state of international law, questions of nationality are, in the opinion of the Court, in principle within this reserved domain.*²⁹

Despite this Opinion, however, the principle was strengthened and declared timeless and objective by the General Assembly in Resolution 2625(XXV) of the 25th of October 1970, in the formula of interpretation of the legal UN Charter–Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations. The introduction of the Declaration states: *Convinced that the strict observance by States of the obligation not to intervene in the affairs of any other State is an essential condition to ensure that nations live together in peace with one another, since the practice of any form of intervention not only violates the spirit and letter of the Charter, but also leads to the creation of situations which threaten international peace and security*, thus binding the prohibition

²⁷ H. Küng, *Towards a Global Ethic. An Initial Declaration*, at <https://parliamentofreligions.org/pwr_resources/_includes/FCKcontent/File/TowardsAGlobalEthic.pdf>, 18 June 2017.

²⁸ The concept was univocally accepted in 1993 by over 200 leaders representing over 40 religions.

²⁹ Advisory Opinion, PCIJ, Series B, no. 4, p. 24, at <http://www.icjij.org/pcij/serie_B/B_04/Decrets_de_nationalite_promulgues_en_Tunisie_et_au_Maroc_Avis_consultatif_1.pdf>, 18 June 2017.

with international security to subsequently strengthen and enlarge the disposition of the norm, (c) *The duty not to intervene in matters within the domestic jurisdiction of any State, in accordance with the Charter*, and culminating in total extension of the prohibition: *No State or group of States has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other State. Every State has an inalienable right to choose its political, economic, social and cultural³⁰ systems, without interference in any form by another State.* First and foremost, the fundamental question of the relation between the prohibition of intervention in the internal affairs as transformed into the right to choose the system, on the one hand, and the duty of a State to respect the rights and freedom of a man, on the other hand, was omitted.³¹

After 1989, the 'internal' character of a whole group of affairs was put into question. As a result, new chapters were added to the UN Charter: *Chapter VI and a Half* as well as *Chapter VII and a Half*, which resulted in a redefinition of sovereignty.

This change of range for the 'internal affairs' involves various fields. UN Member States confronted with economic challenges appear to be able to accept the necessity of self-restraint when it comes to the execution of their competences, as evidenced in multiple ways. One of them is the document *World Summit Outcome 2005 (increasing interdependence of national economies in a globalizing world and the emergence of rule-based regimes for international economic relations have meant that the space for national economic policy, that is, the scope for domestic policies, especially in the areas of trade, investment and industrial development, is now often framed by international disciplines, commitments and global market considerations. It is for each Government to evaluate the trade-off between the benefits of accepting international rules and commitments and the constraints posed by the loss of policy space. It is particularly important for developing countries, bearing in mind development goals and objectives, that all countries take into account the need for appropriate balance between national policy space and international disciplines and commitments³²)*. The General Assembly reaffirmed the paradigm of the implication of free commerce for development³³ and adopted common principles on

³⁰ The principle was repeated verbatim (“(c) Each State has the right freely to choose and develop its political, social, economic and cultural systems.”) within the interpretation of the ‘principle of sovereign equality.’

³¹ See *Preamble* of the Universal Declaration of Human Rights: *Whereas Member States have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms*, and article 2 of the International Covenant on Civil and Political Rights: *Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant.*

³² *World Summit Outcome 2005*, New York, 14-16 September 2005, A/60/L.1, at <http://www.unic.un.org.pl/szczyt2005/dokument_koncowy_4.phpDokument> (22d), 18 June 2017.

³³ *A universal, rule-based, open, non-discriminatory and equitable multilateral trading system, as well as meaningful trade liberalization, can substantially stimulate development worldwide, benefiting countries at all stages of development. In that regard, we reaffirm our commitment to trade liberalization and to ensure that trade plays its full part in promoting economic growth, employment and development for all.* It is a return to the largely contested opinion of John F. Kennedy from his presidential campaign: *a rising tide lifts all boats... bringing benefits to everyone.*

the social-economic system that aim at macro-economic stability as well as transparency in public funds usage.³⁴

