To Become Truly Universal and Sustainable, Human Rights Need a Major Reset in Canada and Globally

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Amidst the war in Ukraine, violent conflicts in other parts of the world and serious human rights issues in many Western countries, including Canada, a critical question begs discussion: is the "universality" of human rights still relevant in the modern world and can the idea of human rights universality be reinvigorated? This article discusses the varying understandings of human rights universality and the importance of its substantive understanding, meaning the same "core content" of human rights for everyone, everywhere in the world. This article presents positive examples from a range of countries concerning the incorporation of human rights universality into the national legal systems and discusses Canada's approach to treating human rights universality. The article argues that, to genuinely embrace the universality of human rights, Canada needs to rethink its own human rights system and adopt an approach taken by many European countries. Scotland is an excellent example of such an approach that Canada should be following – developing a deep and comprehensive statutory human rights framework boldly and squarely based on international human rights standards. The article concludes with further proposals for the consolidation and strengthening of the international human rights system in an effort to reinvigorate the universal human rights framework.

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Dans un contexte marqué par la guerre en Ukraine, des conflits violents dans d'autres régions du monde et de graves problèmes liés aux droits de la personne dans de nombreux pays occidentaux, y compris le Canada, une question cruciale mérite d'être posée : la "universalité" des droits de la personne est-elle encore pertinente dans le monde moderne, et peut-on raviver cette idée d'universalité des droits humains ? L'article examine les différentes compréhensions de l'universalité des droits de la personne et insiste sur l'importance d'une compréhension substantielle de cette notion, c'est-à-dire celle qui repose sur un même "noyau fondamental" de droits applicable à toutes et à tous, partout dans le monde. Il présente des exemples positifs issus de divers pays quant à l'intégration de l'universalité des droits humains dans leurs systèmes juridiques nationaux, et analyse l'approche du Canada à cet égard. L'article soutient que, pour réellement adopter l'universalité des droits de la personne, le Canada doit repenser son système de protection des droits humains et s'inspirer de l'approche adoptée par de nombreux pays européens et, plus récemment, par l'Écosse—en développant un cadre législatif des droits humains à la fois profond, complet, et fermement fondé sur les normes internationales en matière de droits de la personne. L'article conclut en proposant des pistes pour consolider et renforcer le système international des droits de la personne, dans le but de raviver le cadre universel des droits humains.

I. Introduction

The brutal war in Ukraine, past and ongoing genocides, hostilities displacing millions, and deep inequalities in most countries indicates that the great post-World War II promise of universal human rights has not achieved its final objective — freedom and equality in dignity and rights for everyone in a world of peace and justice.[1] Despite some good accomplishments,[2] the universal human rights framework, and even international law in general, has turned out to be vulnerable and fragile. Similarly, after decades of championing human rights, Canada now faces a long list of serious shortcomings in areas such as the rights of the Indigenous Peoples, racism, gender inequalities, refugees and migrants, housing, law enforcement, national security practices and corporate accountability.[3] In this context, a critical question arises: is the "universality" of human rights still relevant in the modern world, and can the idea of human rights universality be reinvigorated?

This article starts by discussing the importance of human rights universality and the varying understandings of this term. It then presents a selection of positive examples from a range of countries concerning the incorporation of human rights universality into national legal systems. The article further discusses the Canadian approach to human rights universality and proposals for a qualitative change of the Canadian approach. The article argues that, to genuinely embrace the universality of human rights, Canada needs to adopt an approach similar to the one recently taken by Scotland — developing a deep and comprehensive statutory human rights framework boldly and squarely based on the international human rights standards. Even more importantly, Canada may need to seriously reconsider and remake its human rights system. The article concludes with further proposals for consolidation and strengthening of the

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1 Freedom House, *Freedom in the World 2025: The Uphill Battle to Safeguard Rights* (2025), online: <freedomhouse.org> [perma.cc/G52W-L3TW] [Freedom House]; Amnesty International, *Annual Report 2022/2023: The State of the World's Human Rights* (28 March 2023), online: <amnesty.org> [perma.cc/5X28-MHDS].

2 Slava Balan, "The United Nations at 75: Has It Delivered the Promise of Human Rights?" (7 Dec 2020), online (blog): <mcgill.ca> [perma.cc/HY3N-UVAG].

3 Alex Neve, "Closing the Implementation Gap: Federalism and Respect for International Human Rights in Canada", IRPP Study No 90 (May 2023) at 7, online (pdf): *Centre of Excellence on the Canadian Federation* <centre.irpp.org> [perma.cc/Y6PS-VBDF].

international human rights system in an effort to reinvigorate the universal human rights framework.

II. What is the Importance of Human Rights Universality?

The 1945 *United Nations Charter* and the 1948 *Universal Declaration of Human Rights* proclaim that "recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world".[4] The wording of these two foundational documents of the modern global order is clear: all individuals have inalienable and equal rights.

The *Universal Declaration of Human Rights* opens with its foundational Article 1, proclaiming that "All human beings are born free and equal in dignity and rights".[5] In turn, the 2030 Sustainable Development Agenda, adopted by the UN General Assembly in 2015, solemnly states that "The new Agenda is […] grounded in the Universal Declaration of Human Rights, international human rights treaties".[6] Thus, rhetorically and formally, human rights are continuously and unanimously reconfirmed as universal.

But with a closer look at the "universality" of fundamental human rights, we may discover that this foundational premise of the modern international human rights system is not fully understood and embraced, rendering the entire construct of "universal human rights" vulnerable and fragile. To achieve the goal of global peace and security, universal prosperity, and sustainable development, human rights must be universal (i.e. everyone should enjoy substantively equal rights). If human rights are not equal for everyone, everywhere, those who are deprived of their human rights will have all the reasons to be unhappy. This can give rise to conflicts, violence and wars. In 2019, the then UN High Commissioner for Human Rights, Michelle Bachelet, at the opening of the 40th session of the Human Rights Council, declared that human rights-based policies deliver better outcomes for people while preventing grievances and conflicts.[7] This statement is a

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4 *Universal Declaration of Human Rights*, GA Res 217A (III), UNGAOR, 3d Sess, Supp No 13, UN Doc A/810 (1948) 71, Preamble.

5 *Ibid*, art 1.

6 *Transforming our world: the 2030 Agenda for Sustainable Development*, GA Res 70/1, UNGAOR, 70th Sess, UN Doc A/RES/70/1 (2015).

7 Michelle Bachelet (UN High Commissioner for Human Rights), *Opening Statement at the 40th session of the Human Rights Council* (25 February 2019), online: <ohchr.org> [perma.cc/3EQH-4RTZ].

modern reiteration of the 75-year-old UDHR Preamble, which asserts that the recognition of the inherent dignity and equal, inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.[8] Thus, the universality of human rights is the key premise for the functionality of the global human rights system and the peaceful, prosperous order it is meant to underpin.

