There are compelling reasons for being content in living at a time when the basic requirements of humanity and human rights have been recognized by the ratification of most of the international human rights and international humanitarian law instruments. Clearly, the existence of disparity between the recognized norms and the actual behavior of states cannot be denied. There are also states that are not willing to subscribe to what is widely accepted or political actors that have interests in reversing the gains made this far. Despite all this, no one can doubt that a mile-stone has been reached in recognizing the values of humanity and human rights. The credit for this goes to those that have struggled for these goals, including through their writings and struggles and the conducive, post-World War II political atmosphere which stimulated the inter-state agreements.

Giving credit to the role played by the past thinkers does not necessarily mean that there is no longer any need for intellectual debate relating to this matter. If the requirements of human rights and humanity are to be critically appraised, it will be necessary to examine closely the thoughts of scholars, past and present, on this subject. Then and only then will we be able to fully recognize the inter-play between humanity and human rights as perceived in the past and present and to appreciate the direction international law has taken or should take.

This article sheds light on the path which international law took in responding to the requirement of human rights and humanitarianism (as dictated by humanity). This is done by reflecting on international human rights law and international humanitarian law. If these laws were developed to protect the dignity and worth of the human being, as is claimed, why make a distinction between them? Are there areas of convergence between them? Before attempting to respond to these and other questions it will be necessary to clarify not only what is understood by human rights and humanity, but also who the human being is in the first place.

Human being, humanity and human rights – conceptual issues

Human being: Dictionaries define 'human being' typically as a member of the *Homo sapiens* species that is "distinguished from other animals by superior mental development, power of articulate speech and upright stance."[1] Since there are species in the animal kingdom with a capacity to reason and communicate, it important to look for other

distinguishing attributes which merit protecting our unique qualities, values, rights, freedoms. Are we social? Are dignity, empathy, sensibilities and sympathy for our fellow beings part of our nature? If not, what do people mean when they say 'this person lacks *humanity*'? While there is no problem in identifying the human being by the looks, appreciating our nature has always been a matter of controversy.

Thomas Hobbes, for instance, believed that the human being was not *social*, e.g., like ants or bees, or a peaceful and compassionate being. Rather, he took him/her as individualistic, competitive, envious, hateful and belligerent. The mere fact that human beings were equipped with the power of reasoning led Hobbes into believing that this quality leads them to think that they are wiser than others and to use it for manipulation and hurting one another. According to him, this nature and inclinations is responsible for the perpetual state of conflict in which we find ourselves in, a situation which Hobbes described as 'war of all against all'. This was why he called for the surrendering of 'natural rights' in favor of tyrannical rule based on social contract.[2]

Immanuel Kant dismissed this negative description of the human nature since it ignored our obvious *social* nature and our many positive inclinations and attributes which enabled us to evolve by forming stable communities. As Kant saw it, the human being is *a rational* and *moral being*, one who complies with duties, whether based on the needs of complying with external laws or self-constraint which limits the freedoms of action using "practical reason, (i.e., according to humanity in his own person)".[3] This uniqueness entitles the human being to exercise their 'natural' rights and freedoms based on the recognition of "the dignity of humanity in every other man."[4]

If humans are a self-consumed evil species constantly at war with one another, as Hobbes claimed, then humanity cannot exist or cannot be anything more than a mere collection of hostile human beings inhabiting the world. If, on the other hand, we are rational moral beings, as Kant believed, then our shared rationality, morality and sense of solidarity should make us feel as 'one', very much like members of 'a family'.

Humanity is defined in *Dictionary.com* in at least three different ways: i. "all human beings collectively; the human race; humankind", ii. "(T)he quality or condition of being human; human nature" and, iii. "(T)he quality of being humane; kindness; benevolence."[5] The first

definition avoids specifying the essential elements in humanity by merely considering it as the equivalent to human beings, collectively. We see this approach taken in some international instruments, e.g., in article 1 of the 1966 Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, which considers outer space as "the province of all mankind", or article 1 of UN General Assembly resolution 43/53 of 1988 which regards climate change as "a common concern of mankind". The second definition also side-tracks what *humanity* is by merely pointing out the root word it came from – i.e., from *human*.

