

Respect for Cultural Diversity Promotes Universality and Peace

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Abstract

Cultures and great religions are the building blocks of the human civilization in the current world with different disciplines which have an inherent right to preserve and develop their own principles within the common whole, i.e. diversity within universality. Although cultural diversity involves several dimensions, this article, mainly within the framework of the UN documents, seeks to elaborate on the essential importance of respect for cultural diversity and promoting the right to preserve and develop cultures and value systems within the imperatives of the universal values of human rights or the peremptory norms of international law. Furthermore, the author intends to make a structural linkage between the principle of respect for cultural diversity and consolidating peace at the international level. The article concludes that the international organizations such as the United Nations, the Non-Aligned Movement and the Organization of Islamic Cooperation should develop strategies and devise mechanisms to promote respect for cultural diversity as effective tools to make a better world.

Keywords: cultural diversity, peace, principles of international law, universality of human rights, dialogue.

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Introduction

With the rise of integrated markets and new political coalitions in different regions as well as progress in communications, biotechnology, and transportation resulting in an unprecedented population growth, people voluntarily or forcefully were driven out of previous isolation and gathered collectively. The confluence of peoples and cultures resulted in increasing multiculturalism and manifestations of cultural diversity. Persistence in returning to old traditions and customs as well as traditional cultures was evidenced alongside fundamental values and sense of one's identity. Clearly, without this sense of identity, people may be driven into isolation, racism or intolerance.

These transformations introduced new challenges in the area of international human rights, peace and security. For example, how can human rights be reconciled with cultures and traditions. Under these circumstances, the main problem is how international human rights exist in a world with various cultures. Therefore, in the area of universal human rights and cultural diversity, there exists a series of questions and concerns that need to be responded. The international community including within the General Assembly of the United Nations ("UNGA"), Non-Aligned Movement and UNESCO, etc. framework have undertaken to tackle this important challenge in many aspects. Based on the international human rights documents, the current research seeks to discuss and elaborate more on the manifold question that centers around the relationship between the universality of human rights and cultural diversity, the indivisibility of respect for cultural diversity, peace and universal human rights and the need to mainstream these assertions into the UN system.

I. Universality of human rights vs. cultural diversity

The relationship between universality of human rights and cultural diversity has come a long way in the contemporary international debate. The emergence of the concept of universality of human rights is largely concomitant with the adoption of the United Nations Universal Declaration of Human Rights in 1948. The main question is: what is the meaning of universality of human rights. In this regard, we can put forth the following questions: Does the concept of universality of human rights mean the universality of the contents of the international human rights instruments?

There is an assertion that human rights are universal, as they contributed to the process of globalization through global communications in the context of such concepts as human security, cultural development, poverty, war and global economies and their impacts on environmental aspects and national development. If human rights are universal, one may ask whether the universality of human rights mean the similar and identical cultural development at the global level, cultural homogeneity or a unified application of human rights in different cultural milieu?

Clearly, based on historical realities in terms of cultural, religious, ethical, and other civilizational aspects, and also based on the concepts of customary law in the field of human rights as well as international treaties in different areas, none of the above questions have affirmative answers. It is essential to recognize that universality does not presuppose uniformity. To assert the universality of human rights is not to suggest that our views of human rights transcend all possible philosophical, cultural or

religious differences or represent a magical aggregation of the world's ethical and philosophical systems.²

It is not a right perception that all human rights in all parts of the world are introduced and implemented equally. Even though some fundamental circumstances and essential conditions in some countries have been the same, but the understanding and experiences of every region or nation on the manifestations of human rights violations are different. After the adoption of the Universal Declaration of Human Rights as a universal document, the European Convention on Human Rights³ in the sixth preambular paragraph of the Declaration states as follows:

“Being resolved, as the governments of European countries which are likeminded 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”.

Clearly, the Convention in this paragraph asserts implicitly and directly that the conditions such as the like-mindedness and common cultural circumstances and the similar traditions and ideals are prerequisites for a sound implementation of human rights in a given region or setting.

Heiner Bilfelt, a German expert and professor in Bielefeld University and the Special Rapporteur in the Human Rights Council, believes that, retrospectively, no culture has been

² Shashi Tharoor, ‘Are Human Rights Universal?’, *World Policy Journal*, World Policy Institute, November 11, 2009.

³ The European Convention on Human Rights (ECHR) (formally the Convention for the Protection of Human Rights and Fundamental Freedoms) is an international treaty to protect human rights and fundamental freedoms in Europe. Drafted in 1950 by the then newly formed Council of Europe.

exclusively the sole foundation of human rights. Therefore, in addition to rejecting the notion of “cultural essentialism” based on which some in western nations believe in western source of human rights, he also maintains that the concept of universality is inclusive and broad. This means human rights is the center of “cross-cultural overlapping consensus” and common normative criteria in the increasingly multicultural societies of today’s world.⁴

The wide concept of universality of human rights was provided during the twentieth century with the Universal Declaration of Human Rights. In its preamble, the Universal Declaration refers to such concepts in relation to human rights as “conscience”, “morality” and “brotherhood”.⁵ This represents the general extension of universality of human rights to common values in all cultures with their own particular and specific understanding and applicability. Therefore, one can conclude that universality means that the fundamental principles and values interlinked with human rights on one hand, and human rights *per se* on the other, form one indivisible whole that is global and universal in nature.