III. What is Meant by the "Universality" of Human Rights?

As stated in the document itself, the *Universal Declaration of Human Rights* is "a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive […] to secure their universal and effective recognition and observance".[9] Despite this formulation, the concept of human rights universality has led to multiple interpretations. Some of these interpretations, as will be presented below, are more formalistic, and some are more substantive. Depending on the adopted interpretation, the universal human rights framework may be either a loose or a bold construct. Therefore, bringing clarity to this subject is of utmost importance for the present and future of universal human rights.

Frédéric Mégret, a professor at the McGill University Faculty of Law, distinguishes between a "thick" understanding of the "universality package" and its "thin" understanding.[10] A "thick" understanding, according to Mégret, is "one that includes the idea of rights, particular lists of rights, and particular understandings of such rights".[11] Although the belief in this relatively thick understanding of universality is, in his words, "part of the human right creed", nonetheless, "human rights are hardly universal in this thick way".[12] He proposes, instead, a "thinner" way of understanding the universality of human rights — as a universality across human rights traditions (akin to conventional "legal traditions").[13]

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8 *Universal Declaration of Human Rights*, GA Res 217A (III), UNGAOR, 3d Sess, Supp No 13, UN Doc A/810 (1948) 71, Preamble.

9 *Supra* note 3, preamble.

10 Frédéric Mégret, "Traditions of Human Rights: Who Needs Universal Human Rights?", (7 October 2019), online (blog): <mcgill.ca> [perma.cc/5C9M-2E92].

11 *Ibid*.

12 *Ibid*.

13 *Ibid*.

On the other hand, in his 2004 piece "The Complexity of Universalism in Human Rights", Makau Mutua, while criticizing the Western domination of the international human rights system, makes it clear, that for him, the universality of human rights relates to the substance — the "core content" of human rights.[14] In particular, he writes: "genuine universality is not possible if the core content of the human rights corpus is exclusively decided, leaving non-European cultures with the possibility to make only minor contributions at the margins, and only in its form."[15] Makau Mutua does not dispute the need for a universal understanding of the "core content", as enshrined in the international human rights documents, but rather calls for a greater inclusion of non-Western perspectives into the developed common (i.e. universal) human rights standards.[16]

Jack Donnelly, in his 2007 article "The Relative Universality of Human Rights", describes at least six meanings of the term "universality" of human rights: conceptual, historical (anthropological), functional, international legal universality (normative), overlapping consensus universality and ontological universality.[17] Below is a short summary of three aspects of universality, according to Donnelly, that are most relevant to the main question of this article – substantive universality.

Conceptual universality, according to Donnelly, means that human rights are universal "in the sense that they are held 'universally' by all human beings", and it is in effect "just another way of saying that human rights are, by definition, equal and inalienable [to all human beings]".[18] International legal (normative) universality, according to Donnelly, is the global political acceptance of universal human rights, as enshrined in the *Universal Declaration of Human Rights*, by states around the world.[19] Overlapping consensus universality, according to Donnelly, is converging moral endorsement of human rights by the world's leading doctrines across regions as the basis and framework for realizing their foundational doctrinal values and/or political conception of justice.[20]

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14 Makau Mutua, "The Complexity of Universalism in Human Rights", in Andras Sajo, ed, *Human Rights with Modesty: The Problem of Universalism* (Leiden: Martinus Nijhoff, 2004) 51 at 59.

15 *Ibid*.

16 *Ibid*.

17 Jack Donnelly, "The Relative Universality of Human Rights" (2007), 29:2 Hum Rts Q 281 at 283.

18 *Ibid*.

19 *Ibid* at 288–89.

20 *Ibid* at 289–91.

Donnelly concludes his article by defending so-called "relative universality", indicating that:

> This more flexible account of universality (and relativity) makes a three-tiered scheme for thinking about universality that I have long advocated particularly useful for thinking about what ought to be universal, and what relative, in the domain of "universal human rights." Human rights are (relatively) universal at the level of the concept, broad formulations such as the claims in Articles 3 and 22 of the Universal Declaration that "everyone has the right to life, liberty and security of person" and "the right to social security." Particular rights concepts, however, have multiple defensible conceptions. Any particular conception, in turn, will have many defensible implementations. At this level—for example, the design of electoral systems to implement the right "to take part in the government of his country, directly or through freely chosen representatives"—relativity is not merely defensible but desirable.[21]

While the "international legal (normative) universality", acknowledged by Donnelly himself, is very close in meaning to substantive universality (same human rights content everywhere in the world), the "relative universality" approach proposed by Donnelly is problematic. First, he seems to conflate, to some extent, the core substance of human rights, "rights concepts" (*what* the right-holders are entitled to), with the form of implementation of human rights (*how* the rights-holders get what they are entitled to).

Substantive universality, in fact, means that, for example, out of the right to take part in the government of the country or the right to social security, the right-holders get the same substance (outcome) everywhere in the world. At the same time, the modalities of implementing this outcome could, of course, be left to the discretion of the rights implementers. Yet, the terms "broad formulations" and "multiple defensible conceptions" [of human rights] used by Donnelly indicate that by "relative universality", he means not only the variety of acceptable implementation approaches (the "*how*-s") but also the variety of human rights substance understandings (the "*what*-s"). This is where Donnelly appears to challenge the idea of robust substantive equality and universality in rights, proposing to talk instead about the "broad formulations" allowing for "multiple defensible conceptions" (i.e. interpretations) of human rights.

But this "multiple defensible conceptions" approach to universality in effect means that human rights could be "equal" within a jurisdiction, but unequal across jurisdictions. This approach not only goes against the core

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[21] *Ibid* at 299.

idea of the UDHR and other international human rights standards, but it also defeats the fundamental logic behind the concept of human rights. If people in one place are entitled to one minimum standard of human rights, and people in another place to a different minimum standard, then this is not the "common [universal] standard" proclaimed by the *Universal Declaration of Human Rights*. To be truly universal, and, as such, achieve the objective of universal peace and security, human rights have to be equal in content for everyone across peoples, nations, countries, territories and jurisdictions. If universal human rights lack the same core content and understanding everywhere in the world, then the entire idea of "universal human rights" becomes rather meaningless.

IV. Universality Under the UN's Universal Human Rights Framework

Universal human rights came into existence after World War II as a framework for guaranteeing international peace and security, promoting social progress and improving standards of freedom and life. The groundwork for establishing the human rights universality framework was done within the United Nations Organization.[22] The *UN Charter* proclaims that "The peoples of the United Nations determined […] to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small […] have agreed to the present Charter of the United Nations" with the purpose "to maintain international peace and security".[23] The 1948 *Universal Declaration of Human Rights*, together with the successive core UN human rights treaties,[24] documented the specific rights to make the above UN

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[22] For example, in 1996 Hurst Hannum wrote: "The international community, led by the United Nations, has accomplished a great deal in developing minimum, universally applicable human rights standards". Hurst Hannum, "The Status of the Universal Declaration of Human Rights in National and International Law" (1996) 25 GA J Intl & Comp L 287 at 287.

