

THE CONCEPT OF DIGNITY IN INTERNATIONAL LAW

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Summary: The first aims of the article is to trace the origins of the notion of human dignity in international law. It is emphasized that the concept of human dignity appeared in international law relatively late, in 1940s. and such concepts as “principle of humanity” or “laws of humanity”, used in the 19th century, are not identical with and do not even have to include human dignity. Moreover, a very different concept of “dignity of sovereign states” existed in international law from Vattel’s time until the 20th century. Nowadays, human dignity appears in international law as a value, legal principle and law. However, the right to dignity is less often explicitly mentioned in international law documents than the principle of human dignity. The minimum content of human dignity appears to include the recognition of the intrinsic value and moral autonomy of every human being.

Keywords: human dignity, international law, human rights, principle of humanity, dignity of sovereign states, legal thought.

1 Introduction

The concept of dignity became the basis of international law in general and international humanitarian law in particular. The importance of this concept is indeed great. The Universal Declaration of Human Rights of 1948 already made extensive reference to human dignity, which was declared as inherent. However, dignity is not an unambiguous concept and references to dignity appear in international law in various contexts, sometimes only as a rhetorical element of a given document, and sometimes as a kind of embellishment. Some scholars are of the opinion that the concept of human dignity existed in international law long before the adoption of the Universal Declaration of Human Rights and was referred to by various names, such as “principle of humanity and universal morality” (*principe d’humanité et de morale universelle*) in Declaration relative to the Universal Abolition of the Slave Trade of 1815 or “laws of humanity” mentioned in the preamble to the Second Hague Convention of 1899 (so-called Martens Clause). In this context, however, the first question arises that I will try to answer in this article: does the concept of “laws of humanity” or “principle of

humanity” actually overlap with the concept of human dignity? The next question concerns the origins of the introduction of the concept of human dignity into international law in the 1940s.

As far as contemporary European constitutionalism is concerned, a reference to human dignity appeared for the first time in the Constitution of Ireland of July 1, 1937, in which the preamble mentions “the dignity and freedom of the individual”.¹ Then the Basic Law for the Federal Republic of Germany (*Grundgesetz*), adopted on May 8, 1949, in its famous Article 1 (clause 1) defined human dignity as inviolable.² The literature indicates that since then, human dignity has played two main roles in contemporary constitutionalism. Firstly, it is a constitutional value, and secondly, it is understood a constitutional right.³ Therefore, it should be asked whether these two understandings, i.e. as a value and a right, can also be attributed to dignity under international law. The last issue addressed in this article deals with the core content of human dignity under international law. In this regard a question arises whether the understanding of dignity in international law corresponds specifically to any of the concepts of dignity formulated in the philosophy of law. Certainly, when formulating this question, one should bear in mind that any philosophical concept transplanted into specific legal considerations is removed from its original context and becomes simplified.⁴

2 “Laws of humanity” and human dignity

Some scholars, including Ginevra Le Moli in her recent and otherwise distinguished monograph, are of the opinion that notion of human dignity entered the concept of dignity entered the law of war thanks to the Christian value of humanity, and was crystallized in international law and international humanitarian law in the 19th century. Even if the very term “human dignity” was not used, the same idea was expressed under labels such as “principle of humanity” or “laws of humanity”. According to this view, the so-called Martens Clause, included in the preamble to the Second Hague Convention of 1899, was of

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- 1 The draft of this constitution uses a phrase of somewhat different meaning: “the dignity and freedom of the citizens”. Cf. KEOGH, Dermot. *The Irish Constitutional Revolution: An Analysis of the Making of the Constitution*. In LITTON, Frank (ed.). *The Constitution of Ireland 1937–1987*. Dublin: Institute of Public Administration, 1988, pp. 31–32 (4–84).
 - 2 *Grundgesetz für die Bundesrepublik Deutschland vom 23. Mai 1949* (BGBl. S. 1). For English translation, cf. Basic Law for the Federal Republic of Germany. [online]. Available at: <https://www.gesetze-im-internet.de/englisch_gg/englisch_gg.html#p0019>. Accessed: 15.03.2024.
 - 3 Cf. BARAK, Aharon. *Human Dignity. The Constitutional Value and the Constitutional Right*. Cambridge: Cambridge University Press, 2015.
 - 4 This tendency was shown by Olga Rosenkranzová on the example of references to the concepts of dignity created by Giovanni Pico della Mirandola and Immanuel Kant on the ground of contemporary constitutionalism. Cf. ROSENKRANZOVÁ, Olga. *Lidská důstojnost: Právně teoretická a filozofická perspektiva. Giovanni Pico della Mirandola & Immanuel Kant*. Praha: Leges, 2019.

key importance for the inclusion of the category of dignity in humanitarian law.⁵ Here I will argue that idea of “humanity”, although it has points of contact with the concept of human dignity, cannot be identified with the latter. This idea became established in the law of nations thanks to thinkers belonging to the early modern school of natural law, while in the 18th century it belonged to the mainstream discourse within the so-called law of nations and could be easily reconciled with the doctrine of state sovereignty, which was developed especially after the Peace of Westphalia. Therefore, in my view, an eminent Israeli law professor and Supreme Court justice, Aharon Barak, is right when stating that: “Until the middle of the twentieth century, the history of human dignity was part of the history of ideas. From the middle of the twentieth century it also became an inseparable part of legal history”.⁶ In order to outline the content of the idea of “humanity” in the context of the law of nations, it is, however, needed to refer to both history of ideas and legal history.

Representatives of the modern school of natural law very often referred to the Roman Stoics, so that is why it is necessary to go back to the Stoic school and one of its most influential representatives in the period of late Roman Republic, i.e. Cicero (106–43 B.C.). Cicero is believed to have been the first thinker to use – in his *De officiis* (44 B.C.) – the term *dignitas* (“dignity”) in reference to humanity. However, the Roman thinker is very far from saying that all human beings are equipped with inherent dignity. Rationality is a feature of humans as a species and an expression of their perfection (*excellencia*) compared to other living creatures. A human being is *persona* of reason. However, only those who make rational choices and fulfill the obligation to strive for the highest possible perfection live a life worthy of being called dignified: “It is appropriate to every discussion of duty, always to bear in mind how far the nature of man excels that of cattle and other beasts. ... [However] there are some who are men, not in fact, but in name ... Indeed, if we will only bear in mind what excellence and dignity belong to human nature, we shall understand how base it is to give one’s self up to luxury, and to live voluptuously and want only, and how honorable it is to live frugally, chastely, circumspectly, soberly”.⁷ As Ginevra De Moli states: “He affirms that, because of human *ratio*, individuals are similar to God (*cum deo similitudo*) and different from animals”.⁸ In line with the main ideas of Roman stoicism, Cicero believes that moral decisions (*honestum*) and behavior (*decorum*) are based on rationality. However, Ciceronian *dignitas* certainly is not an egalitarian concept. Jacob Giltaij

5 LE MOLI, Ginevra. *Human Dignity in International Law*. Cambridge: Cambridge University Press, 2021, p. 308.

6 BARAK, Aharon. *Human Dignity. The Constitutional Value and the Constitutional Right*, p. 34.

7 CICERO, Marcus Tullius. *De officiis*. Translated by Andrew P. PEABODY. Boston: Little, Brown, and Company, 1887, I, 30, pp. 66–67.

