

# A long walk to establish the universal Declaration of Human Rights at domestic level

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- Um longo caminho para estabelecer a Declaração Universal dos Direitos Humanos em nível doméstico
- Un largo camino para establecer la Declaración Universal de los Derechos Humanos a nivel doméstico

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**Abstract:** This paper considers the politics of human rights through the 70 years of the Universal Declaration of Human Rights. Based on political-normative analysis, it argues that the full implementation of the Universal Declaration of Human Rights can be achieved by the design of a *human rights state* (Gregg, 2016), which involves establishing a human rights domestic culture. In order to demonstrate the validity of this assertion, a brief reconstruction of the development of international human rights law is performed, as well as an analysis of the United Nations (UN)' human rights discourse in light of the international politics. In this sense, it highlights the role of human rights defenders (HRDs) in promoting democracy and constructing a human rights state locally. The final section provides an explanation of how HRD could help to design the human rights state and strengthen a country's democracy.

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**Resumo:** Este artigo considera a política dos direitos humanos através dos 70 anos da Declaração Universal dos Direitos Humanos. Com base na análise político-normativa, argumenta-se que a plena implementação da Declaração Universal dos Direitos Humanos pode ser alcançada pela construção de um *estado de direitos humanos* (Gregg, 2016), que envolve o estabelecimento de uma cultura doméstica de direitos humanos. Para demonstrar a validade dessa afirmação, uma breve reconstrução do desenvolvimento do direito internacional dos direitos humanos é realizada. Faz-se, ainda, uma análise do discurso dos direitos humanos das Nações Unidas (ONU) à luz da política internacional. Nesse sentido, destaca-se o papel dos/as defensores/as dos direitos humanos (DDHs) na promoção da democracia e na construção local de um estado de direitos humanos. A seção final fornece uma explicação de como os/as defensores/as de direitos humanos podem ajudar a construir o estado de direitos humanos e fortalecer a democracia de um país.

**Palavras-chave:** Declaração Universal dos Direitos Humanos. Política internacional. Defensores/as dos Direitos Humanos.

**Resumen:** Este documento considera la política de los derechos humanos a través de los 70 años de la Declaración Universal de los Derechos Humanos. Basado en el análisis político-normativo, argumenta que la implementación total de la Declaración Universal de los Derechos Humanos se puede lograr mediante la construcción de un *estado de derechos humanos* (Gregg, 2016), que implica el establecimiento de una cultura de derechos humanos a nivel nacional. Para demostrar la validez de esta afirmación, se hace una breve reconstrucción del desarrollo del derecho internacional de los derechos humanos. Se hace, además, un análisis del discurso de los derechos humanos de las Naciones Unidas (ONU) a la luz de la política internacional. En este sentido, se destaca el papel de los/as defensores/as de los derechos humanos (DDHs) en la promoción de la democracia y la construcción de un estado de derechos humanos a nivel local. La sección final proporciona una explicación de cómo los/as DDH podrían ayudar a construir el estado de derechos humanos y fortalecer la democracia de un país.

**Palabras clave:** Declaración Universal de los Derechos Humanos. Política internacional. Defensores/as de los derechos humanos

## 1. Introduction

The first attempts to design the United Nations (UN) Charter occurred simultaneously with the final phase of the Second World War (LUARD, 1989 and 1982; HARRIS, 2010). Therefore, there is no surprise that the UN Charter's main aim is to avoid war and prevent massive human bloodshed, which, as assumed here, could be done by guaranteeing the maintenance of peace (CLARK, 1960). Nonetheless, making peaceful relations among states a reality, especially while dealing with issues related to economic, political, and strategic interests, is not an easy task. Therefore, it is comprehensible that the UN has not yet fulfilled its main aims entirely, irrespectively of all progress accomplished through its seventy years of its existence.

No doubt some progress has occurred through the spread of the principles and norms contained in the Universal Declaration of Human Rights (UDHR). The problem is that although many UN state members have accepted and, sometimes, even internalized the UDHR into their domestic systems, not all of them have yet acted to fully establishing it domestically. As a result, as argued here, the full implementation of the UDHR can be achieved by the construction of a *human rights state* (GREGG, 2016), which involves establishing a human rights domestic culture.

In order to understand the reasons for the the UN creation and the ways for the fully establishment of the UDHR at national level, however, a brief reconstruction of the recent international political history<sup>4</sup> is necessary (DONNELLY, 2006). The approach taken here will be conducted in light of the development of international human rights law and will consider the 'level-of-analysis problem' (Hollis and Smith, 1991). The analysis of recent international politics is, therefore, conducted in this paper within a *constructivist* perspective (Wendt, 2010; Klotz and LYNCH, 2007; GUZZINI; LEANDER, 2006; CARLSNEAS et al, 2003; KATZENSTEIN et al, 1999; BUZAN; LITTLE, 2000) in connection with the historicity of human rights (PIOVESAN, 2008; LAFER, 1988; ARENDT, 1976).

The second section reconstructs the development of international human rights law in light of recent international politics, which, for didactical purposes, has been divided into the following historical periods: *Second World War*; *Cold War*; *Post-Cold War*; and the current "*War on Terror*". The third section conducts a brief analysis of the United Nations (UN)' human rights discourse in light of international politics. The fourth section highlights the role of human rights defenders (HRDs) in promoting democracy and constructing a *human*

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4 The historical approach towards the subject has been taken here starting from the Second World War. See Gregg (2011); Piovesan (2008); Comparato (2004); Lafer (1988); Luard (1989 and 1982).