On a different analysis, and from the historical and anthropological perspectives, Jack Donnelley believes that Human rights are often held to be universal in the sense that most societies and cultures have practiced human rights throughout most of their history.⁶ Also, Pollis and Schwab

⁴ Bilfelt, Hiner, 2000, Political Theory, 28, (1), 114 and his Article: Human rights: a western construct or Islamic.

⁵ UDHR, Article 1 states: 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.

⁶ Jack Donnelley, THE RELATIVE UNIVERSALITY OF HUMAN RIGHTS, *Human Rights Quarterly*, 2007, P.4.

suggest that “All societies cross-culturally and historically manifest conceptions of human rights”.⁷

Therefore, human rights, *per se*, is not considered a western construct and a privilege or prerogative for western civilization. In fact, Universal Declaration of Human Rights represents, generally, an international consensus on a “common standard” for fundamental human rights. Thus, the adoption of the Universal Declaration is an indication of a broad consensus on human dignity as the foundation for fundamental human rights rather than an instrument for domination or supremacy of a particular culture or tradition.

However, based on the Charter and the Declaration, notwithstanding the “common standard” reached at the international level, the references to the concepts such as “morality”, “public order”, “conscience” and “brotherhood”⁸ are certainly an assertion of the fact that every culture may follow its own interpretation of them while exercising and implementing fundamental human rights in their societies.⁹ The Vienna Declaration and Program of Action (“VDPA”), which was adopted in June 1993 by the UN’s World Conference on Human Rights in Austria, states that “all human rights are universal, indivisible and interdependent”. This statement strengthens the concept of universality of human rights in a way

⁷ Pollis and Schwab 1980a: 15; compare Mutua 1995: 358; Penna and Campbell 1998: 21).

⁸ These concepts are referred to both generally or as the manifestations of restrictions on the application of human rights worldwide. These concepts are stipulated, *inter alia*, in the Article 1 and 29 of the Universal Declaration and Article 19 of the International Covenant on the Political and Civil Rights.

⁹ Bearing in mind that the Declaration on the Principles of International Cultural Cooperation in its first Article stipulates “Each culture has a dignity and value which must be respected and protected.”

that all political, civil, cultural, and economic rights are considered as an indivisible whole and they all possess equal value and benefit to mankind. The VDPA also emphasizes on the importance of the concept of “cultural and historical backgrounds” in the application of human rights. This aspect is an essential component of the current discussion which will be taken on in the next sections of this study.

Therefore, it is clear that the values and principles of universality of human rights are universal in nature. It is noteworthy in this regard that the Proclamation of Tehran has thoroughly articulated these values and principles in a number of Articles such as 2, 7, 8, 12, 13, and 19, within the framework of the Final Act of the International Conference on Human Rights.¹⁰ To be more clear, human beings inherit human dignity and therefore are entitled to a series of fundamental human rights. These include individual and collective rights and freedoms (both individual and people’s rights): civil, political, economic, cultural and social rights and the right to development. All these rights which are generally articulated in the United Nations Bill of Rights are to be implemented by the governments in view of the Cultural particularities as explained by section I (5) of the Vienna Declaration and Program of Action.

Consequently, in human rights issues, the concept of cultural diversity means, in fact, respect for cultural differences. Universal Declaration of Human Rights is presented in such a way that it does not hold any normative power in the face of the diverse cultural traditions and customs, and therefore, human rights practice of a particular nation should be evaluated in the

¹⁰ United Nations, Final Act of the International Conference on Human Rights, Tehran, 13 May 1968, Art 3.

context of cultural milieu within the universality of human rights. As it was announced by American Institute of Anthropology "every human being freely lives only on the basis of his/her society's definition of freedom". Indeed, are cultural values and criteria at odds with universal human rights?

The Universal Declaration of Human Rights, although codified in the time of ideological rivalries, rather tries to make a compromise between different existing orientations with the view to introduce a "common understanding" of fundamental human rights. Therefore, the Declaration is based on human dignity and inherent dignity and rights, to the effect that there exist fundamental rights in each culture that cannot be violated by any government. Both western and non-western ideologies agree on the existence of human dignity. Hence, there should be no discrepancy or conflict in the urgent need to combat genocide, rape, torture, and arbitrary detention, and on the right to participate in government, equality of human beings in their dignity and fundamental human rights and the necessity of limiting the power of governments in the face of injustices. In fact, these concepts are the "minimal and universal moral code" that have been accepted worldwide without reservations.¹¹ In other words, the principle of human rights protection and the concept of human being as "person" and their relationship with society cannot be isolated from their universal nature.