8 LE MOLI, Ginevra. *Human Dignity in International Law*, p. 54. Cf. CANKIK, Hubert. ‘Dignity of Man’ and ‘Persona’ in Stoic Anthropology: Some Remarks on Cicero, *De Officiis* I, 105–107. In: KRETZMER, David and KLEIN, Eckart (eds.). *The Concept of Human Dignity in Human Rights Discourse*. The Hague, London and New York: Kluwer Law International, 2002, pp. 19–39.

accurately emphasizes that although Cicero “indicates there is such a thing as a rational *persona* typical to all human beings, *dignitas* in Cicero’s *De officiis* is an obligation, not a right”.⁹ Cicero also takes the concept of circles from the older Stoics, according to which the individual was the center of subsequent circles: family, friends, city, state community and humanity. The principle of formation of these circles is called *oikeiōsis* in Stoic thought.¹⁰ According to Cicero, the state community and universal human community are the largest social circles with which an individual is able to identify.¹¹ Human community is based on common duty to achieve the highest possible excellence.

The impact of Stoic thought on the early modern theory of the law of nations was significant. Its influence can be seen in the concepts developed by such thinkers Hugo Grotius (1583–1645), Samuel Pufendorf (1632–1634), and later Christian Wolff (1679–1754). It can therefore be said that the theory of the law of nations absorbed the influence of Christian thought, especially the late scholasticism of the so-called the school of Salamanca, as well as elements of ancient concepts, especially Stoic ones. The idea that the nations that make up humanity, just like individual human beings, have duties towards each other, and that these duties were linked to people’s tendency to perfection, has Stoic roots. At the same time, this idea can be perfectly combined with the doctrine of sovereignty of states–nations. Grotius derived the law of nature from human nature (“...for the Mother of Natural Law is human Nature itself”).¹² The Dutch lawyer repeated after Cicero and other Stoics that the human species differs from animals in that its nature is rational. Thanks to this nature, people can learn what obligations the law of nature imposes on them, using the *a priori* or *a posteriori* method. The first method consists in determining what provisions are consistent with the very nature of man, while the second, inductive method, consists in proving what obligations are observed by most peoples, or at least by those of them that can be described as civilized.¹³ Man’s dignity therefore lies in his rational nature.

Grotius also maintained the teachings of the Stoics on the mutual obligations of individuals towards each other, as well as the communities or circles to which a person belongs, the largest of which is the entire humanity: “They who write of Offices, justly say, that there is nothing so useful to one Man, as another Man. Now there are several particular Ties, which engage Men mutually to assist each other. Kinsmen assemble to help one another: Neighbours and Fellow-Citizens call for the Aid one of the other But tho’ there were no other Obligations, it is enough

9 GILTAIJ, Jacob. Existimatio as “Human Dignity” in Late-Classical Roman Law. *Fundamina*, 2016, vol. 22, no. 2, p. 233.

10 Cf. STRIKER, Gisela. The role of *oikeiōsis* in Stoic ethics. In STRIKER, Gisela. *Essays on Hellenistic Epistemology and Ethics*. Cambridge: Cambridge University Press, 1996, pp. 281–297.

11 Cf. CICERO, Marcus Tullius. *De officiis*, I, 17, pp. 35–38.

12 GROTIUS, Hugo. *The Rights of War and Peace*. Ed. by Richard TUCK. Indianapolis: Liberty Fund, 2005, vol. I, p. 93.

13 *Ibid.*, vol. I, p. 87, 159.

that we are allied by common Humanity. For every Man ought to interest himself in what regards other Men”.¹⁴ The rules of mutual relations between nations and rulers during war and peace result from these obligations, dictated by common humanity of all human beings.

Referring to the categories developed by the Stoics allowed Grotius to combine the belief in the existence of a universal community of entire humanity with the view that the actors of the international community are sovereign nations. Peter Judson Richards draws attention to this element of Grotius’ thought: “... Stoic principle of ‘oikeiōsis’ [*affiliation*, note by P.Sz.] ... here frames the Grotian conception of natural law, and points to an important difference in the way that international law is increasingly understood currently ... What we see going on in our day is a hollowing of the intermediate space that traditionally existed between the solitary individual and the relative abstraction of ‘the international community’”.¹⁵

Samuel Pufendorf (1632–1694), a lawyer who contributed greatly to deriving the concept of natural rights from the category of natural law,¹⁶ was influenced by stoicism. Pufendorf’s concept of law of nature, based on the social and rational nature of human beings,¹⁷ owes much to Grotius and the Stoics. As to Pufendorf’s view on dignity, Ginevra Le Moli observes: “Still with an aristocratic vision of man’s status, in his *De iure naturae et gentium* (1672), Pufendorf describes man’s ‘supreme’ dignity as embodying his privileged role in world”.¹⁸ This view resembles that previously expressed by Grotius. Christian Wolff developed the idea of a world moral community and claimed that states, as a result of mutual agreements, created such a community, namely: *civitas maxima*. Simultaneously, he accepted the view of Thomas Hobbes who emphasized that the principle of sovereignty excludes the existence of any authority resolving disputes between states.¹⁹

Emer de Vattel (1714–1767) was the most famous author writing about the law of nations in the second half of the 18th century. According to Vattel, relations

14 *Ibid.*, vol. I, pp. 384–385 [*original spelling*].

15 RICHARDS, Peter Judson. Hugo Grotius, Hosti Humani Generis, and the Natural Law in Time of War. *Liberty University Law Review*, 2008, vol. 2, no 3, p. 896 (pp. 881–908).

16 Cf. SAASTAMOINEN, Kari. Liberty and Natural Rights in Pufendorf’s Natural Law Theory. In MÄKINEN, Virpi and KORKMAN, Peter (eds.). *Transformations in Medieval and Early-Modern Rights Discourse*. Dordrecht: Springer, 2006, pp. 225–256.

17 Cf. PUFENDORF, Samuel. *Two Books of the Elements of Universal Jurisprudence*. Translated by William Abbott OLDFATHER. Indianapolis: Liberty Fund, 2009, pp. 315–316. SAASTAMOINEN, Kari. Pufendorf and the Stoic model of natural law. *Grotiana. New Series*, 1999/2000, vol. 20/21, pp. 257–270. For a different view, denying the influence of stoicism, cf. CHROUST, Anton-Hermann. A Note on Samuel Pufendorf. *Vanderbilt Law Review*, 1947, vol. 1, no. 1, pp. 47–58. PALLADINI, Fiametta. Pufendorf and Stoicism. *Grotiana. New Series*, 2001/2002, vol. 22/23, pp. 245–256.