*rights state* locally. The final section, based on critical analysis, concludes that the establishment of a human rights domestic culture leads to constructing a human rights state, in which the norms, rules, and principles provided by the UDHR would be adopted, as their own, by the population and state' authorities altogether, and provides an explanation of how human rights defenders (HRDs) could help build-up a *human rights state* and strengthen a country's democracy.

## 2. A brief reconstruction of the development of International Human Rights Law

### 2.1 The Second World War and its impact on the idea of universal human rights

As a response to the atrocities of the Second World War, humankind entered into a new and significant phase, one that indeed represents a turning point in the recent history of humanity (ISHAY, 2004). In this sense, it is well regarded that the world population have been living in the age of human rights since post-1945, despite the fact that human rights violations are still occurring around the world.

Prior to the Second World War, human rights affairs were treated mostly as an internal affair, irrespective the fact that some attempts to protect the rights of minorities occurred, particularly between the First and Second World Wars. Although the idea of rights had already been developed, the concept of human rights came to reality only after the Second World War. According to Harris (2010, p. 535),

International law rules framed in terms of the protection of human rights against state interference are very largely a post-1945 phenomenon. Before then individuals were seen mostly as aliens and nationals, not as individuals. Some protection was afforded to them as aliens, but the treatment of nationals was regarded as being within the domestic jurisdiction of sovereign states. By the nineteenth century, some writers recognized an exception in the case of humanitarian intervention, although state practice shows that intervention by a state on that ground was usually justified on other grounds at the same time. After the First World War, efforts were made to protect minority groups by treaty, but no protection of individuals generally was attempted. Events in Europe in the 1930s and in the Second World War focused attention upon this wider question and the guarantee of human right became one of the purposes of the United Nations and when the Charter imposed obligations upon the UN and its members to this end. The Charter was followed by the Universal Declaration of Human Rights 1948 and a series of multilateral treaties and other declarations concluded through the United Nations [...]

In this sense, it should be highlighted that despite some discussions regarding a minority protection regime, the idea of human rights was still insipient before the Second World War. As Arendt (1976) explains, the full implication of this identification of the rights of man with the rights of peoples in the European nation-state system came to light only when an increasing number of people and peoples suddenly appeared whose elementary rights were as little safeguarded by the ordinary functioning of nation-states in the middle of Europe as they would have been in the heart of Africa. In this way, violations of human rights were handled mostly as an internal affair, being, therefore, subject to domestic law on the grounds of the sovereignty doctrine.<sup>5</sup>

The intensity of the atrocities of the Second World War brought human rights into international politics (DONNELLY, 2006). The most important consequence was the creation of a new paradigm in the world, that is, a paradigm of human rights norm generation at international level. Within this perspective, the creation of the UN<sup>6</sup> represents not only an international attempt to make possible the maintenance of peace, but also, and particularly, the emergence of international human rights norms (DONNELLY, 2006).

After its creation, the UN made some efforts towards the development of international human rights norms and rules. *The Convention on the Prevention and Punishment of the Crime of Genocide* (9 December 1948)<sup>7</sup> and the *Universal Declaration of Human Rights* (10 December 1948)<sup>8</sup> are good examples of the advancements originated by that trend, which became seriously compromised by the onset of the Cold War.<sup>9</sup>

## 2.2 The Cold War and its impact on International Human Rights Law

The political implications of the Cold War had an enormous impact of human rights discourses and practices, particularly in regard to the tensions

5 The sovereignty principle is “the general international legal principle that provides that a state has lawful control over its own territory to the exclusion of all other states, possesses authority to govern in its own territory, and has the exclusive right to establish and apply the law internally” (CONDE, 2004, p. 243).

6 “The UN differs from the League of Nations at the same extent to which the Second World War distinguishes itself from the First World War. While in 1919 the only concern was the creation of a forum for arbitration and regulation of armed conflicts, in 1945, the aim was to make war a definitively and outlaw phenomenon. On the other hand, the horror derived from the rise of totalitarian States, true machines of destruction of entire peoples, created everywhere the comprehension that, without respect to human rights, the peaceful relations among nations would be impossible” (COMPARATO, 2004, p. 210).

7 Its entry into force occurred on 12 January 1951. United Nations (UN) <<http://www.un.org/en/>>, accessed 7 February 2019.

8 Nations (UN) <<http://www.un.org/en/>> accessed 7 February 2019.

9 Nations (UN) <<http://www.un.org/en/>> accessed 7 February 2019.

between the USA and the former USSR, which had influenced the interpretation of human rights politically (Cassese, 2005; Schmidli, 2013). For instance, the USA (mis) used the human rights discourse in favor of a much more narrowed political definition for the category, having given more emphasis to civil and political rights, whereas the former URSS also (mis) used the human rights discourse, having attempted to prioritize the economic, social and cultural rights (ADAMISHIN; SCHIFTER, 2010; LEFFLER & WESTAD, 2009; SNYDER, 2004).

Moreover, persistent tensions between the USA and the former USSR on several political, economic, and strategic issues, which were transferred to their spheres of influence, made excesses and manipulation of human rights law and mechanisms from both parts and their respective followers a routine. Under these circumstances, as Donnelly (2006) explains, charges of human rights violations were largely tactical manoeuvres in a broader political and ideological struggle. Hence, the development of international human rights law was to some extent compromised during the Cold War. Even though, advancements were accomplished, as with the change of the US behavior in the second half of the 1970s under the Carter Administration as well as with the Helsinki Final Act (DONNELLY, 2006; SNYDER, 2004).