It means that the existence of human rights is independent of an international treaty or custom in which the explicit or implicit will or consent of a given government is considered essential.¹²

¹¹ Christian Tomuschat, *Human Rights: Between Idealism and Realism*, Translated by Dr. H. Sharifi Tarazkoohi, Mizan Legal Foundation. Tehran, 2012, P.188.

¹² *Ibid*, at 190.

The former, unlike the latter, can be basically and predominantly universal and any further claims about the absolute universality of the human rights treaties create more problems rather than leading to solutions. In the last 60 years, the former has been regarded as the language of dialogue among civilizations and basis of compromise between diverse culture, whereas the language of human rights treaties was seen as the manifestation of divergence and discord among cultures and nations.

II. The right of peoples to conserve and develop their cultures and customs as manifestation of cultural diversity within universality

All cultures have a role in creating and evolving the world civilization and share the fundamental principles of human rights. Consequently, nations as well as national, regional and cultural entities are entitled, within the boundaries of universality of human rights, to preserve and develop their cultural, historical, and religious particularities. The UNGA stressed this notion, recognizing:

[...] in each culture a dignity and value that deserve recognition, respect and preservation, and convinced that, in their rich variety and diversity, and in the reciprocal influences that they exert on one another, all cultures form part of the common heritage belonging to all humankind.¹³

The right to conserve and develop the culture, customs, and traditions of every people and nation is an important aspect of international integration and has been mentioned on several

¹³ UN General Assembly, Human rights and cultural diversity: resolution adopted by the General Assembly, 13 March 2012, A/RES/66/154.

occasions and in different forms in various UN documents and in the so-called soft law. Considering and perhaps analyzing the issue at hand in the following documents could represent the international consensus on the need to respect the cultural diversity as an international common standard.

(a) UN Charter

The first paragraph of the second Article of the UN Charter provides the following as one of the purposes of the United Nations:

“To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples of nations, and to take other appropriate measures to strengthen universal peace.”

Undoubtedly, the main principles stipulated in this paragraph are the principles of sovereign equality and self-determination. The principle of sovereign equality is explicitly stated also in Article 2(1) of the Charter. The principles of sovereign equality and self-determination require that the elements, requirements and exigencies of sovereignties are to be respected. One important foundation of sovereignty is the power and right of a nation with a particular history, culture, and customs to conserve its particularity within a universal spirit of human rights. As a result, and as inferred from the spirit and letter of the Charter, respect for cultural diversity of each nation or region is manifested in, and in some instances, *sine qua non* of the respect for the sovereignty of that nation. Therefore, it can be emphasized that respect for cultural diversity, if translated into laws of the land, is the manifestation of the respect to the principle of sovereignty and self-determination.

In this context, by affirming and consolidating the principle of non-interference in the internal affairs of the countries, Article 2(7) of the Charter also affirms and consolidates the respect for cultural diversity as a fundamental pillar and constituent element of sovereignty. Another matter which is particularly noteworthy in the Charter is that human rights and their implementation are both stated in the Purposes and in the Articles 13, 55, and 56 within the context of "international cooperation". On the other hand, it is clear that a prerequisite for this cooperation as a fundamental principle is to respect the principle of sovereign equality among nations and their national identity.

(b) Declaration on Principles of International Law adopted by

UNGA, Resolution 2625 (XXV), 1970

The Declaration on Principles of International Law adopted in 1970 by the UNGA concerning friendly relations and cooperation among States also affirms the principle of non-intervention and self-determination of nations. The Declaration, under the principle of non-interference, stipulates that every nation, without the interference of others has the inalienable right to determine its political, economic, social and cultural systems in any form. Moreover, the UNGA resolution emphasizes that the respect for and tolerance of cultural and religious diversity is essential for friendly and peaceful relations among nations.¹⁴ Therefore, the principle of the sovereign

¹⁴ UN General Assembly, *Human rights and cultural diversity: resolution / adopted by the General Assembly*, 19 February 2014, A/RES/68/159.

equality of States, which includes the need to respect for cultural diversity, has also been provided in this Declaration.

(c) *Human Rights Covenants*

Both of the International Covenants on Human Rights, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights have affirmed the principle of self-determination in their Article 1. By virtue of this right, States freely determine their political status, and freely pursue their economic, social and cultural development.¹⁵ The reference to this right have been the common language in many UN, NAM and OIC relevant documents and frequently affirmed in successive resolutions. This development has been so repetitive that we may say that it became normative concept at the international level. Nevertheless, we need to view this concept in conjunction with the principle of universality of human rights to make sure that the Human Rights as the common standards have been respected and even protected in all circumstances. In the language of the Vienna Declaration and Program of Action, it should be considered within an international order based on the principles enshrined in the Charter of the United Nations, including promoting and encouraging respect for human rights and fundamental freedoms for all and respect for the principle of equal rights and *self-determination of peoples*, peace, democracy, justice, equality, rule of law, pluralism, development, better standards of living and solidarity.¹⁶

¹⁵ UN General Assembly, *Vienna Declaration and Programme of Action*, 12 July 1993, A/CONF.157/23, Section I (2).