18 LE MOLI, Ginevra. *Human Dignity in International Law*, p. 77. Cf. PUFENDORF, Samuel. *Two Books of the Elements of Universal Jurisprudence*, pp. 333, 374.

19 WOLFF, Christian. *Jus gentium methodo scientifica pertractatum. Volume 2: translation by J. H. Drake*. Oxford: The Clarendon Press – London: H. Milford, 1934. Cf. EHRLICH, Ludwik. The Development of International Law as a Science. *Hague Recueil*, 1962, vol. 105, no. 1, pp. 232–235.

between states could be of a peaceful nature, whereas this state of nature defined the most important principles of relations between states: independence, equality and freedom of each of them.²⁰ Referring to Cicero and his *De officiis*, Vattel stated that nations (states) have a number of obligations to each other, designated by natural law. However, these duties are only moral, so the only sanction for their nonfulfillment is the reaction of public opinion.²¹ When describing legal position of nations, Vattel used the phrase “dignity of nations or sovereign states” (*dignité des nations ou Etats souverains*) and presented the view that this dignity is interconnected with equality of nations, being one of fundamental principles of relations between states.²² Here Swiss scholar utilized the meaning of dignity close to the traditional one, combining dignity with honor, respect and status. As we will see, this understanding of dignity, as well as the recognition of dignity as a specific feature of independent states, entered the language of international law thanks to Vattel, whose work was considered seminal and fundamental for a hundred years after the scholar’s death.

Vattel presented quite developed considerations on “offices” or duties of humanity, although he was of the opinion that they were mainly of moral and not legal character. He linked them to the category of law of nature: “The offices of humanity are those succours, those duties, which men owe to each other, as men, that is, as social beings formed to live in society, and standing in need of mutual assistance for their preservation and happiness, and to enable them to live in a manner conformable to their nature. Now the laws of nature being no less obligatory on nations than on individuals ... the same does each nation, in its way, owe to other nations.”²³ Vattel elaborated on this theme using Stoic categories of duties of individual: “The nature and essence of man—who, without the assistance of his fellow men, is unable to supply all his wants, to preserve himself, to render himself perfect, and to live happily—plainly shews us that he is destined to live in society, in the interchange of mutual aid,—and, consequently, that all men are, by their very nature and essence, obliged to unite their common efforts for the perfection of their own being and that of their condition.”²⁴

The notion of *principles* or *duties of humanity* was already used by Hugo Grotius.²⁵ It was subsequently popularized in the theory of the law of nations in the 18th century as a legacy of Wolff and Vattel, as well as a reference to the Stoic concept of circles. Declaration of the Eight Courts relative to the Universal

20 VATTEL, Emer de. *The Law of Nations, Or, Principles of the Law of Nature, Applied to the Conduct and Affairs of Nations and Sovereigns, with Three Early Essays on the Origin and Nature of Natural Law and on Luxury*. Ed. by Bela KAPOSSY and Richard WHATMORE based on 1797 edition. Indianapolis: Liberty Fund, 2008, pp. 74–76.

21 *Ibid.*, pp. 259–273.

22 *Ibid.*, p. 281.

23 *Ibid.*, p. 261.

24 *Ibid.*, p. 262. Cf. *ibid.*, p. 72: “The universal society of the human race being an institution of nature herself, that is to say, a necessary consequence of the nature of man, – all men, in whatever stations they are placed, are bound to cultivate it, and to discharge its duties”.

25 Cf. LE MOLI, Ginevra. *Human Dignity in International Law*, pp. 90–91.

Abolition of the Slave Trade, signed at Vienna, February 8, 1815, which stated that slave trade had been “considered, by just and enlightened men of all ages, as repugnant to the principles of humanity and universal morality,”²⁶ was written in the language of Vattel’s works. This language emphasized the obligations of humanity which, however, were completely compatible with the principle of sovereignty, since these obligations were of a moral nature and states voluntarily made them legal obligations.

An outstanding lawyer of Swiss origin, Johann Caspar Bluntschli (1808–1881), emphasized the idea of humanity (*Idee der Menschheit*) in the law of nations in the 1860s. In the background of his considerations was the idea of progress, which determined the perception of history by most intellectuals in the 19th century. In his belief, progress had been made in the law of nations since the 18th century, and the principle of humanity was increasingly better reflected in this branch of law. This was manifested, for example, in better protection of civilians during wars: “Ancient peoples considered the enemies with whom they were at war as outlaws, and they considered everything permissible towards them. In today’s legal awareness, it has become clear that human rights must be respected even in war, because enemies do not cease to be people.”²⁷ In this regard, Bluntschli drew attention to the “Instructions for the Government of the Armies of the United States in the Field, General Orders” developed by Francis Lieber (1800–1872) and then adopted in April 1863,²⁸ which he called “the first codification of the law of war in land warfare” (*erste Codification des Kriegsrecht im Landkrieg*).²⁹ Bluntschli’s approach can be called liberal (in the 19th-century sense of the word) and not yet very far from the assumptions of the modern school of natural law. This can be seen in the following passage of his reflections: “Since it is an undeniable truth that man is by nature a being that feels what is right and is endowed with the

26 *British and Foreign State Papers*, vol. 3 (1815–1816). London: James Ridgway, 1838, p. 972. Cf. CLARK, Ian. Vienna and the Slave Trade, 1815. In CLARK, Ian. *International Legitimacy and World Society*. Oxford and New York: Oxford University Press, 2007, pp. 37–60.

27 BLUNTSCHLI, Johann Caspar. *Die Bedeutung und die Fortschritte des modernen Völkerrechts*. Berlin: Lüderitz, 1866, p. 45: “Die alten Völker betrachteten die Feinde, mit denen sie im Keiege waren, als rechtslose Wesen und hielten Alles gegen sie für erlaubt. Dem heutigen Rechtsbewußtsein ist es klar, daß die Menschenrechte auch im Kriege zu beachten find, weil die Feinde nicht ausgehört haben, Menschen zu sein”.

28 General Orders No. 100, 24 April 1863. Instructions introduced the notion of military necessity and referred also to the principle of humanity: “As Martial Law is executed by military force, it is incumbent upon those who administer it to be strictly guided by the principles of justice, honor, and humanity-virtues adorning a soldier even more than other men, for the very reason that he possesses the power of his arms against the unarmed”: LIEBER, Francis. *Instructions for the Government of Armies of the United States in the Field*. Washington: Government Printing Office, 1898, p. 4. For comprehensive analysis of so-called Liber Code, cf. LABUDA, Patryk I. The Lieber Code, Retaliation and the Origins of International Criminal Law. In BERGSMO, Morten, CHEAH, Wui Ling, SONG, Tianying and YI, Ping (eds). *Historical Origins of International Criminal Law*. Vol. 3. Brussels: Torkel Opsahl Academic EPublisher, 2015, pp. 299–341.