[23] *Charter of the United Nations*, 26 June 1945, Can TS 1945 No 7.

[24] *International Covenant on Civil and Political Rights* (1966), *International Covenant on Economic Social and Cultural Rights* (1966), *International Convention on the Elimination of All Forms of Racial Discrimination* (1965), *Convention on the Elimination of All Forms of Discrimination Against Women* (1979), *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (1984), *Convention on the Rights of the Child* (1989), *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families* (1990), *International Convention for the Protection of All Persons from Enforced*

Charter pledge operative. Thus, universal human rights were deemed fundamental to the entire architecture of the UN-based global order. The 1993 World Conference on Human Rights in Vienna reaffirmed "the solemn commitment of all States to fulfil their obligations to promote universal respect for, and observance and protection of, all human rights and fundamental freedoms for all in accordance with the Charter of the United Nations, other instruments relating to human rights, and international law", specifically emphasizing that "The universal nature of these rights and freedoms is beyond question".[25]

It is important to note that seven of the core UN human treaties have achieved a nearly universal recognition and acceptance, each being ratified by over 85% of the world's states.[26] The UN core human rights treaties, together with the *Universal Declaration of Human Rights*, have thus established the most broadly shared body of universal principles and standards. No other corpus of substantive values and norms has ever achieved a comparable level of formal recognition and acceptance in human history.

Building on this foundation, the UN treaty bodies ("committees") under the core UN human rights treaties developed a rather rich body of so-called "general comments" – authoritative international explanations and interpretations of the treaty provisions. In addition, the same committees have issued over 1,400 decisions under their individual complaints mechanism, which also contributed to the clarification and detailing of the international human rights standards deriving from the UN core human rights treaties.[27] In addition, other UN organs and divisions have developed and released a number of authoritative documents guiding the contents and

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Disappearance (2006), *Convention on the Rights of Persons with Disabilities* (2006) as per the Office of the UN High Commissioner for Human Rights (OHCHR), see *The Core International Human Rights Instruments and Their Monitoring Bodies*, online: <ohchr.org> [perma.cc/5YBG-AMXL].

25 *Vienna Declaration and Programme of Action*, UN Doc A/CONF.157/23 (1993).

26 *International Covenant on Civil and Political Rights* (1966), *International Covenant on Economic Social and Cultural Rights* (1966), *International Convention on the Elimination of All Forms of Racial Discrimination* (1965), *Convention on the Elimination of All Forms of Discrimination Against Women* (1979), *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (1984), *Convention on the Rights of the Child* (1989), *Convention on the Rights of Persons with Disabilities* (2006) as per the Office of the UN High Commissioner for Human Rights (OHCHR), *Status of Ratification Interactive Dashboard*, online: <ohchr.org> [perma.cc/46MP-TYHH].

27 Andreas Johannes Ullmann, "Compliance with UN treaty body decisions: A glass one-third full or two-thirds empty?" (5 September 2023), online: <openglobalrights.org> [perma.cc/ZZ7S-XZDT].

substance of universal human rights.[28] Despite some inconsistencies, this body of provisions can be seen as the universal conceptual and normative framework of reference regarding fundamental human rights, as demonstrated by their incorporation into national constitutions and laws[29] and the reasonable level of state adherence to the decisions delivered by the UN human rights committees under their individual complaints mechanism.[30]

The universality of human rights is a key principle of international human rights law.[31] But the concept of universality under the United Nations framework is multidimensional and complex. For example, the *Universal Declaration of Human Rights* refers to "universal respect for and observance of human rights and fundamental freedoms" in the Preamble, concluding the Preamble with the following statement:

> The General Assembly,
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> Proclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.[32]

These two preambular references to universality mostly refer to "spatial" (quantitative) universality, i.e., the applicability of human rights (whatever their content) to all countries, territories, and people. This is the first aspect of human rights universality. At the same time, the *Universal Declaration of Human Rights* is explicitly referred to in the above cited paragraph as "a common standard" to be achieved by all peoples and all nations, meaning

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28 Office of the United Nations High Commissioner for Human Rights, *Frequently Asked Questions on Economic, Social and Cultural Rights*, Fact Sheet No 33 (2008), online: <ohchr.org> [perma.cc/J69L-GTES]; United Nations Secretary-General, *Guidance Note of the Secretary-General on Racial Discrimination and Protection of Minorities* (2013), online: *United Nations* <peacemaker.un.org> [perma.cc/MUV9-7JJ4].

29 European Commission for Democracy Through Law (Venice Commission), *Report on the Implementation of International Human Rights Treaties in Domestic Law and the Role of Courts*, Study No 690/2012, CDL-AD(2014)036 (8 December 2014) at 7-8, para 19 [Venice Commission Report, 2014].

30 Ullmann, *supra* note 24.

31 Office of the UN High Commissioner for Human Rights (OHCHR), "What are human rights?", online: <ohchr.org> [perma.cc/KAP8-CKU9].

32 *Supra* note 3, preamble.

by this "common standard" the Declaration's content and substance. And this is the second, substantive aspect of human rights universality.

The UN's understanding of universality goes much deeper than just the quantitative dimension. The first sentence of UDHR Article 1 states that "All human beings are born free and equal in dignity and rights". But UDHR Article 1 is in fact the foundation for the entire universal human rights system. As Francisco J. Rivera Juaristi pointed in the most recent 2024 Commentary to the *Universal Declaration of Human Rights*, "Article 1 of the UDHR provides the theoretical scaffolding that sustains all human rights norms".[33] In the formulation of UDHR Article 1, all human beings are entitled not just to some rights, but they are entitled to equality in dignity and rights. This entitlement is much more complex and profound than just a list of rights.

Dignity in the UN's framework is, probably, the most profound and foundational concept.[34] The concept of dignity is saliently emphasized as a foundational principle in the UN Charter (as "the dignity and worth of the human person") and in the first sentence of the UDHR's preamble:

> "Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world".

From the very beginning, Charles Malik (a distinguished diplomat from Lebanon who participated in the drafting of the UDHR) emphasized the importance of the dignity concept as the foundation for the entire human rights enterprise.[35] As a result, dignity was made part of Article 1 to serve the purpose of providing guiding rails for all other rights and principles established in the Declaration.[36]

Dignity, in fact, is the main determinant of the entire human rights system and individual human rights. In essence, all human rights are elements and means for ensuring everyone's life of/in dignity. As the 2024 Commentary to the UDHR puts it: "The term 'human rights' thus encompasses the various manifestations and spheres of human dignity. They are the minimum set of norms necessary to ensure a life in dignity,

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33 Humberto Cantú Rivera, ed, *The Universal Declaration of Human Rights: A Commentary* (Leiden: Brill Nijhoff, 2024) at 13, online (pdf): <brill.com> [perma.cc/4V7N-GKY3].

