# CELEBRATING THE UNIVERSAL DECLARATION OF HUMAN RIGHTS AND CONFRONTING THE CHALLENGE OF SAFEGUARDING HUMAN RIGHTS IN TIMES OF WAR

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The *Universal Declaration of Human Rights*, adopted by the United Nations General Assembly on 10 December 1948,[1] celebrated its 75th anniversary in 2023. A visionary document, the Declaration is a testament to humanity's commitment to justice, human dignity and the pursuit of human rights. It may be said that the norms and values enshrined in the Declaration are as crucial today as when they were enacted.

The origins of the Universal Declaration, and the international human rights movement that it sparked, are intimately connected to Canada. John Peters Humphrey, a Canadian legal scholar, was

1 UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III), available at: www.refworld.org/docid/3ae6b3712c.html [accessed 16 November 2023]. Hereinafter: the "Declaration" or "Universal Declaration".

a foundational figure in the international human rights movement, and in particular, the Universal Declaration. His contributions to the development of the Declaration, and his subsequent dedication to the advancement of human rights principles shaped how human rights principles were recognized. Humphrey was the first Director of the United Nations Division of Human Rights, and in this role, he was responsible for translating the ideals enshrined in the Declaration into a concrete document. Working closely with important figures and an international team of legal experts, Humphrey had a crucial role in drafting the Declaration, and making it a reality. His impact on the Declaration was crucial, as his commitment to the protection of human rights shaped the document and ensured that it reflected the shared values of the global community.[2]

Humphrey's intellectual contributions extended beyond the drafting process of the Declaration. His writings and speeches emphasized the philosophical underpinnings of human rights, advocating for the inherent dignity of every individual. His work laid the foundation for the legal principles that underpin the human rights framework, emphasizing the indivisibility, interdependence and universality of human rights. Humphrey pursued his work on human rights as the United Nations' first Special Rapporteur on the Prevention of Discrimination and Protection of Minorities, which highlighted his devotion to addressing contemporary challenges to human rights. Humphrey's commitment to social justice, exemplified in his later work as a human rights professor and author, highlighted his long-lasting contribution to the field beyond his formal role in the United Nations.

The post-Second World War era witnessed a surge in the development of international human rights instruments. International conventions such as the *International Covenant on Civil and Political Rights* and the *International Covenant on Economic, Social and Cultural Rights* reinforced the commitment to protecting human rights at the international level. These instruments set the stage for more robust protections for civil and political rights, as well as economic, social and cultural rights. Together with the Declaration, these two Conventions form the International Bill of Human Rights. Many other international conventions and declarations on human rights were adopted, and the Declaration also set the stage for treaties on the repression of international or transnational crimes, such as torture, that perpetuate human rights violations.

Against this background, as we look back and pause on the history of the adoption of the Declaration, we witness flagrant violations of human rights around the globe. In times of war, for example, where chaos and violence threaten the fabric of a human rights-based system, upholding the norms announced in the Declaration assumes even greater relevance. How can human rights be protected and upheld during armed conflicts? This short essay explores the complex and crucial intersection of human rights during armed conflicts, underscoring the significance of safeguarding the inherent dignity and fundamental rights of individuals, even in the darkest of times, even in times of war. As

2 See generally about John Peters Humphrey: R. St. John Macdonald, "Leadership in Law: John P. Humphrey and the Development of International Law of Human Rights", Reprint from: (1991) *The Canadian Yearbook of International Law* 29 at 3–92.

the Declaration is commemorated, it is imperative to examine its omnipresence and the relevance of human rights values in armed conflicts, as well as the challenges posed by evolving warfare dynamics.

## SAFEGUARDING HUMAN RIGHTS IN TIMES OF WAR

Despite the foundational principles of the Declaration, challenges persist in the effective implementation of human rights during times of war. The protection of human rights is tested during times of armed conflict, where the obligation to protect civilians becomes paramount. Warfare poses unique challenges to the protection of human rights. Civilians are far too often victims of war crimes and human rights violations.

Moreover, the nature of modern armed conflicts, at times marked by the participation of non-state actors and asymmetric warfare, complicates the application of traditional humanitarian norms. The conduct of armed conflicts has undergone profound changes since the adoption of the Declaration. The complexities and challenges faced by civilians have multiplied. The rise of non-state actors, the proliferation of technology, and the often-blurred lines between combatants and non-combatants necessitate a comprehensive human rights approach to protect the inherent dignity of individuals during hostilities.

The synergy between human rights norms and the laws of war is crucial in mitigating the impact of armed conflicts on civilians, and minimizing human suffering. The laws of war provide a specialized legal framework for the conduct of hostilities, complementing the broader existing human rights norms, including those enacted in the Declaration.

### The Declaration and Human Rights Norms in Armed Conflicts

Article 3 of the Declaration emphasizes the *right to life, liberty, and security of person*. In times of war, this principle underscores the imperative to minimize civilian casualties and uphold the safety of non-combatants. Articles 5 and 7 unequivocally *condemn torture and cruel, inhuman, or degrading treatment*. Upholding these principles is crucial in preventing the abuse of detainees and ensuring the humane treatment of prisoners of war. Articles 9 and 10 affirm the *right to liberty and a fair trial*. Protecting these rights is essential to prevent arbitrary detention. Furthermore, states of emergency, frequently declared during wartime, may grant governments power to suspend certain rights temporarily. However, the danger lies in the potential abuse of these powers. Legal mechanisms must be in place to prevent the misuse of emergency powers and to ensure that individuals are guaranteed the protection of their rights.

One of the primary challenges in times of war is distinguishing between combatants and non-combatants. International humanitarian law delineates the rights and protections owed to civilians during armed conflicts. Nonetheless, the practical application of these provisions remains a challenge, as the nature of contemporary warfare blurs traditional lines between combatants and non-combatants. The rise of non-state actors and asymmetrical conflicts complicates efforts to protect civilians, necessitating a re-evaluation of legal frameworks to adapt to the evolving nature of warfare.

Governments bear the primary duty to protect the rights of their citizens, both in times of peace

and war. State responsibility is a crucial aspect of safeguarding human rights. The failure to prevent human rights abuses by armed forces can result in consequences, both domestically and internationally. Moreover, non-state actors, including militia groups and private military contractors, further complicate the landscape of human rights protection in times of war. While international law traditionally focuses on the responsibilities of States, international criminal law recognizes the responsibility of individuals for international crimes (e.g. war crimes, crimes against humanity, genocide), which encompass massive human rights violations. Legal mechanisms and international cooperation are essential in ensuring accountability for human rights violations, so that the quest for justice is not hindered by jurisdictional gaps.

## CONCLUSION

As we celebrate the anniversary of the Universal Declaration, it is imperative to recognize its enduring importance, while not ignoring some persisting challenges in the protection of human rights globally. The norms enshrined in the Declaration serve as a moral compass, guiding nations and individuals toward a more just and humane world, even in the face of armed conflict. By reaffirming our commitment to these universal values, we can strive to build a future where the inherent dignity and rights of all individuals are respected, protected, and fulfilled, regardless of the circumstances. The Declaration provides a foundational framework, and its concrete application requires a global commitment. As the global community confronts the multifaceted challenges of the 21st century, the protection of human rights both in times of peace and in times of war remains a crucial goal on the journey to a more just and humane world.