29 BLUNTSCHLI, Johann Caspar. *Die Bedeutung und die Fortschritte des modernen Völkerrechts*, p. 11.

inclination to know it, the law of nations must have its vital seed and its most certain foundation in human nature itself”.³⁰ Bluntschli’s approach is not free from a certain idiosyncrasy. On the one hand, the scholar expressed satisfaction that the “general” nature of the law of nations, limited previously only to the Christian world, was recognized in the Treaty of Paris of 1856, ending the Crimean War.³¹ On the other hand, he fully accepted that China had been forced by Western powers to open up and therefore join the international community, built primarily by Western countries.

Such understanding of idea of humanity as presented by Bluntschli underpins the St. Petersburg declaration of 1868 and the famous Martens Clause, which was drafted three decades later. The former documents states that “the employment of arms which uselessly aggravate the sufferings of disabled men, or render their death inevitable ... would ... be contrary to the laws of humanity”.³² Although in the eyes of some scholars the declaration contains one of the first formulations of human dignity in humanitarian law, in my view the notion “laws of humanity”, appeared in its preamble, must be understood more in line with Vattel’s ideas and the entire document has more utilitarian connotation. Therefore, David Luban is right when emphasizing that the origins of the declaration lie in “the benthamite concern to alleviate the calamities of war”, rather than in the “respect for human dignity”.³³

The Martens Clause, named after a Russian scholar and diplomat, Fyodor Fyodorovich von Martens (1845–1909), was expressed in the preamble to the Second Hague Convention of 1899: “Until a more complete code of the laws of war is issued, the High Contracting Parties think it right to declare that in cases not included in the Regulations adopted by them, populations and belligerents remain under the protection and empire of the principles of international law, as they result from the usages established between civilized nations, *from the laws of humanity, and the requirements of the public conscience*”.³⁴ The way in which Martens Clause was introduced during the Hague negotiations in 1899, presented in detail by Antonio Cassese in this excellent paper, shows that the importance of the Clause itself should not be overestimated. Martens proposed the introduction

30 *Ibid.*, p. 6: “Wenn es aber eine unbestreitbare Wahrheit ist, daß der Mensch von Natur ein Rechtswesen und mit der Anlage zur Rechtsbildung ausgestattet ist, dann muß auch das Völkerrecht in der Menschennatur seine unzerstörbare Wurzel und seine sichere Begründung haben”.

31 *Ibid.*, pp. 25–26.

32 Declaration Renouncing the Use, in Time of War, of Explosive Projectiles Under 400 Grammes Weight. Saint Petersburg, 29 November / 11 December 1868. [online]. Available at <<https://ihl-databases.icrc.org/en/ihl-treaties/st-petersburg-decl-1868/declaration?activeTab=undefined>>. Accessed: 15.03.2024.

33 LUBAN, David. Human Rights Thinking and the Laws of War. In OHLIN, Jens David (ed.). *Theoretical Boundaries of Armed Conflict and Human Rights*. Cambridge: Cambridge University Press, 2016, p. 52.

34 Hague Convention (II) with Respect to the Laws and Customs of War on Land, The Hague, 29 July 1899, preamble, para. 9, *emphasize added*.

of the clause in response to the position of the Belgian delegation demanding that the issue of lawful combatants be left outside the scope of the convention. Martens feared that this position could lead to the failure of the entire negotiations.³⁵

The idea of humanity is not identical with the idea of human dignity. It only means that all people have similar moral feelings and moral duties, and therefore create a specific community. However, it does not say anything about equal treatment of all human beings or the same moral autonomy of each person. Moreover, this idea coexisted on the ground of international law with the idea of dignity of state, which stemming from writings of Vattel, can be found in various 19th-century international documents. The very phrase “dignity of sovereign states” was in use well into the second half of the 20th century.³⁶ Ginevra Le Moli aptly names dignity of state the first circle of dignity in international law and opposes this concept of dignity to dignity of a person (being, in her view, the second circle of dignity). As an example of the usage of that concept, she quotes the decision of English Court of Appeals in the case *The Parlement Belge* of 1880, in which the Court said that a sovereign state had an obligation “to respect the independence and dignity of every other sovereign state”.³⁷ Now it is necessary to show in what circumstances the concept of human dignity appeared in international law.

3 Introducing the concept of human dignity into international law in the 20th century

In the interwar period, the approach to sovereignty changed, partly under the influence of observations of the situation in totalitarian and authoritarian states, and partly under the influence of Christian personalism. It should be noted that Christian personalism started to put special emphasis on the category of dignity in connection with the criticism of authoritarian and totalitarian systems. The teaching of Popes Pius XI and Pius XII in the second half of the 1930s) increasingly focused on this category. This tendency is particularly visible in the encyclical *Mit brennender Sorge* of Pius XI (1937), which was directed against Nazism. In the same 1937, an outstanding international lawyer, naturalized in Great Britain, Hersch Lauterpacht (1897–1960) wrote: “[i]f the fundamental rights of human personality [are] part of the international system . . . then humanitarian

35 Cf. CASSESE, Antonio. The Martens Clause: Half of a Loaf or Simply Pie in the Sky? *European Journal of International Law*, 2000, vol. 11, no. 1, pp. 187–216. It is worth adding Martens was a moderate positivist, but in his writing emphasized also the importance of human rights, but at the same time he understood them very narrowly, stressing that human rights encompass above all the right to physical life and right to develop one's intellectual. Moreover, he mentioned the right to migration, right to property, right of all to respect one's health, honour and person, as well as the right to get married. Cf. *ibid.*, p. 201.

36 Cf. LUINI DEL RUSSO, Alessandra. *International Protection of Human Rights*. Washington, D.C.: Lerner Law Book Co., Inc., 1971, p. 261.

37 LE MOLI, Ginevra. Three Circles of Dignity. *Journal of Human Rights Practice*, 2019, vol. 11, no. 1, pp. 258–261. LE MOLI, Ginevra. *Human Dignity in International Law*, pp. 1–6.

intervention is both a legal and a political principle of the international society”.³⁸ It is not a long way from emphasizing the “fundamental rights of human personality” to recognizing human dignity as the basis of these rights.