34 *Ibid*.

35 *Ibid* at 15.

36 *Ibid* at 16.

rather than merely a life in existence without purpose or meaning."[37] In another authoritative source, this idea is expressed in similar terms: "whereas human dignity is the core and the foundation of human rights, it is through the operationalization of rights that dignity is protected",[38] indicating that all human rights are ultimately the modalities for providing all people with a life of/in dignity.

Therefore, *equality in dignity*, in effect, necessarily requires equality in rights. Not just equality in rights among individuals within a country or territory, but equality in rights for *everyone and everywhere* (i.e. also between and across countries and territories). Naturally, this equality in rights is meant to be a substantive equality in rights (i.e. equality in what these rights substantively encompass) for everyone and everywhere. Based on this logic, the universal human rights under the UN framework are rights with the same substantive contents for everyone and everywhere in the world.

This complex understanding of universality, intertwined with the concepts of equality and dignity, is reiterated in many international treaties and UN documents and reflected on the official website of the Office of the UN High Commissioner for Human Rights (OHCHR), which describes the main human rights principles: "The principle of *universality* of human rights is the cornerstone of international human rights law. This means that we are all equally entitled to our human rights. This principle, as first emphasized in the UDHR, is repeated in many international human rights conventions, declarations, and resolutions."[39] Thus, the substantive (qualitative) universality is, in essence, equal entitlement to equal ("common standard") rights.

The connection in the above description of "universality" to dignity and equality basically echoes the above-cited UDHR preambular provision proclaiming the Declaration to be "the common standard" for all peoples and all nations. This description also connects well with the Declaration's foundational Article 1: "All human beings are born free and equal in dignity and rights." Taken together, these provisions clearly point not only to the "spatial", but also to the "substantive" universality of human rights, i.e.

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37 *Ibid* at 17.

38 Berma Klein Goldewijk, "Implementation of Rights" in Berma Klein Goldewijk et al, eds, *Dignity and Human Rights – The Implementation of Economic, Social, and Cultural Rights* (Ardsley, NY: Transnational Publishers, 2002) at 6.

39 *Supra* note 28.

universality where there are the same ("equal", "common standard") human rights across all peoples, nations, countries, territories and jurisdictions.

Similar provisions regarding the "spatial" and "substantive" universality could be found also in the Declaration adopted by the World Conference on Human Rights in 1993 in Vienna. For example, in point 1 of the Declaration the word "universal" is mentioned twice, pointing to both, "spatial" and "substantive" universality:

> The World Conference on Human Rights reaffirms the solemn commitment of all States to fulfil their obligations to promote universal respect for, and observance and protection of, all human rights and fundamental freedoms for all in accordance with the Charter of the United Nations, other instruments relating to human rights, and international law. The universal nature of these rights and freedoms is beyond question.[40]

Of special importance is the explicit reference to universal respect, observance, and protection of human rights "in accordance with" (i.e. as set in) "the Charter of the United Nations, other instruments relating to human rights, and international law". Points 37 and 76 of the Vienna Declaration further make another explicit reference to the "universal human rights standards as contained in international human rights instruments".[41] Thus, again, all these provisions reiterate the twofold understanding of universality – spatial ("everyone and everywhere") and substantive ("equal", i.e. same rights) – and emphasize that these rights are to be drawn from and understood according to the international human rights instruments.

To sum up, in the UN's conceptualization, human rights are conceived as a holistic system based on foundational ideas and principles defining the parameters and functioning of the entire system. These foundational principles of the universal human rights system are as follows: universality (in quantitative terms: "*all* human beings"), inalienability ("are born"), freedom and equality in dignity and rights. Equality in dignity and rights necessarily establishes universality of human rights in qualitative terms – i.e., entitlement to the same human rights by substance and content for everyone and everywhere, within and beyond any type of borders.

Therefore, the universality of human rights is a defining and indispensable feature of this system. Human rights are *human*, i.e. they

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[40] *Supra* note 22 at point 1.
[41] *Ibid* at points 37, 76.

belong to all human beings by virtue of just being born human beings, and therefore they are by definition universal (in the sense of covering all human beings). In addition, human beings are born inherently equal in their dignity/worth and therefore are entitled to the same set of universal human rights by substance and content.

The opposite, a rhetoric and formalist understanding of universality, in which human rights are universal in terms of using the same names and words, but having "localized" contents and substantive filling of these rights, essentially renders the entire idea of universal human rights meaningless and useless. If people in one place are entitled to one set of rights and people in another place – to a substantively different set of rights (even if the names of these rights are the same in all these places), then these rights are obviously not universal and cannot even be called "*human* rights". Because human rights, to be truly "pan-human" by their very meaning, must be the same rights for all human beings regardless of the place and status.

V. Streamlining Human Rights Universality at the National Level

The embrace of human rights universality at the national level ranges in depth across countries. Hurst Hannum describes countries where the *Universal Declaration of Human Rights* and other international standards are "a rule of decision binding on the court […] in a system in which international law has direct applicability" (Austria, Tanzania, etc), or the UDHR and other international standards are used "to interpret or inform conventional or domestic law which deals with human rights" (e.g. in Belgium, the Netherlands, etc).[42]

On the positive end of the spectrum, Moldova stands out for its enthusiastic and holistic embrace of the universal human rights framework. This country directly incorporates international human rights standards into its domestic legal system and even recognizes the supreme priority of these standards. *The Constitution of the Republic of Moldova* in its art.4 ("Human Rights and Freedoms") has the following wording:

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[42] Hurst Hannum, *supra* note 19 at 295.

> (1) Constitutional provisions on human rights and freedoms shall be interpreted and are enforced in accordance with the Universal Declaration of Human Rights, with the conventions and other treaties to which the Republic of Moldova is a party.
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> (2) Wherever disagreements appear between the conventions and treaties on fundamental human rights to which the Republic of Moldova is a party and its domestic laws, priority shall be given to international regulations.[43]

Following these constitutional provisions, the Moldovan national human rights institutions (Ombudsperson's Office and Equality Council)[44] and some national courts directly apply the mentioned international standards over national provisions and standards, thus in practice implementing the substantive universality of human rights. By the same token, many other European countries also adopted a straightforward approach to the incorporation of international (universal) human rights norms into their legal order by having in their respective constitution a special clause declaring that international human rights standards became part of their domestic legal order once they entered into force for that particular State (Albania, Armenia, Bulgaria, the Czech Republic, Lithuania, the Netherlands, Portugal).[45]

Similarly, pro-universalist approaches could be found in Latin America. For example, as reported by the Council of Europe Venice Commission, the constitutions of Argentina, Brazil, Bolivia, Colombia, Costa Rica, Mexico, Venezuela, explicitly reference the high standing of the international human rights law in their legal systems and some of them even establish the supremacy of international human rights treaties (the 1985 Constitution of Guatemala, the 1993 Constitution of Peru, the 1980 Constitution of Chile, the 1991 Constitution of Colombia).[46]

Another recent progressive example in this regard is Scotland. In early 2019, National Taskforce for Human Rights Leadership was established to advance human rights and equality in Scotland.[47] In March 2021, the Taskforce published the National Taskforce for Human Rights Leadership Report setting out parameters for establishing a statutory framework bringing internationally recognized human rights treaties into domestic law

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43 *Constitution of the Republic of Moldova*, 2016, online: <constituteproject.org> [perma.cc/V6KE-XH2S].