¹⁶ *Ibid*, Preamble, Para.9.

(d) Declaration on the Right to Development

In the preamble of the Declaration on the Right to Development, the right of self-determination of nations has again been emphasized. The declaration notes, “Recalling the right of peoples to self-determination, by virtue of which they have the right freely to determine their political status and to pursue their economic, social and cultural development”. In addition, the principle of sovereign equality has also been mentioned in Article 3 of this Declaration. It is important to note that these principles outlined above have been frequently mentioned and repeated, in conjunction with the respect to cultural diversity, in a series of other declarations and resolutions.

At the same time, and from the rights perspective and particularly in a world in which market capitalism is triumphant, it is important to stress that the right to development is also a universal human right. The very concept of development evolved in tune with the concept of human rights, and decolonization and self-determination advanced side by side with a consciousness of the standards of living of subjects people.¹⁷ After all, we need to emphasize in this regard, the important contribution of culture to development and the achievement of national development objectives and internationally agreed development goals, including the Millennium Development goals.¹⁸ Even more important to stress that the lack of respect for and recognition of cultural diversity

¹⁷ Shashi Tharoor, Are Human Rights Universal?, *World Policy Journal*, World Policy Institute, November 11, 2009.
¹⁸ A/C.3/68/L.36, OP.2, 31 October 2013.

have an adverse impact on human rights, justice, friendship and the fundamental right to development.¹⁹

(e) UNESCO Declaration on Principles of International Cultural Cooperation, adopted on November 4, 1966

On November 4th, 1966, UN's Educational, Scientific and Cultural Organization ("UNESCO") at its fourteenth session and on the twentieth anniversary of its establishment adopted a Declaration of 11 articles on the subject of international cultural cooperation. As part of its preamble, the Declaration considers:

“That, despite the technical advances which facilitate the development and dissemination of knowledge and ideas, ignorance of the way of life and customs of peoples still presents an obstacle to friendship among the nations, to peaceful co-operation and to the progress of mankind.”

This issue has also been stipulated in the Article 4(2) of the Declaration. Article 1 of the Declaration is particularly important due to its emphasis on the value of cultures and the need to respect them. The paragraph 1 of this article states that "every culture has dignity and value which must be respected and preserved". Paragraph 2 of this Article provides that "Every people has the right and the duty to develop its culture." Finally, paragraph 1 of the Article 11 of the Declaration stipulates that:

In their rich variety and diversity, and in the reciprocal influences they exert on one another, all cultures form part of the common heritage belonging to all mankind. In their cultural relations, States shall bear in mind the principles of the United Nations. In seeking to achieve international co-operation, they shall respect the sovereign

¹⁹ *Ibid*, Preamble.

equality of States and shall refrain from intervention in matters which are essentially within the domestic jurisdiction of any State.

(f) UNESCO Declaration on Cultural Diversity adopted on 2 November 2001²⁰

In its preambular paragraphs, the Declaration also notes the importance of cultural diversity and the reference to the application of cultural rights in the international documents adopted by UNESCO. In addition, the Declaration declares respect for cultural diversity, tolerance, dialogue and cooperation in an atmosphere of mutual trust and understanding as the best guarantor of peace and international security. In Article 1 of the Declaration entitled “Cultural diversity: the common heritage of humanity”, the need for cultural diversity for humankind is equated to the need of biodiversity in nature and considers it a source of exchange, innovation and creativity. In the latter part of Article 2, the Declaration states that cultural pluralism leads to cultural exchange, growth of innovative capacity, and collective sustainability. Article 3 of the Declaration alludes to the role of cultural diversity in the growth and comprehensive development, and Article 4 considers the protection of cultural diversity a moral imperative in conjunction with the need to implement human rights.

The salient feature of this Declaration is, among others, the interplay between cultural diversity and the international peace and security which is a foundational purpose of the United Nations. This would be highly important should we bring this

²⁰ UN Educational, Scientific and Cultural Organization (UNESCO), *UNESCO Universal Declaration on Cultural Diversity*, 2 November 2001.

relationship in the context of the definition of culture by the Declaration.

(g) Global Agenda for Dialogue Among Civilizations²¹

While emphasizing on the Purposes and Principles outlined in the UN charter, including paragraph 2 of Article 1, this Resolution, adopted by the UNGA, in its article 3 and in two paragraphs, focuses on the issue of respect for cultural diversity. By acknowledging cultural diversity, the fourth paragraph considers it as one of the most fundamental characteristics of human societies and essential and indivisible elements of progress and welfare as well as material and spiritual prosperity of all humanity. Paragraph 5 of this Article provides for the right of members of all civilizations to preserve and develop cultural heritage of their societies.