A reference to human dignity appeared in the preamble of the UN Charter, signed in San Francisco on June 26, 1945. It included the words: “... 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, ...”. The term “dignity” itself appeared there at the end of the work and its appearance was not previously planned. South African politician Jan Smuts (1870–1950) prepared the first version of the preamble, which included the words: “... the sacredness, essential value and integrity of the human personality...”. This preamble was corrected by the US delegate, Prof. Virginia Gildersleeve (1877–1965), who just used the term “dignity”. This term also appeared independently in the proposal of the New Zealand delegation (“... to assert the dignity of man, so grievously outraged...”).³⁹ While analyzing the drafting of UN Charter, Ginevra Le Moli supposes: “A Christian vision of dignity played a catalysing role in universalizing the concept of the dignity”.⁴⁰

The very term “dignity” appears twice in the Constitution of UNESCO adopted in London on November 16, 1945. It is worth to be quoted: “the great and terrible war which has now ended was a war made possible by the denial of the democratic principles of the dignity, equality and mutual respect of men, and by the propagation, in their place, through ignorance and prejudice, of the doctrine of the inequality of men and races ... the wide diffusion of culture, and the education of humanity for justice and liberty and peace are indispensable to the dignity of man and constitute a sacred duty which all the nations must fulfil in a spirit of mutual assistance and concern”. The draft of the preamble was authored by poet Archibald MacLeish (1892–1982).⁴¹ In this regard, as the first director-general of UNESCO, Julian Huxley (1887–1975) asserted, the aim of drafters was to avoid any reference to existing philosophical views and the preamble emerged from a kind of “evolutionary humanism”.⁴²

The reference to dignity appears also in the American Declaration of the Rights and Duties of Man (Bogotá Declaration) of 1948 (“the concept that being has dignity and inherent value”), which was undoubtedly influenced by Catholic

38 Quoted in: VRDOLJAK, Anna Filipa. Human Rights and Genocide: The Work of Lauterpacht and Lemkin in Modern International Law. *The European Journal of International Law*, 2009, vol. 20, no. 4, p. 1190.

39 LE MOLI, Ginevra. *Human Dignity in International Law*, pp. 121–125. Cf. MOYN, Samuel. The Secret History of Constitutional Dignity. *Yale Human Rights & Development Law Journal*, 2014, vol. XVII, p. 59 (pp. 39–73). BEITZ, Charles R. Human Dignity in the Theory of Human Rights: Nothing But a Phrase? *Philosophy & Public Affairs*, 2013, vol. 41, no. 3, pp. 259–266 (259–290).

40 LE MOLI, Ginevra. *Human Dignity in International Law*, p. 125.

41 *Ibid.*, pp. 125–127.

42 HUXLEY, Julian. *UNESCO. Its Purpose and Its Philosophy*. London: The Frederick Printino Co., Ltd., 1946, pp. 5–8.

teaching.⁴³ In the same year the category of dignity appeared famously in the Universal Declaration of Human Rights which was adopted by the UN General Assembly on December 10, 1948. During the vote in Paris, 48 states voted for the Universal Declaration, but the Soviet bloc countries, South Africa and Saudi Arabia abstained.⁴⁴ Its preamble reads: “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”. Moreover, the article 1 reads: “All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood”. Dignity is mentioned also in Articles 22 and 23. The reason of using the category of dignity was the experience of Holocaust. The authors of the preamble: Eleanor Roosevelt, P.C. Chang, René Cassin and Charles Habib Malik, agreed to recognize the inherent character of dignity. Malik saw collectivism as a main threat to humankind. The authors intentionally used the language which brought associations with French Revolution and the Declaration of the Rights of Man and of the Citizen of 1789.⁴⁵ In that manner they try to universalize and secularize the concept of dignity. However, personalist views of French Catholic philosopher Jacques Maritain (1882–1973) were also taken into consideration in formulating the Declaration.⁴⁶ The universalization of the concept of dignity, which has its roots on the one hand in Stoicism and on the other in the Christian tradition, was also possible because other major religions contain ideas similar to the idea of dignity, for example *Kvod-ha-Adam* in Judaism or *karamah* and *ismah* in Islam. According to Hanafi school, the term *ismah* (*inviolability*) refers to all sons of Adam, including non-Muslims.⁴⁷

In the 1950s, virtually none of the significant acts of international law on human rights directly referred to human dignity. Its importance was also not so well recognized by international lawyers.⁴⁸ However, the process of drafting a human rights convention to be adopted within the UN was launched in 1949,

43 Cf. LE MOLI, Ginevra. *Human Dignity in International Law*, pp. 128–129.

44 The British delegate, Sir Hartley Shawcross (1902–2003), emphasized during the UN General Assembly session in December 1946, the declaration was intended to present “what is the minimum standard of human rights and human dignity which every State ought to accord to its citizens”. LUINI DEL RUSSO, Alessandra. *International Protection of Human Rights*, p. 36.

45 LE MOLI, Ginevra. *Human Dignity in International Law*, p. 131.

46 Maritain derived human rights from the very concept of a person being responsible for himself and his actions. Cf. BIENKOWSKA, Daria. KOZŁOWSKI, Ryszard. *Prawa człowieka. Uniwersalizm a partykularyzm godności*. Poznań: Wydawnictwo Naukowe Silva Rerum, 2018, pp. 23–25. Cf. MARITAIN, Jacques. *The Person and the Common Good*. New York: Charles Scribner's Sons, 1947, chapter 5. McCauliffe, C.M.A. Cognition and Consensus in the Natural Law Tradition and in Neuroscience: Jacques Maritain and the Universal Declaration of Human Rights. *Villanova Law Review*, 2009, vol. 54, no. 3, pp. 435–477.

47 Cf. SCAGLIA, Lara. Kant's Notion of Human Dignity in Dialogue with Islamic Thinking: For an Interstitial and Extra-National Account of Human Dignity. *Studia Kantiana*, 2023, vol. 21, no. 2, pp. 102–108 (pp. 97–111).

48 In the well-known textbook by James Leslie Brierly (1881–1955), the notion of human dignity is not even mentioned when the author describes the UN Charter; cf. BRIERLY, James Leslie.

soon after the adoption of the Universal Declaration of Human Rights. The project proposed to indicate the inherent dignity of man as the source of these rights. Involved in this work. Lebanese politician and the chairman of the Commission on Human Rights of the United Nations in 1950s, Charles Malik who was involved in this work strongly emphasized that: “the recital ‘recognizing that these rights derive from inherent dignity of the human person’ refutes any notion that an external power, such as a benevolent government or even the United Nations, ‘granted’ man these rights”.⁴⁹

Human dignity has been mentioned in UNESCO Convention against Discrimination in Education, adopted on December 14, 1960, in which according to Article 1 (1) (d), “inflicting on any person or group of persons conditions which are incompatible with the dignity of man” was qualified as a manifestation of discrimination. Article 1 of the UN Declaration on the Elimination of All Forms of Racial Discrimination, being a resolution of the UN General Assembly of 1963 declares any form of discrimination “on the ground of race, colour or ethnic origin” as “an offence to human dignity”.