44 The Equality Council of Moldova, *Decisions and Opinions*, online: <egalitate.md> [perma.cc/8XBK-E8JL].

45 Venice Commission Report, 2014, *supra* note 26 at 7–8, point 19.

46 *Ibid* at 4–5, point 8.

47 *National Taskforce for Human Rights Leadership Report* (2021), online: Scottish Government <gov.scot> [perma.cc/8ZBL-HYRT].

to protect and advance the realization of human rights for everyone in Scotland.[48] The Report called for the full incorporation into Scotland's law of all internationally recognized human rights, explicitly including economic, social and cultural rights as per the International Covenant on Economic, Social and Cultural Rights, as well as provisions of other core international human rights conventions, notably regarding elimination of discrimination against women, racial discrimination and the rights of persons with disabilities. The Report further provided for the development of a new human rights framework in Scotland explicitly based on the international human rights standards.

In October 2022, another report on the new Scottish Human Rights framework was published.[49] It reflected the outcome of multiple workshops and consultations held in Scotland discussing the transition to the new Scottish Human Rights Bill. The Report states:

> The Scottish Government justifiably describes its forthcoming Bill as world-leading because it will, within one integrated framework, give legal effect to the full range of internationally recognised human rights which belong to everyone and give specific recognition to the rights of women, children, disabled, ethnic minority and older and LGBTI people. […] The framework will mandate a new range of legal duties relating to minimum standards and progressive realisation of economic, social, cultural and environmental rights (such as rights to adequate housing; highest attainable standard of physical and mental health; and a healthy environment).[50]

The Report further describes significant changes, such as: (a) move from "civil and political" to "civil, political, economic, social, cultural and environmental" rights, (b) move from equal opportunities to equal enjoyment of human rights, and (c) move from incorporation to integration of human rights.[51]

The above selection of positive examples demonstrates that working models for streamlining human rights universality into the national systems are progressively devised and applied in various parts of the world. At the same time, another group of world's leading countries adopted and continue to promote a rather questionable approach to the universality of human rights, one of them being Canada.

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48 *Ibid*.

49 *Integrated Implementation Workshop Series Findings* (25 October 2022), online (pdf): University of Strathclyde Centre for the Study of Human Rights Law <strath.ac.uk> [perma.cc/T9S5-KP6H].

50 *Ibid*.

51 *Ibid*.

VI. "Universality" of Human Rights in Canada

Canada has a well-regarded national human rights system and a high human rights standing,[52] but it does not embrace universal human rights standards holistically and systemically.

First of all, Canada operates a so-called "dualist" legal system, meaning that ratification of an international human rights treaty on its own does not make this international standard an enforceable part of domestic law. To achieve this, the respective international human rights standard should be incorporated through a separate domestic legal act. Canada incorporated some selected pieces of international human rights law into domestic legislation and policy frameworks (civil and political rights, standards on gender equality, provisions regarding the rights of the Indigenous peoples), leaving to the discretion of domestic institutions and courts to develop their own interpretation of the "non-incorporated" human rights. Despite some recognition of international human rights principles and standards in interpretation of domestic legal provisions, many of Canada's domestic legal provisions and their interpretations diverge from the UN standards.

For example, Canada, at the federal level, does not fully recognize economic, social, and cultural rights (with very few exceptions).[53] This happens despite a prominent Canadian (John Peters Humphrey) being at the origins of the *Universal Declaration of Human Rights*, which enshrines not only civil and political rights, but also economic, social and cultural rights.

The same applies to the UN *Convention on the Rights of Persons with Disabilities* (CRPD) — Canada ratified this international human rights standard but did not transpose it fully and squarely into its domestic legal order. In the 2019 Report on her visit to Canada the UN Special Rapporteur on the Rights of Persons with Disabilities, while acknowledging the existing disability framework in Canada, stated that the Government of Canada needed to conduct a comprehensive legislative review to fully harmonize the federal, provincial and territorial normative frameworks with the

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[52] For example, Freedom House, *Freedom in the World*, online: <freedomhouse.org> [perma.cc/6RNC-3W24] [Freedom in the World]; The Economist Intelligence Unit, *Democracy Index*, online: <eiu.com> [perma.cc/63L3-7SS8].

[53] *Canadian Charter of Rights and Freedoms*, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 11 [*Charter*].

provisions of the *Convention on the Rights of Persons with Disabilities* (CRPD).[54] The report further noted that the Canadian legislation "does not yet reflect the model of substantive equality introduced by the Convention, which challenges structural discrimination and the exclusion of persons with disabilities" and that "certain pieces of legislation at the federal, provincial and territorial levels are contrary to the rights of persons with disabilities set out in the Convention", like "for example, provisions on: substitute decision-making regimes, such as guardianship or *tutelle*; the involuntary hospitalization and treatment of persons with psychosocial disabilities; and […] on deprivation of liberty resulting from declarations of unfitness to stand trial or non-criminal responsibility on grounds of mental health conditions".[55] In short, Canadian standards with regard to rights of persons with disabilities, in many respects, were found to be incompliant and inferior to the international human rights standards as embodied in the CRPD.

Also, despite ratifying the *International Covenant on Civil and Political Rights* (ICCPR), the UN *Convention on the Rights of the Child*, and agreeing to the text of the UN Declaration on Minorities clarifying and expanding on Article 27 of ICCPR, Canada consistently does not incorporate and embrace the provisions of the mentioned universal human rights standards concerning ethnic and linguistic minorities (beyond the Francophone culture and French language).[56] These are just a few of the most notable examples. In his most recent study "Closing the Implementation Gap: Federalism and Respect for International Human Rights in Canada", Alex Neve provides scores of more such examples.[57]

On the other side, some positive developments with regard to embracing international human rights standards took place in Canada recently. In 2021, Canada incorporated the UN *Declaration on the Rights of Indigenous Peoples*;[58] elements of international standards were mentioned in cases such as *Baker v*

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[54] Catalina Devandas-Aguilar (UN Special Rapporteur on the rights of persons with disabilities), *Report of the Special Rapporteur on the rights of persons with disabilities: Visit to Canada*, UN DOC A/HRC/43/41/Add.2 (2019) para 26.

