


Human rights – 70 years after the adoption of the Universal Declaration of Human Rights

Confronting the universality of the UDHR with the intersex reality


Mila Petkova
Association Henri Capitant
Cabinet d'avocats Pitcho
mila.petkova@pitcho.fr



Benjamin Moron-Puech
Association Henri Capitant
Université Panthéon-Assas
b.moronpuech@u-paris2.fr



Presentation
of the Association
Henri Capitant



Presentation of the Association Henri Capitant

☞ An association of *Francophile* lawyers

☞ An association of *reformist* lawyers

National reforms

*Property law, Security rights,
Law of obligations and special contracts*

International reforms

*European law of contract
Caribbean commercial law*

☞ An association of *comparative* lawyers – “International Days”

2015: *Third parties*, Panama

2016: *Globalization*, Germany

2017: *Legal interpretation*, Italy

2018: *Vulnerability*, Québec

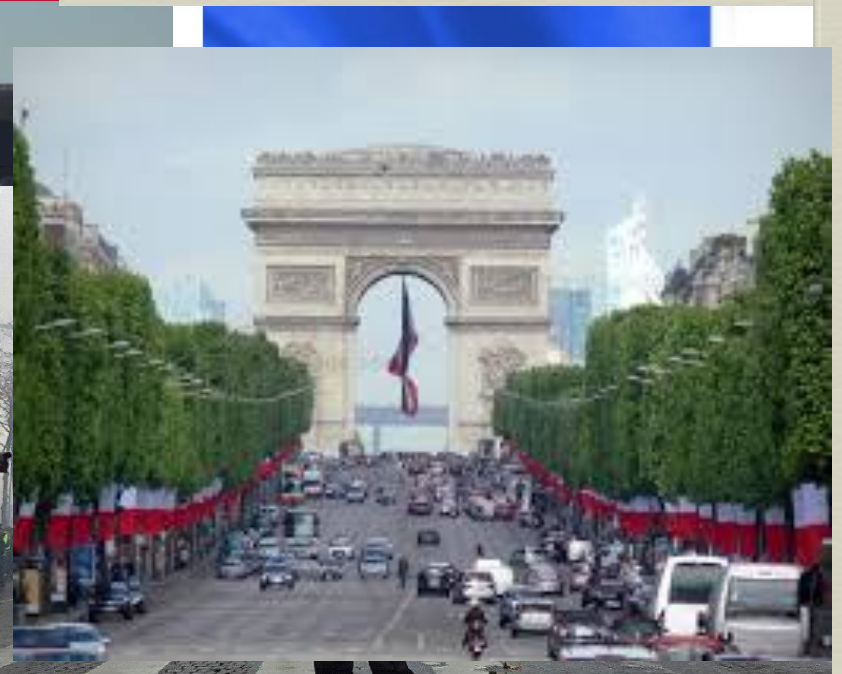
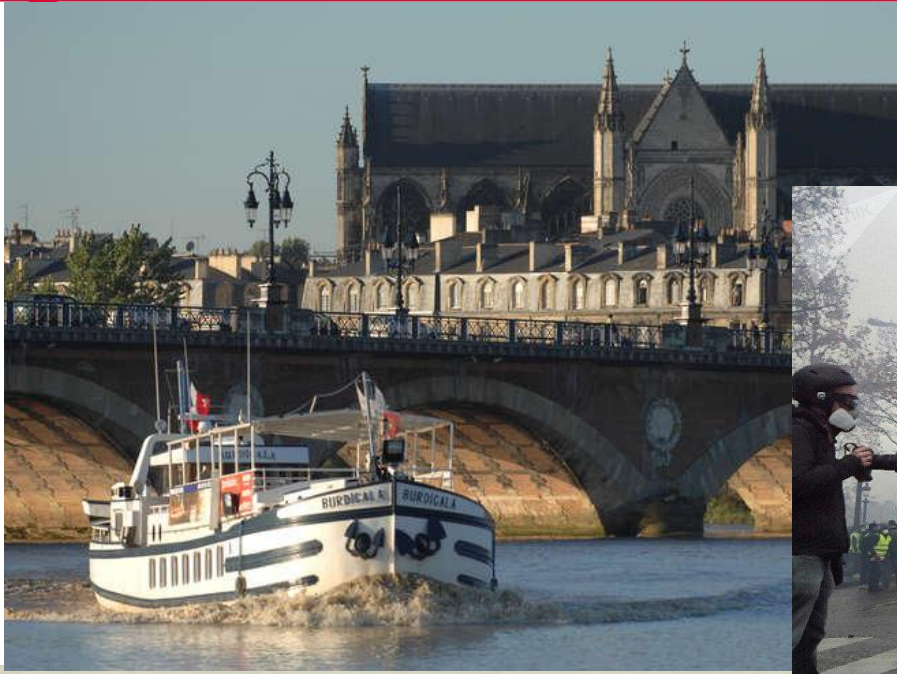