More specific and giving is the third definition which refers to kindness, benevolence, and being humane as examples of the virtues of humanity. David Hume elaborates further by adding more virtues, including "generosity, gratitude, moderation, tenderness, friendship".[6] According to him, these "are not only the same in all human creatures, and produce the same approbation or censure; but they also comprehend all human creatures".[7] Why the receivers get such gestures is not hard to understand, since this is explainable by the simple fact that there must have been a need for it, irrespective of whether that need has arisen from situations or incidents caused by the forces of nature, by others, by accident or by the fault of the receivers. More interesting is what motivates or compels the givers to share the pains or problems of the receivers in that predicament. It makes one wonder whether one can feel or suffer from the conditions or problems faced by others, and if so why and how? Michel Ager answered this question in the following manner:

"Like the god Janus, humanity has a double-sided identity, which, however, does not express any alterity (no "other" is allowed in this bounded and total representation). Its double is only the reflection of a wounded, suffering, or dying humanity. It becomes the "absolute victim," who is nothing else or other than absolute and essentialized humanity when it is suffering. This figure of humanity, both unique and split—absolute humanity vs. absolute victim—dominates contemporary thought: the representation of a world generally treated as a totality, with no representation of difference, is the foundation of our present as a humanitarian age, a world of nameless victims whose identities do not differ from the common humanity..." [8]

To say that sensibilities, generosity, gratitude, empathy and tenderness are examples of the virtues of humanity, does not necessarily mean that human beings cannot display the

opposite characteristics such as to be evil, cruel, insensitive and inhuman. If this is the case, how can we still say that there is humanity? The defendants of humanity seek to resolve this dilemma by underscoring the point that who we are by nature should not be confused by how we sometimes behave in defiance of our nature. Christian theologians, for instance, explain this puzzle by reference to the Bible (Genesis 1:26-28) which considers us as created in the image of God, who is merciful, considerate and good. However, in reality we choose to commit sins (or because of the sins which we inherit) and behave in evil ways. Charles Sherlock explained this in his book on *The Doctrine of Humanity: Contours of Christian Theology* in this way:

"Whatever theory of the transmission of sin and its origin we hold, the reality is that everyone who reads this book is a sinner. Each of us needs constantly to turn to Christ, admit our need for forgiveness and healing, renounce sin and evil, and so live gladly the life which the Holy Spirit brings in us. Only in that way can the old humanity be killed off, and the fruits of the Spirit flourish (cf. Col. 3:1-17). Our prime concern is not with the transmission of sin, but (with) the humanity in Christ."[9]

Most Liberals, libertarians and primordialists are at odds with the emphasis that is placed on the selective positive inclinations of human beings used to validate or glamorize the existence of humanity. Libertarians, such as Ayn Rand, have no problem with selfishness. What they regard strange is selflessness, altruism and sacrificing for others. "Altruism holds *death* as its ultimate goal and standard of value", wrote Rand in her publication entitled *The Virtue of Selfishness,* "and it is logical that renunciation, resignation, self-denial, and every other form of suffering, including self-destruction, are the virtues it advocates."[10] According to her, "if civilization is to survive, it is the altruistic morality that men have to reject."[11]

Richard Rorty, a liberal American professor, questioned the arguments used by Immanuel Kant in defense of humanity and human rights based on morality and rationality because people choose frequently to act in irrational and immoral ways to protect their interests. He provides numerous examples of this, such as how the Nazis tried to exterminate Jews in the 1930s, how Moslems were treated by Serbs during the Balkan wars, how most men see women and why "(F)or most white people, until very recently, most black people did not so count"[12] According to Rorty, these are all examples that show that people do not always

want to see others, outside their own groups, as humans, let alone to feel their pains or share their sufferings. This was not always because of ignorance or misunderstanding but the determination to treat them in that way or as sub-human. As he put it:

"Resentful young Nazi toughs ere quite aware that many Jews were clever and learned, but this only added to the pleasure they took in beating such Jews. … For everything turns on who counts as a fellow human being, as a rational agent in the only relevant sense – the sense in which rational agency is synonymous with membership in our moral community."[13]

Primordialists reason in similar ways in dismissing the existence of humanity, as a concept that embraces all human beings, by attaching heavy weight to membership in ethnicity. As they see it, members of ethnic groups reject those outside their own groups, because of competition, fear of the unknown or past conflicts.[14] Loyalty to one's own group itself hinders the development of broader feelings of solidarity, sensibilities and generosity which are generated by humanity. That we are social is not, strictly speaking, in doubt, since one cannot imagine ethnic conflict without ethnic bonds and loyalty. If this is the case, one can wonder why members of one ethnic group migrate to places inhabited by other ethnic groups or to foreign countries. Why do families from one ethnic group adopt children from other groups? Why do millions of students study abroad or tourists spend so much money to see and enjoy alien cultural places?