IV. NEW PURPOSES – NEW PRINCIPLES

The modification of the purposes and principles of the UN Charter is neither evident nor a one-off act. It takes place within the UN and the institutions of the UN System in a continuous mode, with its breaking point the ‘peoples’ spring’ of 1989 in Eastern and Central Europe, together with the fall of the Soviet Union. New (modified) values and purposes of the UN System and of the UN Organization were comprised in a resolution adopted by the UN General Assembly plenary meeting and called the UN Millennium Declaration. The catalogue of the eight purposes of development covers two groups of goals and one measure of action. The first group, the most numerous, comprehends the purposes relative to the implementation of first-generation human rights while the rest derives from second-generation rights. These are:

Pursuance of *equal rights for women and men*, reaffirmed in the *Preamble* of the Charter; *promote gender equality and the empowerment of women* is an objective that constitutes a vehicle of implementation of first-generation rights.

Within implementation of the human rights of the second generation, the following purposes were formulated: *eradication of extreme poverty and hunger; primary education for all; reduction of child-mortality; improvement of the health condition of pregnant women and women in childbed; reversal of the spread of AIDS, malaria and other major diseases.*

Such goals are hardly questionable, but it is also worth noting that the geographic space where they are implemented is developing countries’ territories where citizens can’t benefit from the indicated rights to a similar extent as citizens of countries of the ‘first world.’ Unquestionably, extreme poverty and hunger, dehumanizing life conditions, and inadequate medical care (therefore, child mortality, health of pregnant and childbed women as well as the efficacy of treatment and the prevention of serious diseases) are the ignominy of the 21st century. It seems, however, that the formulation of those purposes camouflaged their endogenic determinants. Inequalities in access to education, and in numerous cases, women’s lack of access to education, derive not exclusively from the economic development of the country and its prosperity but also from its culture. Discrimination of women is a fact and it is deeply rooted in many religious and cultural systems. Discrimination against women, which is deeply embedded in many religious and cultural systems, is a fact, and the indicated instruments to eliminate it – i.e. *the elimination of inequalities between both sexes with regard to the primary and secondary education, preferably by 2005, as well as to the higher education by 2015 at the latest, so that the children all over the world, both boys and girls, should be able to complete at least the primary school* – are, as we can infer from the situation in First World, only partially effective.

³⁴ Ibid.

Moreover, focusing again in 2000 on second-generation human rights was on the one hand an expression of optimism concerning “the end of history” (i.e. the full acceptance of rights and freedoms encompassing the first-generation of human rights), but on the other hand, it was an unwise and unjustified renouncement of the importance of the full respect for basic human rights and freedoms, as formulated by first-generation rights, which require from the states one thing only, namely, not breaching them.

The second group of values is composed of a standalone purpose *to ensure ecological balance of the environment*. One of the ways it was to be implemented was the rule of sustainability, simultaneously on two levels – international and national – as well as protection of natural resources. The environmental purpose did not belong to the catalogue of primary values and principles of the UN Charter, but this changed after 1970. “Objective VIII” is in fact a measure, not a purpose – *to develop and strengthen further cooperation for development*.³⁵

V. AXIOLOGY OF HUMAN RIGHTS

Human rights are subject to constant evolution in the universal sphere. Numerous determinants of this evolution are underestimated. Among the particularly neglected ones, we count the transfer of human rights from domestic to international law. That was in fact a revolutionary change. Nevertheless, because the revolution happened within the Anglo-Saxon world and mentality and was a victorious fight of Americans over Americans, it fascinated only Americans themselves. One may state that it had less supporters than even Super Bowl Sunday (absolutely cool, but almost nobody apart from Americans gets it). In this case, during Jimmy Carter’s presidency (39th US president), after years of conflict, Americans agreed that the human rights’ sphere did not belong to the inner sphere of each state but was indeed in the scope of interest of the entire international community. On the one hand, this shift determined the course of support of human rights movements and, on the other hand, even more importantly, the refusal to support regimes and dictatorships breaking human rights. However, the “rest” (in this case including also the “world minus US”) failed to notice the revolution, focused on the problems of mass and systematic violations of human rights as well as the lack of real possibilities for action. For many years, the international community kept focusing on problems related to the respect of basic human rights and freedoms as comprised in the catalogue. It was only the change of 1989 that made it possible to discuss human rights in the trans-state space and to seek common measures to ensure rights and freedom to every human being, regardless of race, gender, convictions etc., but most of all, regardless of citizenship. Thus, the importance of the report by the UN General Secretary calling for: *In larger freedom: toward development, security and human rights*