[55] *Ibid* at paras 26–27.

[56] For example, art 4(3) of the *UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities*, GA Res 47/135, UNGAOR, 47th Sess, UN Doc A/RES/47/135 (1992): "States should take appropriate measures so that, wherever possible, persons belonging to minorities may have adequate opportunities to learn their mother tongue or to have instruction in their mother tongue."

[57] Neve, *supra* note 2 at 7.

[58] *United Nations Declaration on the Rights of Indigenous Peoples Act*, SC 2021, c 14.

Canada[59], *Nevsun Resources Ltd v Araya*[60] and *Leobrera v Canada*[61], while the internationally established right to adequate housing was directly quoted in the 2019 National Housing Strategy Act[62]. All these developments in bits and pieces introduced segments of international human rights standards into the domestic Canadian legal order. But these developments are still rather selective and patchy in nature. To genuinely embrace the universality of human rights, Canada needs to adopt an approach similar to the one taken now by Scotland, by developing a deep and comprehensive statutory human rights framework boldly and squarely based on the international human rights standards.

Calls for such a framework in Canada have been made. Most recently, in May 2023, Alex Neve presented a document titled "Closing the Implementation Gap: Federalism and Respect for International Human Rights in Canada", in which he essentially urged the development of a national framework for international human rights implementation grounded in the principles of co-operative federalism and the national concern doctrine.[63] The national framework is proposed to include, *inter alia*, the following points:

- Commit publicly and explicitly to ensuring that all policies and actions taken by federal, provincial and territorial governments conform to international human rights obligations;
- Strengthen existing laws, policies and processes to support implementation of international human rights obligations;
- Enact comprehensive legislative reform, including adoption of international human rights implementation laws by federal, provincial and territorial governments;
- Ensure an enhanced role for Indigenous governments in implementing international human rights obligations, in keeping with the UN Declaration on the Rights of Indigenous Peoples
- Formalize the role of municipal governments in implementing international human rights obligations

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59 *Baker v Canada* (Minister of Citizenship and Immigration), [1999] 2 SCR 817.
60 *Nevsun Resources Ltd v Araya*, 2020 SCC 5, [2020] 1 SCR 166.
61 *Saporsantos Leobrera v Canada (Citizenship and Immigration)*, 2010 FC 587 (CanLII), [2011] 4 FCR 290.
62 *National Housing Strategy Act*, SC 2019, c 29, s 313.
63 Neve, *supra* note 2 at 3–4

- Enhance stakeholder and public engagement to improve the capacity of stakeholders to contribute to and monitor the implementation of human rights in Canada;
- Establish a dedicated secretariat equipped with long-term funding, including for Indigenous People's organizations and civil society groups, to support all aspects of the national framework.[64]

It was further reported that a Federal Human Rights Implementation Framework, applicable to federal departments and agencies, was under development, inclusive of the following elements:

- The Director General International Human Rights Forum, launched in 2022 and co-chaired by Canadian Heritage and the Department of Justice, through which senior officials from federal departments and agencies follow-up on international human rights recommendations;
- The Network of Focal Points on International Human Rights, also co-chaired by Canadian Heritage and the Department of Justice and made up of policy experts, to meet quarterly to discuss Canada's international human rights obligations;
- The Core Interdepartmental Working Group on International Human Rights to serve as a secretariat that supports the work of the framework's other committees;
- Advisory Committees on International Human Rights, composed of key outside stakeholders, to be established to provide advice and collaborate with the other committees.[65]

In this regard it is noteworthy that Canada lags behind many countries in building a solid and comprehensive national human rights implementation framework. According to a recent study, at least 152 National Human Rights Action Plans (the most common form of national human rights implementation frameworks) have been adopted in 79 countries since 1993, with more than half of the plans adopted in the last ten years.[66] Roughly half of those countries adopted two or more human rights plans.[67] Canada has never had a national human rights action plan or other

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64 *Ibid* at 4.

65 *Ibid* at 17–18.

66 Sébastien Lorion, "The Global Diffusion of National Human Rights Actions Plans at Vienna 30: A Chasing Game Between international Guidance and State Practice" (10 Jul 2023) at 2, online (pdf): <papers.ssrn.com> [perma.cc/U5H9-D3BE].

67 *Ibid* at 10.

national human rights implementation framework document in its history;[68] a fact that raises questions about the firmness of Canada's commitment to human rights. This dynamic suggests that Canada's human rights implementation relies more on fragmented efforts and inertia than on thoughtful design and strategic planning. A bold and robust reform is required to rebuild the Canadian human rights system in line with the universal human rights standards and the best human rights implementation approaches.

A positive step is the recent *Human Rights-Based Approach (HRBA) Framework* released by the Ontario Human Rights Commission in October 2023.[69] This document states that "A human rights-based approach is derived from international and domestic human rights obligations".[70] The title of the relevant section also contains a citation note referring to two documents – the Government of Canada's statement on HRBA[71] and the UN's Common Understanding on HRBA[72] – both of which stipulate that HRBA is to be understood as based on the international human rights standards. Although this HRBA Framework of the Ontario Human Rights Commission has some shortcomings (also regarding the place and role of the international human rights standards in the Canadian legal system), its attempt to promote the universality of these international standards is both important and notable.

However, Canadian legal dualism seems to be just a part of a more serious and much deeper problem. The real problem is that Canada still struggles to conceptualize human rights in comprehensive and universalist terms at par with the UN human rights system. The key point of divergence in this struggle is the place and role of human dignity in the Canadian human rights system.

"Dignity and worth of the human person" are officially proclaimed in the Preamble of the 1960 Canadian Bill of Rights: "The Parliament of Canada, affirming that the Canadian Nation is founded upon principles that

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68 *Ibid.*

69 Ontario Human Rights Commission, *OHRC releases new web tool to help Ontarians meet their human rights obligations* (30 October 2023), online: <ohrc.on.ca> [perma.cc/8J9N-THXY].

70 *Ibid.*

71 Government of Canada, *Human Rights-Based Approach* (26 May 2007), online: <international.gc.ca> [perma.cc/9K3E-DVDP].

72 United Nations Sustainable Development Group, *The Human Rights Based Approach to Development Cooperation Towards a Common Understanding Among UN Agencies* (September 2003), online: <unsdg.un.org> [perma.cc/3WPE-LZSF].

acknowledge the supremacy of God, the dignity and worth of the human person and the position of the family in a society of free men and free institutions".[73] But two decades later, the 1982 Canadian Charter of Rights and Freedoms completely misses out on the "dignity" wording in its text and does not postulate its list of rights to be based on the concept of human dignity. Part 1 of the Charter starts with the statement that "Canada is founded upon principles that recognize the supremacy of God and the rule of law". Then the Charter proceeds with a list of recognized rights: Fundamental Freedoms (freedom of conscience and religion; freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication; freedom of peaceful assembly; and freedom of association), Democratic Rights, Mobility Rights, Legal Rights, Equality Rights, and Language Rights.