Liberals and libertarians are more consistent in their approach when belittling humanity because for them groups do not exist. What matters for them is the individual. Our *social* attributes and interests are neglected for the sake of maximizing individual rights and freedoms. But the question remains that the individual cannot develop intellectually, emotionally and socially outside social interaction and enrichment. How else did we end up using a common language, culture or professing a common religion? If groups do not exist, why do states invoke 'public' morality or security to restrict individual rights or freedoms, and why are families given the power to choose the schools for their children? Why is solitary confinement used as a means of punishment? Why are we attracted to foreign cultures and values? Simply walking on a street in a foreign country and seeing a stranger fall, bleed or cry can arouse feelings within us of sympathy or concern as if our own life was endangered. What one stranger does on the street or TV can make us laugh, weep,

stimulated or depressed simply because we are social.

If we were not social, we would not see so many people and organizations dedicating their time, energy, resources and services to help 'others', out of love, compassion and altruistic motives. For most of these people and humanitarian groups even the age, gender, race, ethnicity, nationality or ideological orientation of the receivers do not matter. Nor do they care whether the cause they are responding to is natural calamities (earthquakes, floods, drought, hurricanes, etc.), or man-made problems (conflicts, internal displacement or refugee exodus) or the fault of the receivers. The generosity is extended out of "a vision of humanity as unique".[15]

The presence of special bonds between human beings is now recognized in important international instruments and by international institutions. The Rome Statute of the International Criminal Court, for instance, justified the needs for the establishment of this Court by underscoring the point "that all peoples are united by common bonds, their cultures pieced together in a shared heritage, and … (the presence of fear) that this delicate mosaic may be shattered at any time".[16] UNESCO justifies the protection of the 'common heritage of mankind' by designating historically significant cultural heritages (e.g., ancient monuments, pyramids, ruins and architectural complexes) as belonging to all of us although we have not seen them or will ever see them or have a clear knowledge of how we were shaped by them.

Rights. When used as an adjective the word right means correct, just, righteous, true, fair, etc.), If it is used as a noun, it can describe entitlement, privilege, title, guarantee, power, autonomy, freedom or benefits. The right-holder can be a human being, a legal person (corporation, labour union, religious or cultural entity, etc.), a political ruler (a king or a president), an institution (e.g., a parliament or a supreme court), or even animals. Human rights are only some of the rights that are recognized and enforced in the political world. Some of these rights may even be inhumane or inhuman. There were legal rights that were enforced for centuries, permitting people to purchase, sell, inherit and exploit fellow beings as slaves. Even today, we find countries who use laws entitling a grown-up man to marry a child or several minor girls, or to benefit from the misery of desperate prostitutes or trafficked migrant workers. However, morally bankrupt such legal rights might be, they remain to be valid in the countries that recognize them by law to regulate social relations,

order and stability

Human rights simply state that humans have rights as if the source of the right is "humanity, human nature, being a person or human being'.[17] The discourse on human rights has complex, controversial and ideologically charged sides.[18] Why people have aspired or struggled for rights and freedoms in the past or present is not difficult to understand, since this is linked to what has prevented them from enjoying the desired rights and freedoms: e.g., to end oppression and discrimination. People do not struggle for no apparent reason. This is why "human rights do not define a unitary, universal human condition but designate rather a field of heterogeneous practices that help to constitute the array of subject moments or subject effects that comprise citizens and sovereigns."[19] It is no wonder, therefore, that the narratives of human rights have changed over the years and why we find them framed differently during the French Revolution, the American Civil War, the post-World War II or in the Cold War periods.[20] Whichever way rights might have been framed in the minds of scholars or those who struggled for their rights, in the real political world they have always been political. It is no wonder, therefore, that even after the popular political struggles have emerged victorious, what was achieved were sometimes later denied or diluted by subsequent political actors. A case in point are the British Magna Carta, the U.S. Bill of Rights and the French Declaration of the Rights of Man and the Citizen.