³⁵ J. Menkes, *Kształtowanie prawa międzynarodowego zasobów wodnych*, Warszawa 2000, pp. 150-187. See also: Idem, “Środowisko naturalne a system międzynarodowy”, in A.D. Rotfeld (ed.), *Dokąd zmierzła Świat?*, Warszawa 2008, pp. 91-108.

for all.³⁶ Among the freedoms proclaimed in the Atlantic Charter, we count two not included in the traditional paradigm of 'freedom', namely, "freedom from want" and "freedom from fear", since over centuries want (in relation to basic needs), fear, hunger, and war had been part of the human existence.³⁷ The axis of the report is the belief in the universal character of these "two fundamental freedoms" – freedom from privation³⁸ and freedom from fear, the latter connected with the right to a dignified life.³⁹

The right to a dignified life is essentially identified with the regime of implementation of indicated freedoms, due to the priority put on actions aimed at the rule of law, human rights, and democracy.⁴⁰ History confirms the necessity to create, maintain and protect the right conditions to carry out freedom, as *only freedom makes life worth living*.⁴¹ The report revised the UN Charter by introducing the formula of the *responsibility to protect*,⁴² which changed the content and sense of sovereignty in relation to excluded affairs. To introduce the category of 'responsibility to protect' to the report was a demanding challenge for the UN Secretary-General. The price of the agreement of

³⁶ Resolution A/59/2005 GA ONZ from 21 March 2005, at <http://www.un.org/en/ga/search/view_doc.asp?symbol=A/59/2005>, 18 June 2017. We consider the question of institutional changes in the matter of human rights within the UN irrelevant to the present considerations (although fundamental in its own right).

³⁷ R. Aron, *Esej o wolnościach*, Warszawa 1997, p. 65.

³⁸ P. Kurtz talks about the freedom from privation as an essential element of actual freedom of an individual. Freedom from privation in a developed society means, according to him, not only meeting basic economic needs but also the right to work, care for the elderly, and right to free time and rest. P. Kurtz, *Zakazany owoc. Etyka humanizmu*, Warszawa 1999, pp. 181-182.

³⁹ We apply Polish terminology here even though in the English version of the resolution the term "freedom" was used three times in an extremely non-standard way, that is, both in the sense of "freedom from" as well as "freedom to:" "freedom from want, freedom from fear", but also "freedom to live in dignity;" it doesn't seem justified, however, to give much importance to the lack of use of two terms, "liberty" and "freedom", for the sake of only one of them. It appears that outside the Anglo-Saxon sphere of human rights, the terms do not come with an awareness of their nuances.

⁴⁰ We leave out the matter of UN reform and strengthening of its structures.

⁴¹ K.R. Popper, *W poszukiwaniu lepszego świata. Wykłady i rozprawy z trzydziestu lat*, Warszawa 1997, p. 257.

⁴² *Accordingly, I believe that decisions should be made in 2005 to help strengthen the rule of law internationally and nationally, enhance the stature and structure of the human rights machinery of the United Nations and more directly support efforts to institute and deepen democracy in nations around the globe. We must also move towards embracing and acting on the 'responsibility to protect' potential or actual victims of massive atrocities. The time has come for Governments to be held to account, both to their citizens and to each other, for respect of the dignity of the individual, to which they too often pay only lip service. We must move from an era of legislation to an era of implementation. Our declared principles and our common interests demand no less... I believe that we must embrace the responsibility to protect, and, when necessary, we must act on it [original emphasis]. This responsibility lies, first and foremost, with each individual State, whose primary raison d'être and duty is to protect its population. But if national authorities are unable or unwilling to protect their citizens, then the responsibility shifts to the international community to use diplomatic, humanitarian, and other methods to help protect the human rights and wellbeing of civilian populations. When such methods appear insufficient, the Security Council may out of necessity decide to take action under the Charter of the United Nations, including enforcement action, if so required. In this case, as in others, it should follow the principles set out in section III above.*

the group of the (effectively) “rest” was the value attached to the positive rights.⁴³ The consensus was maintained and in the 2005 General Summit Outcome, the obligation of the states ‘to protect’ against genocide, war crimes, ethnic purges, and crimes against humanity was extended to all inhabitants (not only citizens), as well as the obligation of separate actions by the international community in case of the failure of a state in executing its obligation. The UN was indicated as the instrument for the international community to react using ‘peaceful means,’ and lacking that, by ‘concerted action.’ The regulation was fortified by procedural reservations, among which the essential and paralyzing one lies within the competence of the Security Council.⁴⁴