The Supreme Court of Canada, nonetheless, has covered up for this omission. In its case law, for instance, in *R v Oakes* the Supreme Court stated that "respect for the inherent dignity of the human person must be a guiding principle for Canadian courts when they interpret the [Canadian] Charter of Rights and Freedoms".[74] At the same time, the same Supreme Court in *Blencoe v British Columbia* stated that human dignity is not a constitutional right in Canada.[75]

Dignity played a prominent role in judicial interpretations of three Charter sections: 7, 12, and 15.[76] These sections cover: right to life, liberty, and security of the person (section 7), prohibition of cruel and unusual punishment or treatment (section 12), and equality rights (section 15). Human dignity was the prime concept and value in cases regarding state's restrictions on abortion (concurring judgment of Justice Wilson in *R v Morgentaler*), ban on assisted suicide (in *Carter v Canada*), consecutive sentences of life without parole (in *R v Bissonnette*). In the last case the Court, in fact, stated that the purpose of the prohibition of cruel and unusual punishment or treatment is to protect human dignity.[77]

In *Law v Canada*, the Supreme Court of Canada also established that the purpose of section 15 was to protect human dignity and provided the

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[73] *Canadian Bill of Rights*, SC 1960, c 44.

[74] *R v Oakes*, [1986] 1 SCR 103 at para 136.

[75] *Blencoe v British Columbia (Human Rights Commission)*, [2000] 2 SCR 307 at para 77.

[76] Hassan Ahmed, "Human Dignity" (22 August 2022), online: <constitutionalstudies.ca> [perma.cc/W7EP-X4RK]

[77] *Ibid*.

following description of its understanding of the concept of human dignity: "Human dignity means that an individual or group feels self-respect and self-worth. It is concerned with physical and psychological integrity and empowerment […and] is harmed by unfair treatment premised upon personal traits or circumstances which do not relate to individual needs, capacities, or merits."[78]

According to the Canadian Institute for the Administration of Justice, the Supreme Court of Canada understands dignity as one of "the values that underlie the [Canadian] Charter", finding expression in "almost every right and freedom" guaranteed therein.[79] Although there is no right to dignity explicitly set out in the Canadian Charter of Rights and Freedoms, Quebec's Charter of Human Rights and Freedoms provides a right to the "safeguard of dignity," which the Supreme Court of Canada understands as protecting against "interferences with the fundamental attributes of a human being which violate the respect to which every person is entitled simply because he or she is a human being and the respect that a person owes to himself or herself."[80]

Yet, the Canadian Institute for the Administration of Justice recognizes that there is a tension in the application of human dignity concept in the Canadian law because of it being an "abstract and subjective notion", because of its potentially overly wide applicability, and because of difficulties with its legal articulation.[81] In the context of Quebec, the Supreme Court of Canada held that in order to not trivialize the "meaningful concept" of dignity, a high and objective threshold is required.[82] The Canadian Institute for the Administration of Justice concludes that "on the one hand, dignity as an essential quality of human beings can logically permeate many rights as it is their genesis […but] on the other hand, its quasi-sacred quality makes it hard to define and therefore difficult to apply".[83]

The above accounts point to a significant difference between the UN's and Canada's conceptualization of human dignity and human rights' foundations. Under the UN's universal human rights framework, all human rights stem from the foundational principle of inherent *equality in dignity and*

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78 *Law v Canada (Minister of Employment and Immigration)*, [1999] 1 SCR 497 at paras 6, 53.

79 Canadian Institute for the Administration of Justice, *From Notion to Norm: The Many Meanings of Dignity* (14 September 2022), online: <ciaj-icaj.ca> [perma.cc/2BQ3-R4S6].

80 *Ibid*.

81 *Ibid*.

82 *Ibid*.

83 *Ibid*.

rights for all human beings. All human rights under the UN framework are, in fact, specific modalities for fulfilling a single meta-right: *the right to a life of equal worth and dignity*. Therefore, the right to a life of equal worth and dignity should, in principle, be an enforceable and justiciable right.

Human dignity has a rather clear and identifiable meaning under the UN framework: all goods and services that are necessary for a contemporary life of equal worth and dignity shall be guaranteed by specific human rights.[84] Therefore, economic, social and cultural rights, being essential for a life of equal worth and dignity, are equally important and indivisible human rights under the UN framework, and they have to be recognized constitutionally and/or legally. Furthermore, human dignity under the UN understanding is not just about what the government *should not do* to avoid infringing on human dignity, but it is also about what the government *should do* to substantively uphold equality in dignity and rights.

Under the Canadian human rights framework human dignity seems to have a somewhat truncated meaning. First, Canadian human rights acts do not recognize most of economic, social and cultural rights, although they are an indispensable and central component for guaranteeing everyone a life of equal worth and dignity. Second, Canadian case law concerning the concept of human dignity refers either to interferences with human dignity through the actions of the government or to discrimination as a violation of human dignity.[85] In cases involving interference with human dignity through the actions of the government, human dignity is understood by the Court mostly in terms of inherent personal autonomy (in the concurring judgment of Justice Wilson in *R v Morgentaler* and in the Court's ruling in *Carter v Canada*), or in terms of some sort of ethical "humanism" (in *R v Bissonnette*).[86]

With regard to the concept of dignity in non-discrimination cases, it is important to note that Section 15 of the Charter refers to equality before the law and equal protection under the law (on some grounds): "Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin,

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[84] See e.g. Berma Klein Goldewijk, "Implementation of Rights" in Berma Klein Goldewijk et al, eds, *Dignity and Human Rights – The Implementation of Economic, Social, and Cultural Rights* (Ardsley, NY: Transnational Publishers, 2002) at 6.

[85] *R v Morgentaler*, [1988] 1 SCR 30, 44 DLR (4th) 385 (concurring judgment of Justice Wilson); *Carter v Canada (Attorney General)*, 2015 SCC 5, [2015] 1 SCR 331; *R v Bissonnette*, 2022 SCC 23, [2022] 3 SCR 60.

[86] *Ibid*.

colour, religion, sex, age or mental or physical disability".[87] This "equality before the law and equal protection of the law" is a much narrower concept than the UDHR's "equality in dignity and rights" stipulation, because the "equality in dignity and rights" principle determines what the law should provide to ensure *the outcome* – equality in worth and dignity. By contrast, equality before the law does not explicitly demand this outcome; it mostly requires that the law, whatever its content, should not generate "new" discrimination.

Also, in *Law v Canada*, the Supreme Court of Canada stated that: "Human dignity means that an individual or group feels self-respect and self-worth.[88] It is concerned with physical and psychological integrity and empowerment […and] is harmed by unfair treatment premised upon personal traits or circumstances which do not relate to individual needs, capacities, or merits."[89] But the UDHR's understanding of human dignity is broader than the feeling of self-respect and self-worth (which undoubtedly is important); the UDHR's human dignity conceptualization refers to a substantive *life of equal worth and dignity* (not just to feelings).