In spite of the Cold War, the 1960s brought some important changes in relation to the development of international human rights law. Those changes are usually related to the human rights aspects of self-determination and the process of decolonization (Nicholson, 2002; Donnelly, 2006). Irrespectively of the reasons that led to the decline of European colonial empires and the respective process of decolonization, the fact is that it made possible the creation of new, formally independent states. This was one of the most momentous changes and one which had a direct impact on human rights discourses and practices at the UN level.

The impact of this significant phenomenon on the UN activities could be felt both through (1) an increase in the number of UN Member States derived from the membership of freshly independent African and Asian states, and (2) the change in the UN agenda, strongly influenced by discussions about self-determination and sovereignty (Luard, 1989 and 1982; Cassese, 2005; Ishay, 2004). In fact, self-determination is recognised as a right in both covenants, the *International Covenant on Economic, Social, and Cultural Rights* and the *International Covenant on Civil and Political Rights*. Additionally, the reinforcement of sovereignty is argued by African and Asian states in order to safeguard their territorial integrity and independence recently conquered (Luard, 1989). In general, human rights discourse is used to condemn colonization and racial discrimination, with the latter being particularly directed to the South African “apartheid” regime (Luard, 1989). It should be noted, howe-



ver, that irrespective of the changes in the UN internal politics derived from the arrival of African and Asian states voting in block, the USA and the former USSR kept unchanged the control over their spheres of influence (LUARD, 1989 and 1982; ISHAY, 2004).

The implications of this trend are also marked by the fact that international human rights instruments, such as the *International Convention on the Elimination of All Forms of Racial Discrimination* (7 March 1966)<sup>10</sup> and the *International Human Rights Covenants – the International Covenant on Economic, Social, and Cultural Rights* (16 December 1966)<sup>11</sup> and the *International Covenant on Civil and Political Rights* (16 December 1966)<sup>12</sup> – were finally completed<sup>13</sup>. *The International Bill of Rights*<sup>14</sup> was, therefore, formally finalized, giving impetus to the UN human rights discourse, despite UN Member States' contradictory human rights practices.

Following the 1960s resumption of the discussions and relative progress in regard to international human rights instruments at the UN, the 1970s witnessed advancements concerning the pursuit of the implementation of international human rights norms at the domestic level. Within this perspective, it should be stressed that the monitoring of rights implementation became an important element within UN activities. In reality, some monitoring started in the late 1960s, but continued and developed through the 1970s, when the International Human Rights Covenants – the International Covenant on Economic, Social, and Cultural Rights and the International Covenant on Civil and Political Rights – entered into force and the Human Rights Committee (HRC)<sup>15</sup> was created.

10 Its entry into force occurred on 4 January 1969. United Nations (UN), <<http://www.un.org/en/>>, accessed 6 February 2019.

11 Its entry into force occurred on 3 January 1976. United Nations (UN), <<http://www.un.org/en/>>, accessed 6 February 2019.

12 Its entry into force occurred on 23 March 1976. United Nations (UN), <<http://www.un.org/en/>>, accessed 6 February 2019.

13 Although the International Human Rights Covenants – the International Covenant on Economic, Social, and Cultural Rights and the International Covenant on Civil and Political Rights – would enter into force only in 1976 (DONNELLY, 2006; NICHOLSON, 2002).

14 The International Bill of Rights is composed by the UN Charter (1945), the Universal Declaration of Human Rights (1948), the International Covenant on Economic, Social, and Cultural Rights (1966), and the International Covenant on Civil and Political Right (1966).

15 'The Human Rights Committee is established under article 28 of the Covenant. It has 18 members, who must be nationals of States parties to the Covenant. Members of the Committee, as of other treaty bodies, are also often called "experts". Under article 28 of the Covenant, Committee members must be "persons of high moral character and recognized competence in the field of human rights", with "consideration given to the usefulness of the participation of some persons having legal experience". Each member is a national of the State party that nominates them. Most Committee members (past and present) have a legal background, whether from the judicial bench, as a practitioner or in academia' (OHCHR, 2004).

Both events have contributed to the development of the regime for monitoring rights which is an indispensable tool in the social struggles for the promotion, protection, and realization of human rights conducted by human rights defenders around the world (TERTO NETO, 2018).

Another important change that occurred in the 1970s concerns the work of non-governmental organizations (NGOs) in the human rights field. In this period, the number of human rights NGOs increased, and their influence spread globally. Simultaneously, the work of both national and transnational NGOs started to have an impact on state human rights policies, although it still remained relatively limited.<sup>16</sup> In this respect, to some extent the role played by human rights defenders could be seen as significant, particularly in South American countries, where they conducted and carried out fights for human rights and democracy (Terto Neto, 2018). Their efforts, sweat, tears and blood have certainly marked all social changes through history of many countries in Latin American, such as Argentina, Brazil, and Chile (CLEARY, 1997; OIKONOMAKIS, 2019; CASTILLO, 2016; ECKSTEIN; WICKHAM-CROWLEY, 2003; BUONO; LARA, 2009).

Continuing the significant changes that occurred in the previous decade, the 1980s witnessed a substantial development of international human rights law. The Convention on the Elimination of Discrimination against Women (18 December 1979)<sup>17</sup>, the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (10 December 1984)<sup>18</sup>, the Declaration on the Right to Development (4 December 1986)<sup>19</sup>, and the Convention on the Rights of the Child (20 November 1989)<sup>20</sup> were advanced during the period.