CONCLUSIONS

International human rights derive from a change in the status of the norms concerning those rights: from human rights regulated by national law (plus a few international regulations such as the prohibition of slavery and of the slave trade) to international human rights in the system of international law. It was indeed a revolutionary change in the process of positive valorization. President Carter’s revolution put down (national) borders dividing people in terms of their benefits from fundamental rights and freedoms. Human rights ceased to be an ‘internal affair’ of a state (an ‘evil government’ loses the protection of sovereignty by acquiescing to a breach of human rights) and every human being obtained rights and freedoms. Two separate (until recently) regimes of human rights protection existed and still function – legal-international and constitutional – but the process of a deeper and tighter (stronger) connection in regulatory content (material and formal norms) of both systems is another positive, although evolutionary rather than revolutionary, phenomenon.

This leads to the emergence of hope for the unification of the protection system and the elimination of any difficulties and contradictions in the standards of these systems. The question remains whether – in view of the strict substantial and methodological connection of the concept of man as human being with the inherent human dignity in order to create an internationally accepted legal category of human rights and a related system of protection of these rights – it would not be appropriate to resume work on an attempt to determine the meaning of human dignity in the 21st century. Especially with reference to the new forms of old threats to human rights, as well as the fact that, on the basis of a legal theory and constitutional law, the term ‘dignity of an individual’ has been the subject of disputes and controversies, while the science of international law has been using it, in a rather unjustified manner, as taken for granted or even as a primary notion. Both systems of human rights protection (legal-international and constitutional)

⁴³ See: J. Stańczyk, *Reforma ONZ – tak. Ale jaka? Stanowisko Polski na Szczycie NZ 2005*, at <<http://www.unic.un.org.pl/largerfreedom/JanuszStanczyk.pdf>>, 18 June 2017.

⁴⁴ See: “Human rights and the rule of law”, in *UN World Summit Outcome 2005*, § 138 and 139, at <http://www.unic.un.org.pl/szczyt2005/dokument_koncowy_4.php>, 18 June 2017.

show an increasing material and formal interconnectedness, thus the necessity of a *sui generis* return to the roots of understanding and elaborating on the notion appears to be indispensable.

Furthermore, we need to highlight that at present, it is an important obligation of all to remind and confirm that all human rights established by the power of the UN Convention, as well as those still evolving within new generations of law, are universal, undividable, interdependent, and interconnected, and that we need to enforce their observance. What is equally important is for the EU (as a whole) to be involved in the process of improving coordination and the coherence of action of all UN institutions in favor of increased effectiveness of the universal human rights protection system and of more efficient prevention of breaches of human rights. Only concerted action may limit (and in the future, eliminate) differences in the standards in the observance of human rights between the 'West' and the 'rest.' Last but not least, in view of the rudimentary role of 'dignity' in the system of human rights and their protection, the right moment has come to return to the idea of international regulation of human dignity, that is, to execute the postulate formulated in the 1980s.⁴⁵