It is truly puzzling that the Canadian courts (and the broader Canadian state) do not adopt the UN's formulation of foundational human rights principles and, most notably, UN's conceptualization of equality in human dignity and rights. The promotion of the "national" Canadian approach to human rights foundations and to the concept of dignity has so far rendered a framework, which only partially intersects with the UN's universal human rights framework. And the mismatches between the two are not just technical; they are of *significant conceptual nature*. In effect, this means that the human rights framework in Canada is a framework of "Canadian rights", rather than a framework of universal human rights.

That is why the key issue with human rights universality in Canada is not just the country's legal dualism. The real problem is the conceptualization of human rights in Canada. Human rights in Canada are not conceptualized along the same foundational principles as the international universal human rights system and for this reason they do not build into this universality. There are many intersections and similarities

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87 *Charter, supra* note 52, s 15

88 *Law v Canada (Minister of Employment and Immigration)*, [1999] 1 SCR 497 at para 53, 170 DLR (4th) 1.

89 *Supra* note 74 at paras 6, 53.

between the Canadian and the international universal human rights frameworks, but they are not a full or close-to-full match.

The alienation of the universal human rights paradigm by some Western countries, such as the United States[90] and Canada, produces many negative impacts on global affairs. First, it encourages the development of "national" versions of human rights in many other parts of the world (in China, Russia, Hungary, Turkey), practically deconstructing the idea of "universal" human rights.[91] Second, it strengthens the perception that "international human rights" were created by Westerners for non-Westerners,[92] in order to keep the latter under control. Finally, this approach undermines the entire modern system of international law and global legal order based on the international human rights standards.

VII. Rethinking and Strengthening the Universal Human Rights Paradigm

Lasting peace and global security, progress and sustainable development are hardly imaginable without a strong and robust universal human rights system at the foundation. The current 75-year-old international human rights system laid the groundwork for establishing an expansive and ramified framework of standards and a progressive set of international human rights institutions and mechanisms.[93] Yet, now this framework needs to be taken to another, deeper and stronger level. The international human rights framework needs to be seriously rethought and substantially strengthened to make the global human rights regime truly and factually universal in order to achieve its ultimate goal of providing lasting peace and security everywhere, sustainable well-being and fulfillment to everyone. Some of the ideas in this regard are presented below.

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[90] The United States of America are among a handful of Western countries with a record of very few ratifications of the UN core human rights treaties and US are the only UN member-state which did not ratify the UN Convention on the Rights of the Child. Thus, the US's primary way of defying the universality of human rights is by dissociation from the well-entrenched international human rights standards and by insisting on an American "view" on human rights. Office of the UN High Commissioner for Human Rights (OHCHR), *Status of Ratification Interactive Dashboard*, online: <ohchr.org> [perma.cc/46MP-TYHH].

[91] Freedom House, *supra* note 1; previous annual *Freedom in the World* reports by Freedom House, Freedom in the World, *supra* note 52.

[92] Makau Mutua, "Savages, Victims, and Saviors: The Metaphor of Human Rights" (2001), 42:1 Harv Intl LJ 201–45.

[93] Balan, *supra* note 2.

First, international human rights bodies and mechanisms, most notably treaty committees and UN Human Rights Council Special Procedures (special rapporteurs and working groups) have to be empowered to work out a comprehensive, robust and coherent "Code" of universal human rights standards, stemming from the UDHR and treaty provisions. The groundwork has already been done through the release of general comments, determinations on individual complaints and various guidelines, but further consolidation and streamlining is required to organize these separate and scattered pieces into a single well-structured and coherent document.

Second, international human rights bodies and mechanisms, most notably treaty committees, must be institutionally strengthened with the legal powers to hold state and non-state violators legally and financially accountable for human rights violations. This could be done by providing the UN human rights treaty bodies with legally binding powers of financial sanctioning and compensation awarding under their individual complaints mechanism.[94] Financial "stimulation" may determine Canada and other states to embrace international human rights standards more genuinely and systemically (as it happened in Europe through the European Court of Human Rights mechanism).[95]

Third, all Western countries, including Canada, should make a conscious move to genuinely and holistically embrace the universal human rights framework, discontinuing all kinds of "national" versions of human rights. In particular, Canada needs to seriously reconsider the conceptual premises and basis of its human rights system and align it with the universal human rights framework established by the UN.

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[94] The UN human rights treaty bodies are already practicing the award of financial compensations, but these awards are not legally binding on states and this practice is not yet shaped out well technically (see Ullmann, *supra* note 24).

[95] Ullmann, *supra* note 24.

VIII. Conclusion

To conclude, the universal human rights framework is key to modern challenges and crises. Global peace and security depend on individual peace and security, underpinned by universal human rights. No lasting peace and security, sustainable development and prosperity are possible without the universal human rights at their foundation.

Despite variances in conceptualizing universality in scholarly works, the UN documents generally attribute to it two specific meanings – "spatial" (quantitative) universality, meaning that human rights are applicable everywhere and for everyone, and "substantive" (qualitative) universality, meaning a "common standard" of human rights ("equal rights"). Without the "substantive" universality at the basis the entire international human rights system loses its sense and therefore the substantive understanding of universality should be maintained and strengthened.

There are many positive examples of human rights universality transposition into the national legal order. But, despite a generally good human rights record, Canada does not in practice embrace human rights universality enthusiastically and holistically. Its approach to international human rights standards is rather patchy and inconsistent. Calls for serious reconstruction of the Canadian human rights implementation framework along the lines of the international human rights standards have been made (most recently, in a publication by Alex Neve). But a more serious question about the conceptual underpinnings of the Canadian human rights system is also important. Canada has to follow through on the calls for reconsideration of its system.

The post-World War II international human rights system laid the groundwork for establishing an expansive and ramified framework of standards and a progressive set of international human rights institutions and mechanisms. Yet, now this framework needs to be taken to another, deeper and stronger level. The universal human rights framework needs to be rethought and reconstructed to make the global human rights regime truly and factually universal in order to achieve its ultimate goal of providing lasting peace and security everywhere, sustainable well-being and fulfillment to everyone.

First, international human rights bodies and mechanisms, most notably treaty committees and UN HRC Special Procedures, have to be empowered to deliver a comprehensive, robust and coherent "Code" of universal human

rights standards. Second, international human rights bodies and mechanisms, most notably treaty committees, have to be institutionally strengthened with legal powers to hold state and non-state violators practically accountable for human rights violations. Third, all Western countries should genuinely and holistically embrace the universal human rights framework, discontinuing all kinds of "national" versions of human rights. Without the rebuilding of a truly universal human rights system, human rights globally might soon see an even more dramatic decline, while global crises will widen and deepen.