

**Virtual School of “Dialogue, Democracy and  
Peaceful Conflict Resolution”**

***HUMAN RIGHTS – Enver Đuliman***  
**Lesson VI**



**Enver ĐULIMAN**

was born on 11 January 1959, in Mostar.

He finished the Faculty of Law 1983, in Sarajevo and the studies of intercultural understanding at the University in Oslo, 2002.

From 1997 to 2000 he worked as a chief of the department for education of the Helsinki committee for Human Rights of Norway, Oslo.

In 2000 he published the book “Difficult Reconciliation” and in 2002 “Introduction to Human Rights”.

He writes for Norwegian daily newspapers Aftenposten, Dagbladet, VG and Klassekampen.

In 2003 he received Blans Mayor Award for his work on reconciliation.

## Human rights

### What are human rights?

Enver Djuliman and Gunnar M. Karlsen

**Human rights are the rules by which state acts towards individuals and groups. Human rights put us in a favored position in regard to state and they are the rights we have just because we are human beings. These rights do not need to be deserved. We all have the same human rights.**

THE STARTING POINT FOR THE INTERNATIONAL HUMAN RIGHTS is the Universal Declaration of Human Rights adopted by the United Nations on December 10, 1948. After that declaration, a number of declarations, covenants and conventions (international documents) which broaden human rights have been accepted. Two world conferences were held in 1968 and 1993, where the countries committed to continue their work on an improvement of the protection of human rights. There are many ways to categorize human rights. The most common categorization is into civil, political, economic, social and cultural rights. Apart from that, there are also different methods for improving human rights, among other things, through legislation, education, public campaign and debates.

***“Human rights are the foundation for human existence...  
Human rights are what makes us human.”  
Kofi Annan, Secretary- General of the UN***

### Different types of rights

The term human rights consists of two words – human and rights. Everybody knows the meaning of the word human, but what does having rights mean exactly? The suggestion for a general definition of the word right could be stated *as advantage positions given to individuals or groups by law, ethical rules or other norms*. When it comes to human rights, a very important issue is the borderline between *ethical* and *legal* norms. That borderline could be traced to ancient courts from the beginning of our era. Whereas *legal* norms are defined by laws or court orders, ethical norms are defined as *natural* rights common for all people, no matter in which society they live. Disagreements about whether this kind of *natural* rights should be recognized, have existed and they still do. Haven't all moral principles developed in only one specific culture and aren't they relevant only for that very culture?

One of the possible answers could be – even though human rights apply to everyone, they are universal. However, it is not necessary to observe these as *natural rights*. To confirm their universal validity it is sufficient to conclude that they are accepted in the international negotiations.

An expression *ethics* of human rights is used by some philosophers and theologians. It is simply an attempt to make human rights something that will become usual, by saying that an individual should consider them in his/her own acts. In that way human rights become a rule and sign for that how we, as individuals, should act towards one another. In this book, however, we will not describe attempts for establishment and development of such ethics. But, it is worth mentioning that the Universal Declaration of Human Rights also underlines

the responsibility of each individual. For example, in Article 1 it is stated that “humans should act towards one another in a spirit of brotherhood.”

In a philosophical debate on rights they are often divided into sub-groups, so that we can study them more closely. For example, they can be classified as negative and positive rights. The right, for example, not to be exposed to torture is so called *negative* right. It prescribes to my opposite side an obligation not to expose me to torture, which means to restrain from a certain action. The right to work is, on the other hand, a *positive* right. It prescribes to the authorities a positive obligation to create conditions so that I can get a job, i.e. they have obligation to act. Also, we can differentiate *active* from *passive* rights. Your right to get back the money you lend is a passive right (you don't need to do anything), while the right to defense is an active right (you yourself have to do something). Philosophers, who study rights, also make difference between *specific* and *universal* rights. *Specific* rights, such as the right to freedom of speech, apply to everyone. Specific rights refer to specific relations, such as the rights of the spouses in a marriage. In some catholic countries each spouse has right to “to perform marriage duties”, which means to have sex with his/her marriage partner. If, on the other hand, a partner does not want to carry out this duty, it is a good reason for dissolution. With making the divorce law more flexible, this argument has become irrelevant, because you can get divorce even without a specific reason.

It might appear that having rights always means that someone else has certain obligations. It could be explained like this: in order to say that you have a right, there must be an opposite side to respect, protect or fulfill this right. It is said that Robinson Crusoe had enough obligations, but only when Friday appeared he got his rights. But, this, of course, cannot be applied to all rights. On the contrary, so called *demand* rights indicate a certain obligation of the opposite side. The right to get back the money you lend indicates an obligation of the other side to return the money. In order to clear up the relations between someone who has a certain right and the opposite side, who needs to respect, protect or fulfill this right, we can differentiate four types of rights: demand, freedom, competence and immunity. The right of *demand* indicates an obligation of the opposite side to perform a certain act. The right to *freedom* means that you do not have any obligations towards the opposite side so as to not to perform a certain act. To have the right of *competence* means that you can change the status of the opposite side, for example, from the status of a free man to the status of a prisoner. On the other hand, the right to *immunity* means that the opposite side cannot change your status. For example, even if you own someone more money than you are able to pay back, that person cannot make you his/her debtor slave.