The real breakthrough in the importance of the category of dignity came in December 1966, with the adoption by the UN General Assembly of two international covenants: on civil and political rights and on economic, social and cultural rights. The preambles of both covenants indicate, as Charles Malik postulated, that human rights derive from inherent human dignity. Moreover, both covenants repeated the same wording of Article 1, regarding the right to self-determination. As Ginevra Le Moli rightly claims, the repetition of the same provisions does not mean that they have exactly the same meaning in both covenants. In the first one, self-determination has a more individualistic dimension, and in the second one, concerning second-generation human rights, it has gained a more collective character. As the scholar asserts: “The two treaties ... collect these two different paradigms of dignity: on the one hand, human dignity as an attribution of the individual, to be found crystallized in the UDHR, while on the other, an expression of dignity in its collective nature”.⁵⁰

4 Human dignity as legal value, legal principle and as right

The Universal Declaration of Human Rights uses human dignity as a value being the foundation of international legal order (according to the preamble, the recognition of human dignity is seen as “the foundation of freedom, justice and peace in the world”). Thus, the so-called founding function of human dignity is

The Law of Nations. An Introduction to the International Law of Peace, 6th edition, New York and Oxford: Oxford University Press, 1972, pp. 413–432.

49 MALIK, Charles. *Human Rights in the United Nations with Text of Draft Covenants*. New York: United Nations, 1952, p. 11. One of the initial versions of the preamble, proposed by Lebanon delegation, emphasized the recognition of “inalienable human rights and fundamental freedoms flowing from the inherent dignity of the human person”. Cf. LE MOLI, Ginevra. *Human Dignity in International Law*, p. 151.

50 LE MOLI, Ginevra. *Human Dignity in International Law*, p. 156.

noticed in the literature.⁵¹ This function of dignity was repeated in many other international-law documents. Therefore, human dignity most often appears in international law as a value,⁵² although some acts *expressis verbis* indicate that dignity is also a right. In some cases, treating dignity as a right results from the context in which the reference to dignity is placed. Four Geneva conventions of August 12, 1949: for the amelioration of the condition of the wounded and sick in armed forces in the field, for the amelioration of the condition of wounded, sick and shipwrecked members of armed forces at sea, convention relative to the treatment of prisoners of war, and convention relative to the protection of civilian persons in time of war, contain the same Article 3. This Article prohibits, *inter alia*, acts of violence to life and person (clause 1 (a)) and “outrages upon personal dignity, in particular humiliating and degrading treatment” (clause 1 (c)). As it is ascertained in the literature, this provision makes the distinction between human rights related to the protection of life and person on the one hand and human dignity on the other hand. Thus, it means that persons protected by these conventions have a right to be treated in a way does not violate their personal dignity.⁵³ At the same time, human dignity as mentioned in Article 1 clause 1 (c) of Geneva conventions is perceived also as legal principle. Thus, as Robert Alexy wrote, it is an optimization norm, “commanding that something be realized to the highest degree that is actually and legally possible”.⁵⁴ Therefore, the principle of respect for human dignity commanding the protection of human dignity to the highest possible level. As the International Criminal Tribunal for the former Yugoslavia stated in the Furundzija judgment of December 10, 1998: “This principle is intended to shield human beings from outrages upon their personal dignity, whether such outrages are carried out by unlawfully attacking the body

51 DICKIE, Klaus. The Founding Function of Human Dignity in the Universal Declaration of Human Rights. In KRETZMER, David and KLEIN, Eckart (eds.). *The Concept of Human Dignity in Human Rights Discourse*. The Hague, London and New York: Kluwer Law International, 2002, pp. 111–120. KARLINA, Kate. Human Dignity as a Foundational Value of Peremptory Norms in International Law. *Riga Graduate School of Law Research Paper*, 2020, no. 22, pp. 18–24. STEINMANN, Rinie (AC). The Core Meaning of Human Dignity. *Potchefstroomse Elektroniese Regsblad. Potchefstroom Electronic Law Journal*, 2016, vol. 19, pp. 1–32.

52 An example of such a usage of human dignity as a legal value can be found in the case-law of the European Committee of Social Rights on the ground of the European Social Charter. The Committee has found, e.g., that “health care is a prerequisite for the preservation of human dignity and that human dignity is the fundamental value and indeed the core of positive European human rights law – whether under the European Social Charter or the European Convention on Human Rights”: European Committee of Social Rights. Decision on the merit. Defence for Children International (DCI) v. Belgium, complaint no. 69/2011, para 101. Available at: <[53 ROSEN, Michael. *Dignity. Its History and Meaning*. Cambridge, Mass.: Harvard University Press, 2012, pp. 58–60. LE MOLI, Ginevra. *Human Dignity in International Law*, p. 191.](https://hudoc.esc.coe.int/eng/#{%22sort%22:[%22escpublicationdate%20descending%22],%22escdidentifier%22:[%22cc-69-2011-dmerits-en%22]}>”. Accessed: 15.03.2024.</p></div><div data-bbox=)

54 ALEXY, Robert. On the Structure of Legal Principles. *Ratio Iuris*, 2000, vol. 13, no. 3, p. 295 (pp. 294–304).

or by humiliating and debasing the honour, the self-respect or the mental well-being of a person”.⁵⁵

Right to human dignity is recognized in international law, although not very many international legal documents refer to it openly. On the ground of EU law this right is expressly mentioned in the Explanations Relating to the Charter of Fundamental Rights.⁵⁶ The Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women⁵⁷ specifies the right of every woman “to have the inherent dignity of her person respected and her family protected” (Article 4 point (e)). The African Charter on Human and Peoples’ Rights, adopted on June 27, 1981, in scope of the Organization of African Unity,⁵⁸ explicitly recognizes the right of an individual “to the respect of the dignity inherent in a human being and to the recognition of his legal status” (Article 5). It is also worth adding that the revised European Social Charter⁵⁹ proclaims “the right to dignity at work” (Article 26).

The very right appears more frequently in the case law of various international courts and adjudicating bodies. It can be found, *inter alia*, in the jurisprudence of the European Court of Justice,⁶⁰ although the Court has not yet presented its detailed characteristics. As Ginevra Le Moli points out, on the ground of the jurisprudence of the European Court of Human rights, the references to the right to human dignity most often appear in judgments regarding inhuman treatment in detention, while the Inter-American Court of Human Rights “has instead referred to the right to dignity in decisions related to violations of the right to privacy and the right to humane treatment in detention”.⁶¹ The African Commission on Human and Peoples’ Rights has “on many occasions referred to the strict

55 International Criminal Tribunal for the former Yugoslavia. Prosecutor v. Anto Furundzija (Trial Judgement). IT-95-17/1-T. Judgement of December 10, 1998, para 183. [online]. Available at <<https://www.icty.org/x/cases/furundzija/tjug/en/>>. Accessed: 15.03.2024. Cf. International Criminal Tribunal for the former Yugoslavia. Prosecutor v. Zlatko Aleksovski (Appeals Chamber Judgement). IT-95-14/1-T. Judgement of March 24, 2000, paras. 25–26. [online]. Available at <<https://www.icty.org/x/cases/aleksovski/acjug/en/>>. Accessed: 15.03.2024.

56 Explanations Relating to the Charter of Fundamental Rights (2007/C 303/02), OJEU, C 303/17, 14.12.2007. [online]. Available at: <<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:C:2007:303:FULL>>. Accessed: 13.03.2024.