Possibly as a result of the work of national and transnational human rights networks, in which human rights NGOs are active members, the monitoring of human rights increased through the efforts of UN

16 "Major actors in advocacy networks may include the following: (1) international and domestic nongovernmental research and advocacy organizations; (2) local social movements; (3) foundations; (4) the media; (5) churches, trade unions, consumer organizations, and intellectuals; (6) parts of regional and international intergovernmental organizations; and (7) parts of the executive and/or parliamentary branches of governments. Not all these will be present in each advocacy network. [...] international and domestic NGOs play a central role in all advocacy networks, usually initiating actions and pressuring more powerful actors to take positions. NGOs introduce new ideas, provide information, and lobby for policy changes" (Keck and Sikkink, 1998: 9).

17 Its entry into force occurred on 3 September 1981. United Nations (UN), <<http://www.un.org/en/>>, accessed 7 February 2019.

18 Its entry into force occurred on 26 Jun 1987. United Nations (UN), <<http://www.un.org/en/>>, accessed 7 February 2019.

19 United Nations (UN), <<http://www.un.org/en/>>, accessed 7 February 2019.

20 Its entry into force occurred on 2 September 1990. United Nations (UN), <<http://www.un.org/en/>>, accessed 7 February 2019.



bodies, particularly the UN treaty bodies<sup>21</sup> level. In this respect, special emphasis is to be put on the work of the Human Rights Committee<sup>22</sup>, the Committee on Economic, Social and Cultural Rights<sup>23</sup>, and the Commission on Human Rights (1946-2006)<sup>24</sup> as UN efforts concerning the monitoring of human rights in the 1980s (Donnelly, 2006; Nicholson, 2002).

Another very important phenomenon occurred in the 1980s refers to the democratization of dictatorial states in several parts of the world. Many dictatorships collapsed and new democracies appeared in Asia, Latin American, and Eastern Europe. In this light, the democratization processes varied greatly from one country to another, and there are plenty of examples for both peaceful as well as violent transitions to democracy in the 1980s. In any case, there seems to be consensus on saying that the aforementioned changes occurred as a direct result of political pressure applied to authoritarian states<sup>25</sup>, not only by other states – particularly Western Powers –, but also by national and transnational advocacy networks, which may be captured by the phenomenon called “the boomerang pattern”. According to Keck and Sikkink (1998), the phenomenon occurs when dialogue between the national civil society and state is no longer an available option. In fact, they believe that the boomerang pattern of influence is commonly related to human rights campaigns and usually takes place when “domestic NGOs bypass their state and directly search out international allies to try to bring pressure on their states from outside” (KECK; SIKKINK, 1998: 12). In this case, the role also played by human rights defenders can be branded as crucial for organizing and carrying out the fights for human rights and democracy (TERTO NETO, 2017).

21 ‘The seven core international human rights treaties have created legal obligations for State parties to promote and protect human rights at the national level. When a country accepts one of these treaties through ratification, accession or succession, it assumes a legal obligation to implement the rights set out in that treaty. But this is only the first step, because recognition of rights on paper is not sufficient to guarantee that they will be enjoyed in practice. When the first treaty was adopted, it was recognized that States parties would require encouragement and assistance in meeting their international obligations to put in place the necessary measures to ensure the access of rights provided in the treaty by everyone within the State. Each treaty therefore creates an international committee of independent experts to monitor, by various means, implementation of its provisions. Implementation of the seven core human rights treaties is monitored by the seven human rights treaty-monitoring bodies’ (OHCHR, 2004).

22 It was created in 1976 to monitor the implementation of the International Covenant on Civil and Political Rights (OHCHR, 2004).

23 It was created in 1987 to carry out the monitoring mandate of the Economic and Social Council (ECOSOC) under the International Covenant on Economic, Social and Cultural Rights (OHCHR, 2004).

24 The United Nations Commission of Human Rights functioned from 1946 until 27 March 2006, when it was replaced by the United Nations Human Rights Council. United Nations (UN), <<http://www2.ohchr.org/english/bodies/chr/index.htm>>, accessed 7 February 2019.

25 In the case of peaceful transitions to democracy, it is generally accepted that diplomacy and economic pressures have been more effective, despite the fact that political pressure from national and transnational human rights networks might also have contributed.

The collapse of the Soviet empire and the respective end of the Cold War had a significant impact on 1990s events as well. The implications concern not only the development of international human rights law, but also, and probably more important, international politics, for a new global order was established.

## 2.3 The post-cold war period and its impact on human rights discourses and practices

Although the UN human rights discourse was strengthened, the UN Member States' practices did not always reflect the aspirations for promotion, protection and respect of human rights contained in the *International Bill of Rights*. Furthermore, it should be noted that this situation brought to the table a new debate, that is, one in which Asian values would function as a counter-argument against the universality of human rights discourse. In fact, the hegemonic rhetoric of Western Powers started facing some opposition from Asian countries. (KRASNER, 1999). As a result, the westernized concept of universality of human rights started to be questioned in light of the Asian values debate.<sup>26</sup> Additionally, this conundrum has proved to be a strong barrier towards the establishment of a universal approach on the definition of human rights and the implementation of international human rights standards globally.

In spite of this, considerable progress was made during the 1990s as, for example, it is the case of the World Conference on Human Rights in Vienna (1993), in which an increase in the 'force of the idea of international human rights' occurred (Donnelly, 2006: 13).

The importance of the activities of national and transnational human rights networks and NGOs further increased in this period, as much as their respectability within the international political sphere. In other words, their global influence progressed towards its consolidation and their reputation among UN Member States became even better. All of which made their impact on policy change markedly stronger.

In this light, it should be noted that human rights defenders also played a decisive role within this context, particularly due to the fact that they organized and carried out fights for human rights and democracy at the domestic, regional and international levels. Undoubtedly, they contributed to closing the gap between human rights discourses and practices also through the 1980s and 1990s.