## Human rights

A man always has a right because of a certain status, but what is specific for human rights is that we have them just because we are human. In former social systems the political rights, what we today call human rights, were reserved only for people with property. Some groups, such as women, children, individuals with physical or mental disorder and minorities, also have special rights. The reason for this is that they are either really delicate groups (children, individuals with physical or mental disorder, refugees) or victims of discrimination (women, minorities).

Many rights (which do not belong to human rights) we deserve in different ways. The right to a pension in a certain amount, the right to participate in the national football championship or to be invited to the premiere of a new film, it all depends on our efforts, whom we know, what we do and so on. Human rights then come into question only if we are discriminated on the grounds of race, color, sex, language, religion, political or any other opinion. Authorities are obliged to prevent these forms of discrimination, but they do not need to worry that everyone gets equal part. Even in the society where human rights

are respected to the very last, there will still be many rights enjoyed just by one smaller group of that society.

So far we have observed some terms from the discussion about what rights are. We did not discuss what rights we should have, but *what having a right means in general*. Also, we found out that human rights are those rights which every human being has only because of being human. While there are still misunderstandings if we should adopt animal protection law, no serious statesman or leader denies that people have human rights. According to the Universal Declaration of Human Rights “all human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one other in a spirit of brotherhood”.

The historical background of the decision of the UN to adopt the Universal Declaration of Human Rights were reports on violence towards Jewish people and other ethnic groups which Nazis considered the second class, the less worthy people, before and after the Second World War. After the Second World War, the international community was united in decision to adopt the rights which will include “all members of the human family” and which will make the foundation of “freedom, justice and peace in world”.

The rights from the Universal Declaration can be found in many former declarations. They too resulted as the response to former massive violence. It also includes the American Declaration of Independence from 1776, and the French statement of human and civil rights from 1789. However, only with the new Universal Declaration of Human Rights, it has been finally confirmed at the global level that human rights refer to everybody, no matter where you live.

Human rights protect human life, private life, physical integrity and social engagement.

The Universal Declaration describes the ideal how authorities should treat and support their citizens. But, each of us, also, has the responsibility to promote the respect for someone else’s rights and freedoms.

The Declaration is not a recipe for egoism, but for the society where citizens will have a possibility to develop their own abilities, to participate in important social decision-making and to satisfy their basic needs.

Human rights were built on a principle of the equal rights and non-discrimination.

- *Civil rights protect life, integrity, legal security, private and family life, freedom of expression, assembly and movement.*
- *Political rights protect the right to take part in the government of one’s country (the right to vote and to participate in elections)*
- *Economic rights protect the right to work, to form and to join a trade union, the right to strike and to sufficient standard of living*
- *Social rights protect the right of an individual to public welfare for the period of unemployment, sickness, invalidity and other circumstances beyond our power.*
- *Cultural rights protect the right to education and the right to participate in the cultural life, as well as, to enjoy in a scientific advancement and the copyright*

The representatives of different countries have come to an agreement about creating and establishing human rights in the form in which we have them today. At the same time, we have seen the growth of non-governmental organizations (NGOs) and independent experts for human rights who work on the promotion of human rights, development and acceptance of new rights, as well as on the strengthening of their respect. Human rights are a dynamic concept, which means that they are interpreted and realized in accordance with changes within the society and new challenges. The examples of new rights are the right to peace, the right to clean environment and the right to development. There are a number of different types of international documents which describe and define human rights, such as

covenants, conventions, statements, basic principles and so on. Only covenants and conventions are legally obligatory for those countries which have *ratified* them, which means the countries that have stated by a special procedure to support them. As for the ratification, a state can be in a position of the reserve, unless it wants to be bound by certain decisions (*reservation*). During the state of emergency or a war, it is acceptable to overlook some of human rights (*derogation*). The convention, as a rule, requires a specific lowest number of ratifications to enter into effect. Two covenants of the UN, adopted in 1966, entered into effect not before 1976, after being ratified by 35 countries.

The **most important documents** are:

- *The Universal Declaration of Human rights, 1948*
- *The international Covenant of Civil and Political Rights, 1966*
- *The International Covenant on Economic, Social and Cultural Rights, 1966*

For the countries formed after the disintegration of ex-Yugoslavia and the other European countries also important is The European Convention on Human Rights adopted by the Council of Europe in 1950, and the Helsinki statement adopted by the Commission on Security and Cooperation in Europe (the former CSCE, the present OSCE) in 1975. The UN have also adopted a certain number of special conventions, among other things, the convention against torture, genocide, discrimination on the grounds of race and the rights of delicate groups, such as children, women and natives (autochthonous people).