In 1215, the rebellious English barons secured from their autocratic, King John, concessions acknowledging rights for the 'free men' of his realm. These included the right not to be arbitrarily "seized or stripped of his rights or possessions, or outlawed or exiled" and not to be denied justice (clause 63). These rights and protections were not extended to the majority of "unfree peasants known as 'villains', who could seek justice only through the courts of their own lords."[21] The pledges that were given were disregarded by subsequent kings who repealed most of the clauses contained in this Great Charter, making the struggle for rights open-ended.

The 1776 American Revolution was justified to put an end to the oppressive and tyrannical rule of the British King and to affirm the self-evident truths "that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness" and that governments should derive "their

just powers from the consent of the governed."[22] Shortly thereafter a Bill of Rights was adopted in 1791 to put this vision into practice, by guaranteeing the rights to the freedom of speech, assembly, religion, privacy, fair and speedy trial, to petition the government and the protection from 'cruel and unusual punishment'. However, these 'unalienable', God-given rights were not interpreted as being applicable, at the time, to women or blacks or the indigenous populations. They were politically framed rights that were secured for the white men, whose rights to privacy included owning blacks – for nearly one more century. Both George Washington and Thomas Jefferson owned slaves. Even after the institution of slavery was legally abolished in 1865, blacks (and American Indians) continued to be excluded from political participation until their uprising in the 1960s.

The much-celebrated 1789 French Declaration of the Rights of Man and of the Citizen too was really not intended to make all human beings the holders of full rights, although its title suggests that non-citizens also have right. As Susan Maslan noted:

"The inclusion of man, *as opposed to, say, Frenchman, as a subject of rights within the Declaration is what distinguishes it so radically from the American Bill of Rights, a document that makes no claim to apply beyond the confines of its national authority. It is a wonderful sort of irony, one that demands serious reflection, that the invention of the Rights of Man played and continues to play such a predominant role in the creation and perpetuation of French national identity."*[23]

This Declaration affirms the principle of equality and the "natural and imprescriptible rights of man". But the beneficiary remained to be the politically situated French man.[24] French women (the 'passive citizens') continued to be excluded from political participation, and the problem of slavery in the French colonies was left out. This was why the betrayed slaves started to rebel. French women too protested, which was why the Declaration of the Rights of Women and the Female Citizens which was published in 1791, and still fell on deaf ears.

The international regime of human rights considers human rights as being applicable to all human beings without distinction. As stated by the Office of the United Nations High Commissioner for Human Rights:

"Human rights are rights inherent to all human beings, whatever our nationality, place of

residence, sex, national or ethnic origin, colour, religion, language, or any other status.... Universal human rights are often expressed and guaranteed by law, in the forms of treaties...and other sources of international law. International human rights law lays down obligations of Governments to act in certain ways or to refrain from certain acts, in order to promote and protect human rights and fundamental freedoms of individuals or groups."[25]

This fits Donnelly's definition which makes human rights applicable to everyone "simply because one is a human being."[26] It makes the *language* of human rights, if not human rights themselves, (essentially)... universal" because the members of the international community claim to respect its core value: i.e., human dignity.[27]

The contours of international humanitarian law: evolution and features

Humanitarian values and rules were developed out of the awareness of our social nature and the determination to protect values of broader concerns based on our sensibility and feeling of solidarity. There are two movements of interest to mention, both aiming at alleviating human suffering, broadly speaking. They are the anti-slavery movement and the campaigns used to mobilize support for ending the cruel manner of conducting wars.