BIBLIOGRAPHY

- Advisory Opinion, PCIJ, Series B, no. 4, at <http://www.icjci.org/pcij/serie_B/B_04/Decrets_de_nationalite_promulgues_en_Tunisie_et_au_Maroc_Avis_consultatif_1.pdf>.
- America and the World War (1915). Inaugural Address of Theodore Roosevelt*, at <http://avalon.law.yale.edu/20th_century/troos.asp>.
- Antonowicz L., "Człowiek. Sprawiedliwość. Prawo międzynarodowe", in M. Szyszkowska (ed.), *Wokół człowieka*, Warszawa 1998.
- Aron R., *Eseje o wolnościach*, Warszawa 1997.
- Baron A., "Spór o Pawła, spór o człowieka czy spór o Boga? Refleksje na marginesie kontrowersji pelagiańskiej", in Pelagiusz, *Komentarz do Listu św. Pawła do Rzymian*, Kraków 1999.
- Berlin I., *Dwie koncepcje wolności i inne eseje*, Warszawa 1991.
- Bernacki W. et al., *Historia doktryn politycznych i prawnych. Wybór źródeł*, Sopot 1997.
- Blackburn S., *Oksfordzki słownik filozoficzny*, J. Woleński (ed.), Warszawa 2004.
- Burszta W.J., *Świat jako więzienie kultury. Pomyslenia*, Warszawa 2008.
- Cassese A., *Self-Determination of Peoples: A Legal Reappraisal*, Cambridge 1999.
- Espinas A., "Les orgines de la technologie", *Revue Philosophique de la France et de l'Étranger*, vol. 30 (1890).
- Hayek F.A., *The Constitution of Liberty*, Chicago 1960.
- "Human rights and the rule of law", in *UN World Summit Outcome 2005*, § 138 and 139, at <http://www.unic.un.org/pl/szczyt2005/dokument_koncowy_4.php>.
- Król M., *Filozofia polityczna*, Kraków 2008.

⁴⁵ L. Antonowicz, "Człowiek. Sprawiedliwość. Prawo międzynarodowe", in M. Szyszkowska (ed.), *Wokół człowieka*, Warszawa 1998, p. 178.

- Küng H., *A Global Ethic for Global Politics and Economics*, New York–Oxford 1998.
- Küng H., *Towards a Global Ethic. An Initial Declaration*, at <https://parliamentofreligions.org/pwr_resources/_includes/FCKcontent/File/TowardsAGlobalEthic.pdf>.
- Kurtz P., *Zakazany owoc. Etyka humanizmu*, Warszawa 1999.
- Lord Acton, *Historia wolności. Wybór esejów*, Kraków 1995.
- Malinowski B., *Freedom and Civilisation*, New York 1994.
- Menkes J., *Kształtowanie prawa międzynarodowego zasobów wodnych*, Warszawa 2000.
- Menkes J., “Środowisko naturalne a system międzynarodowy”, in A.D. Rotfeld (ed.), *Dokąd zmierza Świat?*, Warszawa 2008.
- Merton R.K., *Social Theory and Social Structure. Toward the Codification of Theory and Research*, New York 1968.
- Popper K.R., *W poszukiwaniu lepszego świata. Wykłady i rozprawy z trzydziestu lat*, Warszawa 1997.
- Resolution A/59/2005 GA ONZ from 21 March 2005, at <http://www.un.org/en/ga/search/view_doc.asp?symbol=A/59/2005>.
- Stańczyk J., *Reforma ONZ – tak. Ale jaka? Stanowisko Polski na Szczycie NZ 2005*, at <<http://www.unic.un.org.pl/largerfreedom/JanuszStanczyk.pdf>>.
- Szacki J., “O tożsamości (zwłaszcza narodowej)”, *Kultura i społeczeństwo*, no. 3 (2004).
- Tönnies F., *Community and Society (Gemeinschaft und Gesellschaft)*, transl. by C.P. Loomis, East Lansing 1957.
- Tyranowski J., *Integralność terytorialna, nienaruszalność granic i samostanowienie w prawie międzynarodowym*, Warszawa–Poznań 1990.
- Universal Values – Peace, Freedom, Social Progress, Equal Rights, Human Dignity – Acutely Needed, Secretary-General Says at Tübingen University, Germany*, at <<http://www.un.org/press/en/2003/sgsm9076.doc.htm>>, 12 December 2003.
- Weber M., *Gospodarka i społeczeństwo. Zarys socjologii rozumiejącej*, Warszawa 2002.
- World Summit Outcome 2005*, New York, 14-16 September 2005, A/60/L.1, at <http://www.unic.un.org.pl/szczyt2005/dokument_koncowy_4.phpDokument> (22d).

Jerzy MENKES – Professor, Department of European Integration and Legal Studies, Collegium of World Economy, The Warsaw School of Economics, Head of the Polish Group of International Law Association. He is a specialist of international law. His main interests include the international economic law and international organizations.

Anna KOCIOŁEK-PEKSA – PhD in Law in the Department of Public Administration, Collegium of Socio-Economics, The Warsaw School of Economics. She is a specialist of legal sociology and public policy. Her main interests include legal philosophy, legal psychology and legal public policy.