## 2.4 The "War on Terror": "age of human rights versus age of state of exception"?

It is commonly observed that, by the beginning of the 2000s, the UN human rights regime had already been established. In this respect, special

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26 For an analysis of arguments against the universality of human rights, see Talbott (2005).

emphasis should be put on the advancements regarding international human rights law. The International Bill of Rights and other instruments had already been formally ratified by the majority of UN Member States. In addition to it, the UN – through its treaty bodies and in partnership with transnational advocacy networks – was advancing the *monitoring* of rights for the establishment of human rights standards at the domestic level (ISHAY, 2004; KECK; SIKKINK, 1998).

Irrespective of the UN Member States' occasional lack of sufficient motivation in regard to their human rights practices, it seems correct to say that the *age of human rights* had come and would last long.<sup>27</sup> Moreover, it should be stressed that national and transnational human rights networks had already acquired respect and international recognition, which made their work very influential on pressuring both democratic and dictatorial states while dealing with human rights issues domestically, regionally, and globally. Even the role played by human rights NGOs became more influential during this period at the UN level. Therefore, the voices of victims of human rights violations caused by either state or non-state violence from all over the world were finally being heard through transnational NGOs' activities at the UN (TERTO NETO, 2018; ISHAY, 2004).

Nonetheless, it would be misleading to assume that the discrepancies between the UN human rights discourse and the UN Member States' insufficient motivation for human rights practices were finally decreasing. In reality, the recurrent situation in which economic and political interests overcome human rights issues was still manifest. Indeed, if, on one hand, UN Member States recognized the importance of international human rights standards; on the other hand, however, they very often have been insufficiently motivated to implement them domestically. This controversial context demonstrates how huge the gap between human rights discourse and human rights practices was indeed.

Furthermore, in that morning of September 11, 2001, the whole world witnessed the terrorist attacks against the USA through TVs or computer screens simultaneously. As depicted by Carlisle (2007: VIII),

[T]he skies were clear over New York that morning, and it was one of those rare fall days that are not too warm, not too cold to enjoy. In the space of less than two hours, that image was destroyed forever. In a confused tumble of crises, those watching from the ground or their television screens saw four civilian aircraft, commandeered by nineteen hijackers, turned into weapons aimed at the symbols of American wealth and power. The events of that day not only had great emotional impact, they changed the political landscape in profound ways

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27 It is generally accepted that under the age of human rights, "normality" meant the continuation of Western Powers' dominance and/or influence on international economy and politics. See Brown and Ainley (2005) and Hobsbawm (1994).

Similar to Hollywood movies, the scenes showed the total destruction of the twin towers of the World Trade Center and the limited impact on the Pentagon. Thousands of people were killed. The myth of U.S. territorial inviolability was shattered. At that point, the responses from the U.S. Government occurred, both politically and militarily, with the former resulting, later on, in the Afghanistan War and in the respective – and perhaps unlawful – invasion of Iraq.<sup>28</sup>

The events of the September 11th have had serious ramifications for the human rights discourse and human rights practices all over the world. The most significant implication was probably the reinforcement of the security discourse.<sup>29</sup> In fact, prior to the September 11th, the discussions on the promotion, protection and respect for human rights were advancing steadily. After this event, however, it seems that the concern regarding security in light of terrorism became predominant. In short, although controversial, it is possible to affirm that the September 11th came to establish a new era in international politics, that is, one in which security is apparently gaining more attention than human rights.

This invariably contributes to the assumption that the world has entered the age of state of exception (LAZARUS; GOOLD, 2007). Under the justification that there is an ongoing “war on terror”, the exceptional measures that seriously compromise or completely ignore the constitutional rule of law have become routine today. The exceptional powers usually conceded to the Executive branch should be taken as temporal and only applied during the time necessary to overcome the causes of the crisis at hand. In this light, the constitutional rule of law must be guaranteed at all costs, if democracy were to prevail. Within this context, it is important the analysis Brenkman (2007, p. 55) conducts of the US political and legal tensions post-September 11,

In short, alarm over the extent and effect of the Bush administration’s reliance on executive decrees and arbitrary power is thoroughly justified, but the brake that public opinion and court rulings have put on administration policies is a reminder that presidential power is not absolute and that even under what are widely perceived as wartime conditions, the balance of powers is capable of limiting presidential authority. The serious violations of the Constitution and international law that administration policy fostered came un-

28 Although the war in Afghanistan could be justified under international law, the invasion of Iraq could not. In fact, it is generally accepted that the invasion of Iraq involved more than aspects linked to the strategic defence of the security of the USA, for there was no Weapons of Mass Destruction over there, despite both President Bush and the US Secretary of State Colin Powell had categorically said there were. Economic and strategic issues related to the extraction of petroleum in the region might have played a crucial role in the U.S. decision to invade Iraq, which occurred despite the lack of support from the UN and even without the international support from the majority of its historic allies (only the United Kingdom supported the invasion of Iraq unconditionally). See Tomsen (2011); Johnston (2006); Roberts (2005); and Davies (2010).

29 Concerns regarding peace and security in light of human rights became more evident after the Second World War. See Luard (1989 and 1982); Cassese (2005); Ishay (2004).

der political and judicial challenge.