In her illuminating essay entitled "Humanity without Feathers", Lynn Festa, highlights the background of the movement which led to the abolishment of slavery in Britain. The force behind this movement, she notes, was the sympathy and sensibility of people in England had to the sufferings of black slaves in the distant English colonies. "Inasmuch as sympathy involves experiencing another's feelings (that is, feelings that are by definition not one's own)," she wrote, "it breaks down the division of self and other".[28] This scenario shows how the 'free' white European come to the rescue of the enslaved African at the cost of the economic interests of the English slave master. The pains which the abolitionist felt appears to be personalized in that the black victims were "marginalized by the fact that it is not the slave but the personification of 'humanity' that bleeds and longs to vindicate her rights".[29] Obviously, sentiments were not the only 'playbook' used by the abolitionist, the writer notes, as "calls for sympathetic feeling— then as now—were tempered and supplemented by appeals to reason, to policy, to interest, to principle, to faith."[30] In his celebrated publication entitled *The Social Contact* Rousseau describes the ironies of slavery by noting that "(M)an is born free, and everywhere he is in chains. One man thinks himself the master

of others, but remains more of a slave than they are."[31]

The other example mentioned above to explain the movement defending humanity is that which led to the prohibition of the savage ways of conducting warfare. Some of the champions of this cause were not soldiers or people who lost loved ones in battle fields or those whose personal safety was directly or indirectly affected by wars. As in the case of the anti-slavery activists, their campaign was to rescue the victims whom they did not know personally and wherever they were. There was no question that those who were behind the development of rules prohibiting these kinds of cruelties shared the agonies of the victims as if they themselves had been victimized.

Perhaps the most famous scholar who laid the foundation for the emergence of humanitarian law was Hugo Grotius (1583–1645). Like other writers before him (such as Francisco de Vitoria and Alberico Gentili), Grotius was concerned about the dignity of human beings and about how wars were conducted. He was especially puzzled and annoyed by why "men rush to arms for slight causes, or no cause at all, and that when arms have once been taken up there is no longer any respect for law, divine or human; it is as if, in accordance with a general decree, frenzy had openly been let loose for the committing of all crimes".[32] According to him, the kinds of cruel and inhumane behaviour that revealed itself during his time, when the Thirty-Years religious wars were raging, were irreconcilable with Natural Law. He took this law as valid because it was based on morality (rationality). It was natural because it was universally applicable to all human beings. His writings identified elaborate rules of conducts that should be followed by all states at all times, in connection with conflicts.

The efforts made by Grotius to mobilize wider support through his writings and travelling to different countries, inspired many others, like him, to be engaged in humanitarian work. Among these was Henry Dunant, who was awarded the first Nobel Prize, and the establishment of The Red Cross in 1863. In 1899 and 1907 two important international conferences were held in The Hague (Holland) on the conduct of warfare. These paved the way for the conclusion of the first and second conventions. The horrors of the First World War led states to appreciate the importance of broadening the scope of the existing humanitarian instruments, by adding the 1925 Geneva Protocol to these Hague prohibiting the use of certain weapons.

The establishment of the United Nations in 1945 speeded up the legal evolution of international humanitarian law. The UN Charter expressed concern over the "scourge of war, which twice in our lifetime has brought untold sorrow to mankind" (preamble para. 1), and considered the achievement of "international co-operation in solving international problems of "… humanitarian character, and … respect for human rights" (art. 1(3) as one of the purposes of this organization. The pursuit of these goals and the mandates given to its General Assembly to promote "the progressive development of international law and its codification" (art. 13) gradually led to the adoption and ratification of numerous conventions transforming humanitarian law qualitatively. Examples of these include the 1948 convention on the prevention and punishment of the crime of genocide, the four Geneva Conventions of 1949, the 1951 Refugee Convention, the 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict, the 1968 treaty on non-proliferation of nuclear weapons, the 1972 Biological Weapons Convention, the 1980 Convention on the use of certain weapons causing excessive injuries, the 1993 Chemical Weapons Convention, the 1997 Ottawa Convention on anti-personnel mines, and the 2008 convention on cluster munitions. The effort to galvanize support for banning weapons of mass destruction (by using biological, chemical, and nuclear weapons) deserves special attention. The refusal of states to abandon such weapons and the efforts which they continued to make to produce and stockpile these weapons continue to endanger mankind as a whole. In this sense one can say that humanity has never been threatened as it is now.

This aside, one can say that many of the international humanitarian law instruments that have been ratified have now clarified practices which should not be tolerated during conflicts. Some of them, e.g., the genocide convention, prohibit the commission of genocide even in times of peace, a prohibition which includes complicity, attempts and conspiracy to commit this crime. The refugee convention encourages states to protect those who face a fundamental fear of persecution. Other humanitarian rules mentioned in The Hague and the Geneva Conventions outlawed the use of weapons such as poison, chemicals and expanding bullets. Abusing prisoners, hostage-taking, rape, forced relocation and the destruction of civilian properties such as pillaging, destroying hospitals and heritage were also prohibited by the same conventions.