(h) Declaration and Plan of Action of 2001 Durban World Conference against Racism, Racial discrimination, Xenophobia and Related Intolerance²²

This Declaration which was adopted during the Conference against Racism, Racial discrimination, Xenophobia and Related Intolerance from August 31st to September 8th of 2001 in Durban, dedicates part of its introduction to the issue at hand, reaffirming respect for cultural diversity. It also declares cultural diversity as one of the most important factors in the progress and prosperity of the entire humanity which should be of interest and

²¹ UN General Assembly, *Global Agenda for Dialogue among Civilizations*, 21 November 2001, A/RES/56/6.

²² World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, South Africa, from 31 August to 8 September 2001, Durban Declaration and Programme of Action.

utilized and accepted properly and must be considered as a constant feature that strengthens and develops societies.

(i) Resolutions of the UNGA on Human Rights and Cultural Diversity, adopted on 19 December 2011

The UNGA over the past 18 years have initiated a process of resolutions analyzing the concept of cultural diversity and its linkage with human rights. These resolutions, most of them adopted by consensus, seek to defuse and consolidate the assertion that the human societies are able to observe the imperatives of their own particular cultures and traditions while respecting the common standards set forth in the universal fundamental human rights. In the preamble of these resolutions, the UNGA recalls a number of UN human rights instruments, declarations and resolutions in an effort to make a linkage between the concept of cultural diversity and the body of international law, including soft law. The UNGA Resolution on “Human Rights and Cultural Diversity”, adopted on 19 December 2011, emphasizes the need for respect for cultural diversity of all nations and customs of indigenous people. Article 1 of the Resolution also stresses the importance of maintaining and developing nations’ heritage and cultural traditions in an atmosphere of peace, tolerance and domestic and international mutual respect. The concept of respect for cultural diversity in the interplay between universal human rights and cultural specificities have consistently been addressed in all UNGA resolutions until the last of its type in the United Nation System.

In addition, respect for cultural diversity and cultural particularities has an important place in the Vienna Declaration and Program of Action. The World Conference on Human

Rights was held in Vienna in 1993 as the second global event on human rights since the 1968 Tehran International Conference. Earlier, regional conferences in Bangkok, Tunisia and San Jose had expressed their opinions and stance in varying degrees regarding the need for respect toward cultural diversity. The final document of Vienna Declaration and Program of Action, in Section 1(4), emphasizes human rights as an international priority and considers this issue an “international concern”. In paragraph 5 of this section, the international community discusses the terms and indicators of this priority and concern. Three issues are important in these indicators. First, “All human rights are universal, indivisible and interdependent and interrelated”. Second, the international community should focus on human rights and treat all aspects of human rights, including political and civil rights on one hand and economic, social and cultural rights on the other, equally and on an equal footing at the international level and implement them fairly. The third issue is the acknowledgement of the international community in Vienna regarding the importance of respect for national and regional particularities as well as historical, cultural and religious backgrounds in the context of the universality of human rights. In fact, Section 1(5) is the most important historical part of the Vienna Conference in 1993, because it explains the need to comply with certain conditions when implementing human rights as well as designing an assessment of human rights for its fulfillment around the world. Section 1(5) reads as follows:

All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious

backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.

The content of this paragraph, in our view, may categorize the particularities in two parts:

(a) National and regional particularities:

The particular circumstances could entail a wide range of different situations and different countries in different regions of the world. For example:

- The specific geographical and geopolitical circumstances of different countries and regions as well as political and security status of a particular region and their neighbors;
- The unique conditions of some countries in regards to organized crime such as drug trafficking, human trafficking, national, regional and international terrorism, organizations related to trafficking of women and girls;
- The economic, social and development status of a specific region.

Clearly, the national and regional particularities and specific circumstances may warrant particular and different policies in regards to human rights in different countries and regions. It may also have an impact on the system responsible for the enjoyment of fundamental human rights as well as assessing the steps and degrees to which these rights have been implemented and fulfilled.

(b) Diverse Historical, Cultural, and Religious Backgrounds:

On this issue, there is an international consensus in Vienna, Bangkok, Tunisia and San Jose that universal human rights should be evaluated in the light of different cultural, religious and historical backgrounds. In other words, the international community, by consensus, has realized that human rights emanating from human nature on one hand and the existence of different and diverse religious, legal, cultural, and civilization systems in the world on the other, cannot be implemented as a readymade tailor with the same and identical prescription for all. Historical records on the jurisprudence of International and even European courts in regards to various advisory, as well as contentious, civil and criminal cases demonstrate the undeniable fact that different legal systems at national and regional levels at different times have given different judgements and opinions regarding advisory and contentious issues. Differences have been observed frequently in cases regarding respect or violation of human rights even in courts such as the International Court of Justice (“ICJ”). For example, in the “Diallo Case”²³, which was related to international human rights standards and the need for the defendant government to follow it, the ruling of International Court of Justice was decided by Judges who gave multiple and sometimes different views. Therefore, as it is inferred from the Section 1(5) of the Vienna Declaration, cultural and religious backgrounds and particularities of a country or region can be decisive in determining compliance or breaches of fundamental rights and even their implementation procedures.