57 Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (Convention of Belém do Pará). [online]. Available at: <<https://www.oas.org/en/mesecvi/docs/belemdopara-english.pdf>>. Accessed: 13.03.2024.

58 African [Banjul] Charter on Human and Peoples’ Rights, adopted June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force on October, 21, 1986. [online]. Available at <https://au.int/sites/default/files/treaties/36390-treaty-0011_-_african_charter_on_human_and_peoples_rights_e.pdf>. Accessed: 15.03.2024.

59 European Social Charter (Revised), Strasbourg, 3.05.1996. *European Treaty Series*, No. 163. [online]. Available at: <<https://rm.coe.int/168007cf93>>. Accessed: 15.03.2024.

60 Cf. Judgment of the Court of Justice of October 9, 2001. *Kingdom of the Netherlands v European Parliament and Council of the European Union*, case C-377/98. [online]. Available at: <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61998CJ0377>>. Accessed: 13.03.2024.

61 LE MOLI, Ginevra. *Human Dignity in International Law*, p. 241.

relationship between the right to respect human dignity and right to life”.⁶² The Commission found that the right to dignity is in some way subordinated to the right to life: “The right to life is the supreme right of the human being. It is basic to all human rights and without it all other rights are without meaning. The term ‘life’ itself has been given a relatively broad interpretation by courts internationally, to include the right to dignity and the right to livelihood”.⁶³ Therefore, according to the Commission, if the right to life is not respected, the right to dignity becomes in a sense void. It is worth noting that the Committee on Economic, Social and Cultural Rights has found a linkage between right to dignity and right to health, since – as it is emphasized – the latter is dependent on the realization of other human rights, including the right to food, the right to work, the right to housing, the right to education and the right to dignity.⁶⁴ Thus, it can be concluded that human dignity “qualifies the content” of several other human rights.⁶⁵

As it is emphasized by Aharon Barak, right to dignity is perceived in modern constitutionalism either as relative right, or as absolute right. When considered to be a relative right, the right to dignity is subjected to balancing and the proportionality clause can be used in relation to the right to dignity. Barak believes that the understanding of dignity as an absolute right occurs only in German constitutional law. German Basic Law (*Grundgesetz*) of 1949 declares human dignity inviolable in Article 1 clause 1, and the second sentence of the same article indicates that respecting and protecting dignity is the duty of the state authority. However, it must be stated that this understanding of the right to dignity is also present, to a greater or lesser extent, in the case law of Central European countries (Poland, Hungary, the Czech Republic, Slovakia), which after 1989 adopted concepts developed on the basis of German constitutionalism. However, Barak is right when he says that the right to dignity rarely is main basis for decisions of the Federal Constitutional Court (*Bundesverfassungsgericht*), since this right is understood narrowly as an absolute right that cannot be limited.⁶⁶ Due to the multitude of contexts in which the right to dignity appears in international law, it is impossible to indicate which of the two approaches to the right to dignity distinguished by Barak dominates in international law: whether it is more often perceived as a relative right or as an absolute right. However, it should be emphasized that in the area of international humanitarian law, where the right

62 *Ibid.*, p. 242.

63 African Commission on Human and Peoples’ Rights. Sudan Human Rights Organisation & Centre on Housing Rights and Evictions (COHRE) v. Sudan, decision of May 27, 2009, case 279/03-296/05, para 146. [online]. Available at: <<https://www.refworld.org/jurisprudence/caselaw/achpr/2009/en/97622>>. Accessed: 15.03.2024.

64 General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12). Adopted at the Twenty-second Session of the Committee on Economic, Social and Cultural Rights, on 11 August 2000. [online]. Available at: <<https://www.refworld.org/legal/general/cescr/2000/en/36991>>. Accessed: 15.03.2024.

65 LE MOLI, Geneva. *Human Dignity in International Law*, p. 249.

66 Cf. BARAK, Aharon. *Human Dignity. The Constitutional Value and the Constitutional Right*, pp. 229–241.

to dignity takes the form of the right to respect of human dignity understood in a negative way, i.e. excluding all actions violating dignity, it is definitely an absolute right.

Human dignity is presented as principle in such international acts as: Convention on the Elimination of All Forms of Discrimination against Women adopted by UN General Assembly on December 18, 1979 (preamble), International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families of 1990 (Article 70), United Nations Declaration on the Elimination of All Forms of Racial Discrimination of 1963 (preamble), Declaration on the Rights of Mentally Retarded Persons adopted by UN General Assembly in 1971 (preamble), Declaration on the Rights of Disabled Persons adopted by UN General Assembly in 1975 (preamble), and Declaration on the Elimination of Violence against Women adopted by UN General Assembly in 1993 (preamble). The legal principle of human dignity is widely recognized also by international bodies concerned with the protection of human rights. The Committee on Economic, Social and Cultural Rights named the principle of human dignity “the fundamental guiding principle of international human rights law enshrined in the Preambles to the Universal Declaration of Human Rights and both Covenants” and declared that corporal punishment or public humiliation, also used in schools and other educational institutions, is generally inconsistent with this principle.⁶⁷ According to the African Commission on Human and Peoples Rights, the following actions are incompatible with this principle: taking land from indigenous peoples, execution of the death penalty by hanging, refusal of medical assistance for people in detention, discriminatory behavior and hate speech, as well as enforced disappearance.⁶⁸ Only the most important, in my opinion, examples of the use of dignity as a principle under international law are given here.

Ginevra Le Moli is essentially right when stating that human dignity, besides being the value underpinning world’s legal order, fulfils other functions in international law, namely it is “the basis of an inviolable right” and “a non-balanceable basis for all rights which *derive* from it”.⁶⁹ Dignity is less often recognized as a right than as a value. Moreover, it is often the basis for the legal principle of protecting human dignity.⁷⁰ However, this is a very specific legal principle because, unlike other principles, it can never be balanced against other legal principles. Not being subject to balancing, this principle always stipulates

67 Committee on Economic, Social and Cultural Rights. General Comment No. 1, E/C.12/1999/10 (General Comments). Available at: <<https://www.escr-net.org/resources/general-comment-13-right-education>>. Accessed: 15.03.2024.

68 LE MOLI, Ginevra. *Human Dignity in International Law*, pp. 226–227.

69 *Ibid.*, p. 219.

70 Cf. LE MOLI, Ginevra. The Principle of Human Dignity in International Law. In ANDENAS, Mads, FITZMAURICE Malgosia, TANZI, Attila, and WOUTERS, Jan (eds.). *General Principles and the Coherence of International Law*. Leiden: Koninklijke Brill, 2019, pp. 358–368.

that the inherent dignity of the human person is to be protected to the greatest extent possible in given circumstances.