The establishment of the International Criminal Court represents another mile-stone in the defense of humanity, since it created a forum for prosecuting the violators of international

humanitarian law. Prior to this, the prosecution of these kinds of international crimes was left to the UN. This was why the UN had to create special tribunals to prosecute those who committed international crimes during the conflicts in the former Yugoslavia, Rwanda, etc. By the end of last year, 124 states had ratified the statute of this Court, making that institution a widely recognized body for monitoring respect for international humanitarian law.

The preambles of the statute of the International Criminal Court recognize “that all peoples are united by common bonds, their cultures pieced together in a shared heritage”, and express the fear that exists “that this delicate mosaic may be shattered at any time.” It recalls, further, that during this century millions of children, women and men have been victims of unimaginable atrocities that deeply shock the conscience of humanity” and that henceforth “the most serious crimes of concern to the international community as a whole must not go unpunished”. This instrument defines and elaborates the kinds of acts or conducts that should not be tolerated, namely genocide, aggression, war crimes and crimes against humanity. Article 7 specifies the recognized crimes against humanity’ if they are “committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack”. They include extermination, enslavement, attacks directed in an organized way against any civilian population, deportation, torture, forced pregnancy, collective persecution, enforced disappearance. In short, this statue has codified the pre-existing rules of international human rights law by crystallizing what were vaguely formulated before.

International human rights law: legal evolution and features

Human rights emerged as universally applicable legal rights thanks to the efforts made by civil societies, humanitarian organizations, political activists, progressive writers and states as a response to the gross human suffering and destruction seen during the Second World War. In the course of mobilizing the masses to defeat the Fascist and Nazi states militarily, the galvanized masses and political actors were compelled to question the totalitarian and racist values and ideologies promoted by the aggressive powers. Thus, what started out as a military campaign for self-defence ended up in questioning the very structure and ideologies of the Aggressive Powers. If the new international organization that was to be established after the military campaign was to be legitimate and durable, it had to usher in a new world

order which was sensitive to human rights. It was, therefore, not surprising that the UN Charter had to "reaffirm faith in fundamental human rights, in the dignity and worth of the human person" (preamble) and considered the promotion of "respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion" as one of its purposes, in article 1(3).

This was clearly a novel development for a world that had never had a truly universal organization, let alone one that was mandated to promote this goal. The achievement can even be perceived as revolutionary since the great majority of the member-states had poor records of respecting human rights and were not equipped with human rights sensitive laws and institutions. What pushed them in this direction was the memories of the Second World War and the determination to co-operate with the UN to achieve this goal as pledged under article 56 of the Charter.

Indeed, as it turned out, it did not prove to achieve broader international co-operation once attention was turned to developing the general standard settings when the first universal document was prepared (later known as the Universal Declaration of Human Rights). This instrument was adopted on 10 December 1948 with no opposition, though eight states abstained. A factor that explains this wider base of support could be that its provisions were broadly formulated. The obligations of states to respect the proclaimed rights and freedoms were also avoided. There was the recognition that this document was not intended to be legally binding since the UN General Assembly had no power to adopt legally binding instruments. As the last preamble of this document states, the whole point was to use it as "as a common standard of achievement for all peoples and all nations" so "that every individual and every organ of society… 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".

The Universal Declaration recognized that "All human beings are born free and equal in dignity and rights" (article 1) and that "Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion or social origin, property, birth or other status" (art. 2). It lists the different civil, political, economic, social and cultural rights that should be promoted for all without discrimination. Using this standard setting, the UN General

Assembly adopted numerous other declarations and later legally binding conventions crystallizing the recognized rights and freedoms and state obligations flowing therefrom. In 1966, for instance, the two international covenants (one on civil and political rights, and another one for economic, social and cultural rights) were adopted and both entered into force in 1975. Thus, within three decades of the establishment of the UN mankind had secured two legally binding universal human rights instruments even if the number of states that ratified them was not that impressive at the time. In the years that followed, more conventions were adopted strengthening the rights of vulnerable groups such as children, women, persons with disabilities and migrant workers, and addressing problems connected with discrimination.