The dangers for human rights and democracy are self-evident; especially due to the fact the 'state of exception' point seems to be very acceptable in Western societies, where the ideology of "war on terror" is more attractive. In this respect, it should be noted that Lazarus and Goold (2007) describe the popularity of the 'state of exception' argument as being a result of the emergence of a 'culture of control' as well as the 'politics of rights scepticism'. Despite all controversies involved, it is necessary to consider that the rise of the security discourse, occurred post-September 11, has affected the human rights discourse enormously. Therefore, an urgent need to reach a theoretical agreement between the human rights discourse and the security discourse presents itself irrefutably. The dilemma might be overcome, as Lazarus and Goold (2007, p.7) argue, through the pursuit of a language of reconciliation. According to them,

[I]n broaching the question of how to reconcile security and human rights, we are in effect also asking how to balance between the individual and the collective, between the political and the legal, and between the political sovereignty and the rule of law. Thus, the pursuit of the mutual attainment of security and human rights since 9/11 has provoked a re-engagement with questions that are central to democratic orders and has peeled back any veneer of political consensus that may have surrounded them. The current fight is then not only about security and rights, it is also about the essential institutional, procedural and substantive principles that we think a legitimate democracy ought to have.

In fact, reconciliation is a key concept to overcome tensions caused by the dichotomy human rights versus security. Additionally, this concept needs to be analysed in light of legality and extra-legality issues, for the constitutional rule of law is always at risk at times of crisis. Therefore, the question whether we should enforce the rule of law or accept extra-legal measures in the face of terrorism arises and must be confronted today.

In these terms, metaphysical theoretical arguments are not enough to construct an effective defence of human rights, once '[r]ights advocates must show how rights can work in practice, how the rule of law can be maintained, why the integrity of the law matters and how rights-regarding institutions can be shown to work even when facing our most perilous social challenges' (LAZARUS; GOOLD, 2007, p 12). The endeavour is both individual and collective. In other words, the reassessment of individual and collective values and certainties must be total, that is, it must involve not only an engagement with all current human rights and security affairs, but also, and perhaps more importantly, conduct a reconstruction of human rights discourses and practi-

ces (RAMRAJ, 2007, p. 185). In order to succeed, this reconstruction process (BOURDIEU, 1996, 1997 and 1998) must avoid, along the way, misconceptions or pre-concepts that would invalidate any sincere attempt to reconcile human rights and security.

### **3. United Nations' human rights discourse and international politics**

The employment of critical analysis to the United Nations' discourses in light of international politics assists to understand that rules, norms, and institutions of the international community permit violence since they establish a protection system that only works if states accept to internalize and implement human rights law domestically (RISSE; ROPP; SIKKINK, 2013 and 1999, DUNNE; WHEELER, 2010). It should be highlighted, therefore, that the UN's human rights rhetoric must be in consonance with the UN Member States' practices for the establishment of a human rights culture to be possible domestically. It is in this sense that an overview of the predominant and secondary discourses at the UN over the last 70 years is conducted below. In order to do so, the authors have drawn on the works of Portela (2018), Harris (2010), Piovesan (2008), Lazarus and Goold (2007), Donnelly (2006), Cassese (2005), Ziring et al (2005), Nicholson (2002), Hollis and Smith (1991), and Luard (1982 and 1989). Although critical, the analysis here is superficial, given the limits of this paper.

It is commonly accepted that, prior to the Second World War, the main discourses in international politics referred to issues related to peace and security and that the problems related to human rights had a minor importance. The international community was still trying to overcome the consequences of the First World War, as the first attempt to create a global organization – The League of Nations – dedicated to peace proves (PORTELA, 2018). As Great Britain and France came to control that organization and (mis) use it for their own benefits, in addition to the fact the USA did not take part in it, the League of Nations failed (Cassese, 2005). Global hegemony and the prevention of another war became concerns more urgent than the discussions about human rights (HARRIS, 2010; ZIRING et al, 2005; LUARD, 1982 and 1989).

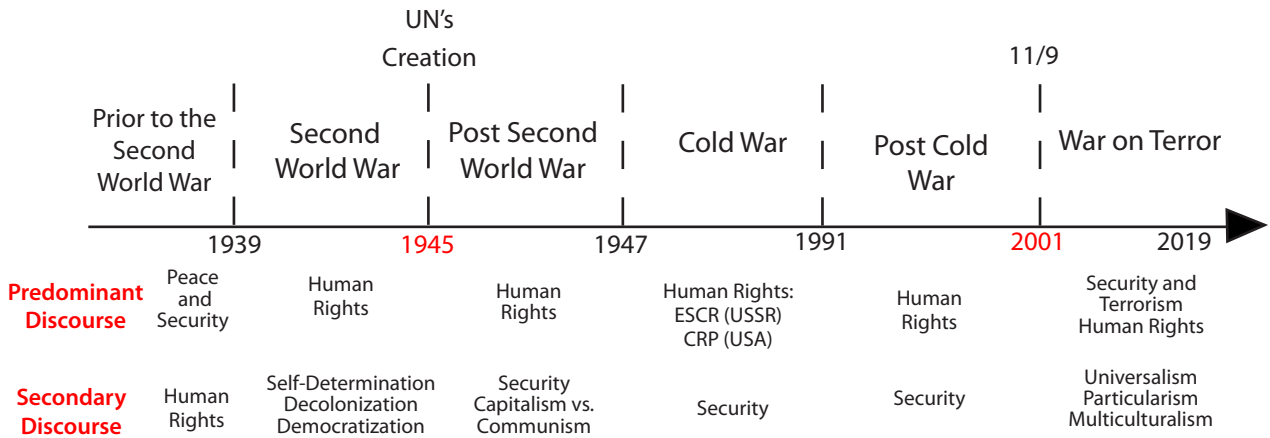
Irrespective of all attempts to prevent it, the Second World War came to be, and through it, human rights became the main discourse in international politics, especially given the atrocities that happened to combatants and civilians alike, let alone the genocide against Jews, Negroes, Roma people, and LGBTI people (PIOVESAN, 2008; CASSESE, 2005; PORTELA, 2018). Humanity finally started paying attention to human rights issues, despite some issues related to self-determination, decolonization and democratization occupied the



attention of world leaders as well (LUARD, 1982 and 1989). One of the main consequences of the Second World War was the creation of the United Nations, that is, the second attempt by the international community to create an organization able to prevent war and consolidate world peace (CASSESE, 2005).