5 The content of human dignity in international law

In some international-law documents dignity is perceived in collective way, as a feature of certain group of people. Such a collective understanding of dignity may, depending on the circumstances, be both competitive and compatible with dignity perceived in an individualistic way. The Declaration on Race and Racial Prejudice, adopted on November 27, 1978 by the General Conference of the United Nations Educational, Scientific and Cultural Organization, uses the phrase “the principle of the equality in dignity and rights of all human beings and all peoples” (Article 9 clause 1) and therefore asserts that peoples are also characterized by dignity. The African Charter on Human and Peoples’ Rights speaks in the preamble both about dignity of individual and dignity of peoples “which are still struggling for their dignity and genuine independence, and undertaking to eliminate colonialism, neo-colonialism, apartheid, zionism [*sic!*] and to dismantle aggressive foreign military bases and all forms of discrimination, particularly those based on race, ethnic group, color, sex, language, religion or political opinions”.⁷¹ The African Commission on Human and Peoples Rights, being the body established to interpret and protect the rights indicated in the African Charter, strongly emphasized that depriving indigenous people of their ancestral land is inconsistent with the principle of human dignity, if this results in the community’s living conditions being thereby deteriorated to such an extent that human dignity is violated. In this regard, the Commission based its reasoning on the judgment of the Inter-American Court of Human Rights of June 17, 2005 in the case *Yakye Axa Indigenous Community v. Paraguay*.⁷² Thus, the Commission pointed out the connection between individual dignity and collective, and therefore collective, rights.

In this context it should be stressed that dignity of the community (collective) can be perceived as resulting from the dignity of individuals, but it can also be understood as a kind of counterweight to the dignity of individuals. If the latter perspective is adopted, balancing of the dignity of individuals against dignity of

71 Similar statements on Zionism can be found in Article 1 clause (B) of the Arab Charter of Human Rights prepared in 1994 in scope of the League of Arab States and Article 2 clause (3) of the revised Arab Charter on Human Rights of 2004. Cf. Arab Charter on Human Rights (1994). [online]. Available at <<https://www.refworld.org/legal/agreements/las/1994/en/10672>>. Accessed: 15.03.2024. Arab Charter on Human Rights (2004). [online]. Available at <<https://digitallibrary.un.org/record/551368?v=pdf>>. Accessed: 15.03.2024.

72 African Commission on Human and Peoples Rights. Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v. Kenya, decision of November 25, 2009, file no.276/2003, para 216. Available at: <https://www.esccr-net.org/sites/default/files/Endorois_Decision.pdf>. Accessed: 15.03.2024. Inter-American Court of Human Rights. Judgment of June 17, 2005 in the case of the *Yakye Axa Indigenous Community v. Paraguay* (merits, reparations and costs). Available at: <https://corteidh.or.cr/docs/casos/articulos/seriec_125_ing.pdf>. Accessed: 15.03.2024.

the community is not precluded. Such a situation would be dangerous for the protection of individual dignity. However, those acts of international law that refer to collective dignity do not exclude this possibility.

When it comes to the minimum content of human dignity under international law, in my view Christopher McCrudden is right when saying that recognition of intrinsic worth of every human being determines this content.⁷³ Moreover, human dignity is based on personal and moral autonomy or integrity, since this intrinsic worth is connected with the fact that every human is capable of moral choices and judgments. The Committee on the Elimination of Discrimination against Women and the Committee on the Rights of the Child link human dignity with moral integrity of individual.⁷⁴ In 2019 the Human Rights Committee declared assisted suicide generally incompatible with the right to life. On this occasion, the Committee emphasized the importance of personal autonomy for human dignity: “While *acknowledging the central importance to human dignity of personal autonomy*, States should take adequate measures, without violating their other Covenant obligations, to prevent suicides, especially among individuals in particularly vulnerable situations, including individuals deprived of their liberty.”⁷⁵ This understanding of dignity refers to a simplified reading of Immanuel Kant’s concept, which can be found, among others, in the case law of the German Federal Constitutional Court or the Constitutional Court of South Africa.⁷⁶ It also harmonizes with the liberal vision of the individual as an autonomous subject who is responsible for his or her choices.

6 Conclusions

Some scholars argue that the category of human dignity was introduced into international law in the 19th century. In my opinion, however, such an interpretation is not supported by the sources. Concepts such as “principle of

73 McCrudden, Christopher. Human Dignity and Judicial Interpretation of Human Rights. *European Journal of International Law*, 2008, vol. 19, no. 4, pp. 655, 679.

74 Joint general recommendation No. 31 of the Committee on the Elimination of Discrimination against Women/general comment No. 18 of the Committee on the Rights of the Child (2019) on harmful practices. Available at: <<https://documents.un.org/doc/undoc/gen/g19/134/42/pdf/g1913442.pdf?token=IjT9VDu69KwSV2O0m0&fe=true>>. Accessed: 15.03.2024. The Committees pointed out that harmful practices “constitute a denial of the dignity and/or integrity of the individual and a violation of the human rights and fundamental freedoms enshrined in the two Conventions” (para 16 point (a)).

75 Human Rights Committee. General Comment No. 36. CCPR/C/GC/36, September 3, 2019. Available at <<https://documents.un.org/doc/undoc/gen/g19/261/15/pdf/g1926115.pdf?token=f47CP74m9qHHsdGlwX&fe=true>>. Accessed: 15.03.2024. Cf. FOSTER, Charles. Universal Declaration of Human Rights Part I: Articles 1, 2 3, 5 and 6. In Ó NÉILL, Clayton, FOSTER, Charles, HERRING, Jonathan, and TINGLE, John (eds.). *Routledge Handbook of Global Health Rights*, Milton Park and New York: Routledge, 2021, chapter 2.

76 Cf. WEINRIB, Jacob. Dignity and Autonomy, paras 26–31. In *Max Planck Encyclopedia of Comparative Constitutional Law*. Available at <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3336984>. Accessed: 15.03.2024. SENSEN, Oliver. *Kant on Human Dignity*. Berlin and Boston: de Gruyter Verlag, 2011.

humanity” or “laws of humanity,” which appear in contemporary documents, are not identical with human dignity. These concepts, however, refer to the idea of humanity, which was introduced into the theory of the law of nations in the 17th and 18th centuries under the influence of Stoic thought and could be easily reconciled with the principle of state sovereignty. Moreover, from Vattel’s time until the 20th century, the concept of “dignity of sovereign states” existed in international law. In fact, the concept of human dignity was introduced into international law not earlier than in the 1940s. This concept was undoubtedly embedded in Christian personalism, but it was secularized already in the 1940s.

In contemporary international law, human dignity appears as both a value, a human right and a legal principle. However, international legal documents are less likely to explicitly refer to the right to dignity than to the principle of dignity. The principle of dignity is a special legal principle because, unlike other legal principles, it cannot be balanced against other legal principles. The minimal content of human dignity is the recognition of the intrinsic value of every human being and his or her autonomy. It can be pointed out that this is a kind of distant echo of Kant’s concept of individual dignity.

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