### Who is responsible?

Primarily, the authorities in the state you live in are responsible for respect, protection and fulfillment of your human rights. In many countries there are gross violations of human rights, especially those concerning arresting and jailing. The legal system is another key institution which should protect from violence and punish it. The legal security and equality in front of the law, means independent and righteous courts.

The states are obliged to respect human rights by the act of joining the UN and other international organizations or by including human rights into their own legislation. The states can take legal obligations on themselves by ratifying conventions of human rights. In a number of countries, conventions then become a part of their own legislation and citizens can directly point to them in eventual legal proceedings.

A convention or a covenant can become a part of the national legislation in many ways. In the so-called mono-legal systems, international conventions which have been ratified by a state, have the same legal force as national laws. In dualistic systems this can be done by incorporation, transformation and establishing of harmony of norms.

- Incorporation means that the parliament adopts a law which points to one or several international conventions and gives them a power of law.
- Transformation indicates a change of national laws, so that they are in accordance with international conventions.
- Establishment of harmony of norms means that the authorities state that there already is equality between national laws and international conventions.

If the states fail in their obligation of respecting and ensuring human rights, the international community has the legal right to criticize them and eventually take other measures. This was established at a global level on the Second World Conference of Human Rights at Vienna, 1993.

The UN, The Council of Europe and some other international organizations have established so-called mechanisms or procedures for controlling if the states fulfill their duties. The states, among other things, must hand over written reports about what they have done to improve the protection of human rights. The citizens of European countries can appeal to the European Court of Human Rights if they have used all legal possibilities of their national courts.

Also, it has been discussed if non-governmental organizations, guerilla or rebel movements or private firms can violate human rights. In the reports of the organizations for the protection of human rights the violation of human rights committed by state and non-state actors has also been often criticized. For example, Amnesty International and Human Rights Watch (the American organization for the protection of human rights equal to The Helsinki Federation for Human Rights in Europe), have also criticized Turkish Government and The Kurdistan Workers' party (PKK) for the violation of human rights.

Though, there are surely a large number of those who believe that human rights are the relation between the state and an individual or groups and that only the states can violate them. We may say that organizations and industrial concerns have moral responsibility for human rights, but only states have a legal responsibility for them. For example, The European Court of Human Rights has punished only states for the violation of human rights so far.

The Norwegian expert on human rights, Asbjørn Eide, has specified the responsibility of the state for human rights in three items. The responsibility of the state is to *respect, protect and fulfill* human rights. Let us take as an example Article 3 of the Universal Declaration of Human Rights. The mentioned article says: "everyone has the right to life, freedom and personal security". The responsibility of the state, in relation to this article, would include:

- The respect for the right of the individual to life so that it does not take it away itself
- The protection of individual's right to life in order to protect him/her from those who threaten him/her with homicide
- The fulfillment of individual's right to life, in order to keep him/her alive

The responsibility of the state, in other words, is much wider than merely not killing an individual. In debates at the UN, related with the creation of the Universal Declaration of Human Rights, however, was emphasized that Article 3 does not guarantee that an individual will have enough food, firewood or medical care. Capital punishment and abortion were considered as legal exceptions from the right to life. But, according to Article 25 of the Universal Declaration of Human Rights, which states that the right to a satisfactory standard of living includes food, clothing, housing, medical care and social services, we can simply say that the state has an obligation to keep us alive in such a way that it provides us with different means of support.

In The Covenant of the UN on civil and political rights, the right to life is established in Article 6. The Committee of the UN of Human Rights, whose main task is to consider appeals regarding human rights violations, has stated that the states are obliged to establish positive measures to accomplish the right to life, and, among other things, to prevent mortality of newborn infants, malnutrition and epidemics. The covenant does not forbid the capital punishment, but it establishes that it can be carried out in the cases of the gravest crimes.

This example shows that human rights must be interpreted separately, in each individual case and that it could be necessary to investigate which starting points were considered on

the occasion of their adoption. Also, it may appear necessary to observe one right in accordance with others, in order to reach a harmonic interpretation. When it comes to whether capital punishment is in opposition to other human rights or not, the dynamic character of these rights is expressed. Amnesty International is consistent in the interpretation of the right to life, in the sense that it means the prohibition of capital punishment. Even though documents about human rights have been adopted in which this kind of a penalty is forbidden, they are still obligatory only for those countries which have ratified them.

The USA and some other countries still claim that the prohibition of capital punishment does not exist in international human rights. When the USA ratified The Covenant of Civil and Political Rights in 1992, the American authorities reserved the right to carry out the capital punishment over minors. A number of countries protested against this reservation.

***Topics for thinking/discussion:***

- Relation between human rights and religion, tradition and culture
- The limits of human rights and the war against terror
- The human rights and humanitarian interventions
- Domestic violence
- The rights of individuals with special needs