It is clear that the frequent emphasis on the concept of respect for cultural diversity particularly within a world program and by consensus of the international community may have legal

²³ Diallo Case, ICJ, 2012.

implications as well, which will not be discussed in details due to the limited space of the present study.

The regional instruments and documents in Asia, Africa and Latin America also have the same diverse form of references to the concept of respect for cultural diversity and its relationship with the universality of human rights. Essentially, the recognition of the concept of respect for cultural diversity in regional instruments and documents suggests that cultural approach and particularities and traditions are important for all regions in the world. And the UN Member States, by the very recognition of the right to respect and preserve cultural diversity in their own documents sought to further minimize the excesses by the extreme version of universality of human rights and cultural essentialism and, as a result, maintain their cultural identity.

III. Respect for cultural diversity promotes international peace and security

Universal values of peace and human rights as well as cultural diversity are mutually reinforcing. In other words, human rights and various aspects of its implementation, including respect for cultural diversity, promote peace and security and therefore constitute an indivisible whole. Hence, cultural diversity is regarded as an indivisible component of the entire human rights system and its relationship with peace and security. In this context, one may argue that there are several areas or different circumstances in the social and cultural life of the peoples within the human rights scope that correspond to cultural diversity and its relationship with peace and security. Different interpretation of freedoms, family issues, issues related to gender and sexualities, criminal issues, ownership, etc. form the

mosaic of diverse cultures and cultural traditions and religions. The tolerance of this diversity, in the field of interpretation or otherwise in these contexts, may constitute the roots of convergence or divergence that may lead eventually to the situations of peace or violence and even war between societies within or without cultures and civilizations. The normative aspects of this expression can be found in various UN documents regarding cultural diversity. The international community in the Resolution 154, adopted by UNGA in 2012, emphasized that:

“Tolerance of cultural, ethnic, religious and linguistic diversity as well as dialogue among civilizations are essential elements for peace, understanding and friendship among peoples and nations and people from different cultures in the world.”

Such statements that focus on the interplay between international peace and security on the one hand, and respect for cultural diversity on the other. In other words, respect for cultural diversity also includes certain imperatives and dimensions that must be respected by the international community and its members so that the foundations of world peace can be strengthened. As it was previously mentioned, these dimensions and requirements have been explained in Section 1(5) of the Vienna Declaration and Program of Action in 1993, and have been frequently.

Mentioned in many of the documents, declarations, and resolutions of the UNGA and Human Rights Council.

IV. Respect for diverse interpretation of freedoms: a case in point?

While believing in the universality of fundamental human rights and freedoms, such as freedom of expression and religious freedom, the national and cultural entities may enjoy the discretion to interpret these freedoms based on their particularities and historical, cultural, and religious circumstances. In addition to VDPAs, this is expounded in an affirmative manner in Article 29 of the Universal Declaration of Human Rights and in Article 19 of the Covenant on Civil and Political Rights, and in a negative context, in Article 22(2) of the latter. This matter has also been mentioned in the Article 4 of the International Covenant on Economic, Social and Cultural rights. From these references, it can be inferred that in the international system of human rights, and by invoking national and historical conditions and their cultural and religious particularities, governments can assess the scope of the rights and freedoms of the people. And this must be respected by others. The subject of interpretation centers around elements such as respect for the rights, dignity and freedoms of others, protection of national security, maintenance of public order, protection of morality and public health. It is in this context which different legal disciplines may hold diverse interpretations of rights and freedoms within universality of human rights and in a democratic society, in order to diagnose the restrictions imposed by the human rights instruments.

The case in point could be the European perspective in this regard. The European Court of Human Rights (“ECtHR”), in numerous cases, has referred to the concept of cultural particularities as “*Margin of Appreciation*”. This is a concept the ECtHR has developed when considering whether a Member State of the European Convention on Human Rights has breached the Convention. The *margin of appreciation* doctrine allows the Court to take into effect the fact the Convention will

be interpreted differently in different Member States. Judges are obliged to take into account the cultural, historic, and philosophical differences between Strasbourg and the nation in question.