After the Second World War, the main discourses in international politics and, as a consequence, at the United Nations, referred to human rights issues. A normative system came to existence and was followed by mechanisms for monitoring states' compliance with international human rights law (PIOVESAN, 2008; CASSESE, 2005). Nonetheless, the security discourse did not disappear. In fact, it continued to occupy the attention of Western Powers, especially because a new ideological dispute had started: capitalism versus communism (PORTELA, 2018; ZIRING et al, 2005; CASSESE, 2005). Two great powers emerged with the end of the Second World War. On one side, there was the USA and its capitalist ideology. On the other side, there was the former Soviet Union and its communist ideology. Their ideological dispute would influence international politics via what came to be known as Cold War.

**Figure 1 – United Nations, International Politics and Human Rights Discourse**



Source: Portela (2018), Harris (2010), Piovesan (2008), Lazarus and Goold (2007), Donnelly (2006), Cassese (2005), Ziring et al (2005), Nicholson (2002), Hollis and Smith (1991) and Luard (1982 and 1989). The table has been designed based on authors' interpretation of the sources.

Throughout the Cold War the main discourse remained human rights, with the USA defending civil and political rights, while the former Soviet Union was for economic, social, and cultural rights (CASSESE, 2005). These two great powers led the works of the United Nations and influenced international politics. Although they did not fight one another directly, they got involved in proxy wars, always supporting different sides, as, for instance, happened during the Vietnam War. That's why the security discourse also occupied the

attention of global leaders at the United Nations.

With the fall of the Soviet Empire, the Cold War came to an end. However, human rights remained as the main discourse in international politics and at the UN during the Post-Cold War period. In fact, it was believed that the age of human rights, that had started post-1945, would remain and consolidate itself (DONNELLY, 2006). World leaders still paid attention to security discourse, but in a minor way and usually related to guaranteeing world peace through states' compliance with international human rights law. The international scene, however, would change drastically on the September 11th, 2001, when the terrorist attacks took place in the USA.

Prior to the terrorist attacks that occurred on September 11th, 2001, the human rights discourse and practices were predominant. Even though human rights violations were still occurring all over the world, there was an ascending trend regarding the accomplishment of human rights worldwide. Indeed, human rights marked the rhetoric of states and influenced the works of the United Nations, which had allowed NGOs to participate actively in its works.

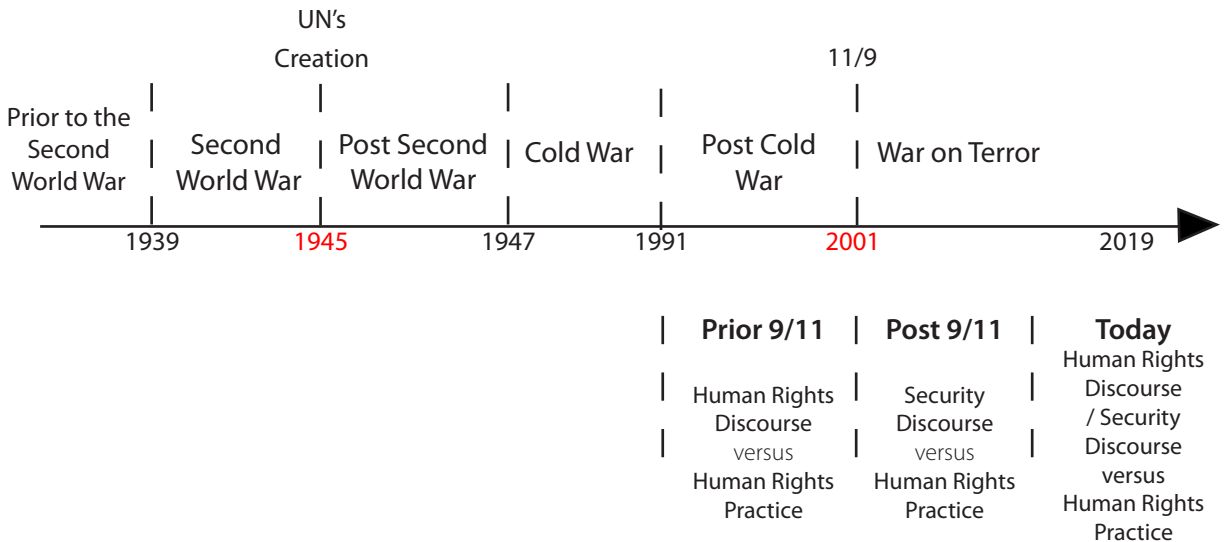
Nonetheless, after the terrorist attacks that occurred on September 11th, 2001, the Bush Administration started the so-called "War on Terror". The direct consequence was a shift in international politics that affected UN's discourse, bringing security and terrorism as the main focus against human rights discourse and practices. (ver figura 2)

The conflicting discourses – security versus human rights – impacted the states' actions regarding the implementation of international human rights law. After the terrorist attacks that occurred on September 11, 2001, the security discourse overcame both human rights discourse and practices. (figura 2)

After the terrorist attacks that occurred on September 11th, 2001, a new era was introduced, that is, an era that human rights violations would be accepted in the name of security against terrorism as, for instance, the case of the invasion of Iraq by the USA, which did not have the formal authorization of UN mechanisms.