One of the important feature of this development is the individualization of the recognized rights and freedoms (i.e. as the rights of every person), very much as recognized in the West traditionally. The only exception was that this time around the scope of the rights was broadened to encompass political, economic, social and cultural rights and the right holders were to be all under the jurisdiction of the ratifying states. There were a few recognized rights with collective character. They include the rights of peoples to self-determination (mentioned in article 1 of the two covenants), and minority rights (mentioned in article 27 of the covenant on civil and political rights).The other feature of these international legal instruments is the manner in which the obligations of the ratifying states were elaborated and the mechanisms established for monitoring how these obligations are complied with by considering regular reports and the submission of petitions.

Except for the right to life, equality, thought and religion, and the prohibitions of torture, cruel, inhuman and degrading treatment or punishment, the great majority of the recognized human rights are subject to restriction. The prohibition that is mentioned in article 4 of the civil and political rights covenant prohibits derogation from the obligations to respect the above-mentioned rights. This suggests that some of these rights have an ‘absolute’ character. The validity of this legal presumption is in line with article 53 of the Vienna Convention on the Law of Treaties which recognizes the existence of a pre-emptory norm of general international law (*Jus Cogens*) – i.e. “a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted”.

While the international community can take pride in having developed an international regime of human rights by adopting a long list of binding conventions, and developing the monitoring mechanisms, the actual record of states in complying with what is ratified is not that impressing. This monitoring system uses two separate paths to consider how states are complying with their human rights obligations. The treaty-based monitoring bodies examine the reports of states, and the communications that are sent by victims or state parties alleging human rights violations. The UN Charter-based monitoring bodies also consider the reports of states and those of the special rapporteurs, working groups and others. Using these and other sources of information, the UN Human Rights Council publishes its periodic reports on the human rights situation inside the member state. There are also other offices that play important roles in promoting or monitoring human rights. These include the High Commissioner for Human Rights, the High Commissioner for Refugees, UNICEF etc. Obviously, the effectiveness of these methods can be questioned and there is a long way to go when it comes to improving the system.

Humanitarian and human rights law: areas of intersection

The fact that international law has followed two distinct tracks when it comes to developing the rules related to international human rights and humanitarian law does not mean that there is no convergence between the two. Both derived their justifications from the need of protecting the dignity and worth of the human being. Both provide protection from slavery, forced labour, torture, cruel, inhuman and degrading treatment or punishment and rape. Both require *humane* treatment in prison. Humanitarianism looks at the broader context of what concerns us all and is guided by the values of humanity. These values arouse sympathy, empathy, love and compassion. The human rights laws are framed as the rights of the individual in the political context, rights which everyone is entitled to. Some of these rights are justiciable and even empowering (e.g., the rights to vote and take part in government).

Needless to say, the monitoring mechanisms of the international regime of human rights and international humanitarian law require improvement. There is a new doctrine which has been invoked lately to enable the international community to protect those that are exposed to serious international crimes: the international responsibility to protect (R2P). This doctrine has been invoked by the Security Council and the General Assembly (e.g., in the

2005 World Summit) in relation to serious conflicts and tragedies where states are seen to be either unable or unwilling to protect their own populations. This idea suggests that serious international crimes should be viewed as special concern to mankind as a whole. This fits the claim that there is humanity.

One can wonder, at the same time, whether the doctrine of R2P which has been invoked to 'rescue' oppressed victims from the cruelty of their political leaders is always non-political, one that is just moved only by humanitarian considerations? If the intervention in Libya was triggered only by the urgency of saving Libyans, why abandon them now when the humanitarian situation facing them is much worse than before? If those that are intervening in the Syrian conflict are really moved by the tragic plight of Syrians in the hands of their cruel regime, and cruel it is, why are some of the states that are intervening in that conflict hesitant to even give asylum to Syrian refugees? Having said this, just because this doctrine can be abused by states does not mean that the international community should abandon it. If developed well, it can be used to vindicate the rights of humanity, irrespective of whether the crisis was brought by breaches of international human rights obligations or those flowing from international humanitarian law. In this sense, one sees a convergence between these two spheres of international law.

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Endnotes

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