The ECtHR in several cases has discussed issues regarding interpretation of freedoms. In these cases, The Court calls upon the right of the government to determine and evaluate freedoms under the framework of *Margin of Appreciation*. In general, the Court introduced this doctrine in the case of *Handy side v UK*.²⁴ The *Handy side* Case concerned the confiscation of thousands of pages of pornographic books by British officials. The book was published for a school by two Danish publishers and was lawfully confiscated by British authorities after it was published in Britain. In this case the Court was faced with the question of whether or not the confiscation of the pornographic books published by two British citizens (with Danish nationalities), was in violation of Article 10 of the European Convention on Human Rights (freedom of expression). In this Case, the Court rejected the claim of the plaintiffs, who believed the confiscation was in violation of Article 10, declared that the objective of the British government restrictions on freedom of speech was based on "support of morality" stated in Article 10. However, even though the Court believes that freedom of expression can be limited, interference in freedoms should be within the rule of law and be a necessity and imperative in supporting the morality in a democratic society.²⁵ The Court points out that the Member States do not have the same

²⁴ *Handy side v. The United Kingdom*, 5493/72, Council of Europe: European Court of Human Rights, 4 November 1976.

²⁵ Merrils, J. G. (1995) *The Development of International Law by the European Court of Human Rights*, Manchester University Press, Second Edition, p. 162.

interpretation of the concept of morality, the definition of which varies from time to time and from place to place. The Court finally concluded that domestic bodies are in a better position than international judges to express their views in regards to the necessity of imposing restrictions to protect legitimate objectives.

The doctrine enables the Court to declare that according to the laws and cultural customs of countries, freedoms enshrined in the ECtHR could face different interpretations by each of the Member States. Other cases such as the case of *Muller v Switzerland*, *Dudgeon v Northern Ireland*,²⁶ and also the Welfare Party of Turkey, refer to this issue and discuss the doctrine. However, in the case of *Schalk and Kopf v Austria*, the Court stipulates that the boundaries of the *margin of appreciation* depends on the circumstances, the issues, and backgrounds surrounding the case.²⁷ In cases such as identity or the life of an individual (*Evans v Great Britain*), support of legislative bodies (*Sunday Times v Great Britain*), the rights stated in Article 2 (right to life) and 3 (prohibition of torture) that are called absolute rights, racial or ethnic discrimination (*DH v Czech Republic*) and some aspects of the right to privacy (*the Geon v Great Britain*), Member States can only have limited use of this doctrine. But in cases such as public interests related to in Article 15 (*Branygan and McBride v Great Britain*), national security (*Klass v Germany*), support of morality (*Handy side case v Great Britain*), law enforcement, social and economic policies (*Hatton v Great Britain*), the lack

²⁶ *Dudgeon v. United Kingdom*, Appl. No. 7525/76, Council of Europe: European Court of Human Rights, 22 October 1981, Para 56.

²⁷ *Schalk and Kopf v. Austria*, Application no. 30141/04, Council of Europe: European Court of Human Rights, 24 June 2010.

of consensus between the Member States of the Council of Europe (*Evans v Great Britain*) and issues regarding the need to create balanced competing interests or rights under the ECtHR (*Evans v Great Britain*), governments can enjoy a broader interpretation of Margin of Appreciation.²⁸ The procedures in the ECtHR in regards to the *margin of appreciation* show that the Court has paid close attention to the specific circumstances of a particular society, and in the event of violation of the convention, it explicitly states the nature of the failure to comply with the Convention, passing them to local bodies.

These are but few examples of the manifestations of relevance of respect for cultural diversity when it comes to diverse perspectives and interpretations of human rights standards. As it was mentioned before there are other human rights issues related to family, criminal cases, gender issues, etc. with which different societies have particular legal stances in dealing. In view of the undisputable diverse perspectives and interpretations which constitute the so-called sense of identity in different cultures and civilizations, the international community, with the view of preventing clashes among the followers of different religions, recognizes the differences of this kind and emphasizes on the respect for cultural diversity within universality. It is with the normative concept supporting this pattern of behavior at the international level that the international community strengthens the bonds of peace and security.

²⁸ ECHR Forum, Margin of Appreciation, APRIL 2012, an overview of the Strasbourg Court's margin of appreciation doctrine, Available from: www.opensocietyfoundations.org/.../echr-refo, Accessed: January 2, 2014.

V. Defamation of religions: A Step toward the Violation of Peace and Security

One of the major international concerns that has always been the subject of international and inter-cultural debate at the United Nations and in the context of international political developments, is defamation of religions, and particularly insulting Islam, its prophet and holy book, the Quran. This major concern has frequently drawn heated debate in the context of the previously annual resolutions of the Human Rights Council and its predecessor, the Human Rights Committee ("HRC"), entitled "Defamation of religions". Series of resolutions in the UNGA, former HRC and Human Rights Council in this domain have consistently denounced defamation of religions as an act creating hatred and violence. These resolutions asserted that creating hatred, violence and hostility emanating from disrespect to cultural diversity and defamation of a particular culture or religion constitute religious intolerance, and consequently pose a threat to international peace and security.²⁹ Paragraph 9 of the Resolution on "Human Rights and Cultural Diversity", adopted by the UNGA's Third Committee on 31 October 2013, and many further resolutions, emphasize on enhancing dialogue among religions, cultures and civilizations at the highest level and, on the basis of equal dignity and on supporting international efforts to mitigate intercultural clashes. They further stress on the need to promote respect for cultural diversity and the role of governments in rejecting any imposition of a specific culture on the other, aimed at consolidating