As time passed, the human rights discourse bounced back and nowadays it is disputing predominance against the security discourse. The rise of the flamboyant and dangerous Trump as the President of the USA might be seen as a setback regarding the human rights discourse, especially because he somehow kept on with the security discourse and, together with the United Kingdom, France, and other European allies, influenced directly or indirectly the wars in Syria and Yemen. Therefore, this rhetorical dispute – human rights discourse versus security discourse – has debilitated the human rights practices worldwide.

**Figure 2 – United Nations’ Conflicting Discourses**



Source: Portela (2018), Harris (2010), Piovesan (2008), Lazarus and Goold (2007), Donnelly (2006), Cassese (2005), Ziring et al (2005), Nicholson (2002), Hollis and Smith (1991) and Luard (1982 and 1989). The table has been designed based on authors' interpretation of the sources.

## 4. Human rights defenders and the construction of a human rights state

It has previously been argued that the full implementation of the Universal Declaration of Human Rights can be achieved by the construction of a human rights state (Gregg, 2016), which involves establishing a human rights culture domestically. This is because the project towards a new sociability demands social relations to be less hierarchical and more egalitarian, which allows for individuals to accept one another as rights bearers so that effective citizenship can be fully enjoyed (TERTO NETO, 2017; BRINKS, 2008; ARENDT, 1994). In other words, a human rights state permits a human rights project to be pursued through collective political action (GREGG, 2016).<sup>30</sup> Furthermore, let's not forget that such a task encompasses placing constitutionally guaranteed human rights as public parameters for social relations, challenging, hence, the core structures of social authoritaria-

30 "[...] by human rights state I mean a metaphorical polity constituted by interested, self-selected members of a corresponding nation state. Members constitute themselves as a human rights state by authoring their own human rights and mutually recognizing that authorship among themselves. A human rights state seeks to advance a free embrace of human rights in the corresponding nation state. It seeks to advance human rights as an internal feature of the nation state, in short, to encourage local politicians and legal systems to generate domestic legal obligations to abide by human rights" (Gregg, 2016: 13).

nism (TERTO NETO, 2017; DAGNINO, 1998; ALVAREZ et al, 1998). In addition to it, given its political and cultural changing characteristics, such a task will demand huge labors from both organized civil society and the state (TERTO NETO, 2018).

In any case, it should be highlighted that a human rights state is another tool to help individuals grow 'assertive selfhood' and 'human rights personality', since 'someone socialized into assertive selfhood acquires the capacity to author his or her own human rights', which demands 'institutionalized socialisation' and 'cultural socialisation' of human rights (GREGG, 2016, p. 7). PRECISELY, as TERTO NETO (2017, p. 294) explains,

Gregg's proposal of a human rights state can help advance the project for a new sociability since it calls for the establishment of a new human rights culture domestically. A human rights state demands cultural socialisation that leads to individuals and communities freely embracing that political project. It envisions a human rights development project aligned with cosmopolitan human rights standards to be formally established by institutions and socialised among self-conscious individuals who, based on mutual solidarity, exercise their self-granted human rights and recognise the self-granted human rights of others. It allows for a human rights project to be pursued through collective political action. In this sense, a human rights state, as a political project, interfaces with the project towards a new sociability that would change the current cultural politics since both contain an ethical dimension for egalitarian social relations that calls for collective political action. Consequently, the potential of a human rights state (as a political project) to help bring about human rights change rests on the fact that it adds up to the project for a new sociability at the ideological level, in the sense that it challenges the social-symbolic structures.

In this regard, the construction of a human rights state means the full implementation of the 1948 Universal Declaration of Human Rights, which may be accomplished by human rights defenders' pivotal role, since they organize and carry on the social struggles for democracy, human rights, and social justice. They are no doubt important in promoting democracy and constructing a human rights state locally.

## 5. Conclusion

There has undeniably been human rights progress since the creation of the United Nations (1945) and the promulgation of the Universal Declaration of Human Rights (1948). It is true that UDHR's principles, rules, and norms have been spread globally, in spite of the fact that they have always faced resistance from the so-called security issues related to powerful states' economic and political interests. In this regard, it is possible to affirm that interna-

tional human rights law has been accepted, even internalized, by the majority of United Nations' members, but they have never been genuinely compliant with international human rights law. Their rhetoric is in consonance with international human rights law, but their actions still violate the human rights of millions of people all over the world. While presenting a pro-human rights discourse, states in general disregard their human rights obligations, and this prevents the UDHR from being fully implemented at domestic level.

The solution, as developed here, passes through the construction of a human rights state, once taken as a political project to be constructed both individually and collectively. Under this perspective, the establishment of a human rights domestic culture leads to constructing a human rights state, in which the norms, rules, and principles provided by the UDHR would be adopted, as their own, by the population and state's authorities altogether. This means they would follow those norms, rules, and principles because they would have had become their own values that guide their behavior in society. It is this behavioral change at the individual level that transforms society itself, leading to a collective change in regard to internalizing and socializing international human rights norms, rules, and principles domestically.

An important element of this proposed solution is the work of human rights defenders. They can adopt the construction of a human rights state as a political project to be pursued collectively. Under human rights defenders' leadership, social movements and human rights NGOs can create a collective political engagement to push forward the human rights agenda nationally. In this regard, the human rights state project can help change a country's authoritarian culture by constructing a new cultural politics of human rights. This is a way forward for human rights defenders to help build-up the human rights state and strengthen any country's democracy.

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