²⁹ These assertions have been made, for instance, in the UNGA resolution A/C.3/67/L.47 entitled "Combating intolerance, negative stereotyping, stigmatization, discrimination, incitement to violence against persons, based on religion of belief", 2012, Preamble, para 16.

international peace and security. Article 20(2) of the International Covenant on Civil and Political Rights prohibits support of any national, racial, and religious hatred which leads to discrimination, hostility or violence. Paragraph 16 of the Resolution No. 178/67, adopted by the UNGA, expresses concern about rising religious intolerance which can create hatred and violence among people of different nations and within a nation, which has serious impact at the national and international level.³⁰ In this regard, it stresses the importance of respect toward religious and cultural diversity as well as dialogue between faiths and cultures with the aim of promoting a culture of tolerance and respect among peoples, communities and nations. In its third operative paragraph, this Resolution reaffirms its concern about the increasing number of incidents due to religious intolerance, discrimination, and related violence based on religion or belief, which can result in grave consequences at the national, regional, and international level. It also condemns any support of religious hatred against individuals, which leads to discrimination, hostility, and violence, and encourages governments to adopt effective measures included in this resolution and in accordance with international human rights obligations in order to deal with such events. Furthermore, the United Nations Millennium Declaration, adopted on 8 September 2000, considers tolerance as one of the most fundamental values for international relations in the 21st century that should entail the effective promotion of a

³⁰ UN General Assembly, Combating intolerance, negative stereotyping, stigmatization, discrimination, incitement to violence and violence against persons, based on religion or belief: resolution / adopted by the General Assembly, 28 March 2013, A/RES/67/178.

culture of peace and dialogue among civilizations, taking into account the religious and cultural diversity of nations.

One important point is that Githu Muigai, the Human Rights Council Special Rapporteur on “contemporary forms of discrimination, xenophobia and related intolerance” in a report to HRC³¹ has elaborated on the processes of defamation of religions and its different forms and possible further escalation into the acts of hostility and violence. In this context, the Special Rapporteur emphasizes on different stages of the processes: (a) “intolerant mentalities” about a particular religion or culture which might be created by political parties or otherwise in a given society, (b) “incitement to religious hatred” which is the natural product of “intolerant mentality” in the society, (c) “religious discrimination”, the third step in a row and (d) “violence perpetrated against members of religious or belief communities” that brings with it communal violence which is the last and final stage of this process that constitute a crime in international law. He further stresses that “intolerant mentalities” become a human rights issue, as they are publicly expressed through advocacy of racial or religious hatred that constitutes incitement to discrimination, hostility, or violence.

II. The way ahead

Respect for cultural diversity represents respect for the world’s civilizations, cultures, and great religions that have created global civilization and further inspired universal human rights. Shared human principles are the foundation and the constituting

³¹ UN Human Rights Council, Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, 9 May 2017, A/HRC/35/41, P. 9.

elements of the universality of human rights. In a retrospective historical analysis, it becomes clear that no civilization can claim to be the absolute champion of the common principles and the sole foundation of human civilization, including in the area of human rights. Therefore, both in terms of common sense and based on international consensus, respect for cultural and religious diversity at the international level promotes universality of human rights, and constitutes one of the foundations of international peace and security. The concept of “order” referred to in Article 28 of the Universal Declaration on Human Rights, if seen in conjunction with the operative paragraph 14 of the UNESCO Declaration on Cultural Diversity, can generate a new and hopeful perspective in this domain. To put it more clearly, establishing a fair international order that contains various aspects of normative and structural respect for cultural diversity and universal human rights in the context of peace and security as an indivisible whole, and creating its correspondent functional mechanisms in the international system, will have an important role in the meaningful realization of human rights contributing to the peace and international security. To provide the necessary ground for respecting cultural diversity in the context of Article 28 of the Universal Declaration of Human Rights, the international community should pay a close attention to key trends in conceptualization, international policy making, and international institutionalization. More importantly, focusing on the importance of mainstreaming respect towards cultural diversity in all relevant areas such as the universality of human rights, development, poverty reduction, free exchange of information, as well as cooperation and solidarity in the context of UN activities, which are all part of an effective way in achieving the end goal. Without mainstreaming of respect for cultural and

religious diversity in the general context of culture of peace and peaceful ideals, the international community will face challenges and difficulties in this domain. Therefore, The UNGA, Human Rights Council, UNESCO and other relevant international organizations should mainstream respect for cultural diversity in different fields and establish relevant institutions. In the next step, even the prospect of preparing a binding treaty at the international level that can translate the objectives of the Charter-based mechanisms in the field of cultural diversity into the commitment and obligations of the UN Member States can be even more useful and effective.