La solidarité, Bordeaux et Paris, 3 juin 2019

La solidarité

Bordeaux et Paris, lundi 3 juin 2019

- ☞ Solidarity and family
- ☞ Solidarity and solidarity economy
- ☞ Solidarity and compensation
- ☞ Solidarity and fiscal policies

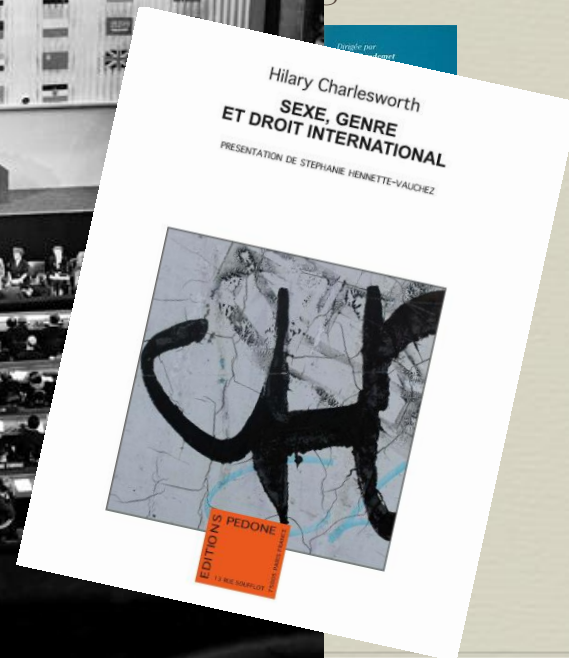


Introduction

∞ The Universality of the UDHR: a self evidence?



g its effects



Introduction

Who are intersex?



Caster Semenya,
an intersex athlete



Anne Gaby Odiele,
an intersex model



Pol Naidenov,
a Bulgarian intersex

A screenshot of the European Commission website. The header includes the European Union flag and the text 'EUROPEAN COMMISSION Audiovisual Services'. Below the header, there is a navigation menu with 'Europe by Satellite', 'My AV Services', and 'Help'. A search bar contains the text 'Monika & Pol'. Below the search bar, a link is displayed: 'https://unfe.org/system/unfe-65-Intersex_Factsheet_ENGLISH.pdf'. The background of the screenshot shows a blurred image of a person's face.

Introduction

∞ Are we aware of their existence?

“When I started as High Commissioner a year ago, I knew little about intersex people. I don’t think I was alone in this: it reflects a general lack of awareness.”

Too many people assume, without really thinking about it, that everyone can be fitted into two distinct and mutually exclusive categories: male or female.”

Opening Remarks at the Expert meeting on ending human rights violations
against intersex persons, 15 September 2015
<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16431>



Zeid Ra'ad Al Hussein
United Nations
High Commissioner
for Human Rights


Introduction

∞ Problematic:


*How can UDHR benefit to intersex,
if no one is aware of their existence?*

∞ Plan:

- I. Understanding the problem
- II. Finding solutions



I. Understanding the problem



I. Understanding the problem



Overview

- A. A universalism universally violated

- B. Understanding this violation: a French perspective

A. A universalism universally violated

- ∞ The main violation of intersex human rights:
 - ∞ The facts: non consented sex surgeries on *infans*
 - ∞ The legal analysis:
 - ∞ Violation of art. 5 of the UDHR
 - ∞ Torture or inhuman and degrading treatment?

A. A universalism universally violated

- ∞ A violation documented by UN treaty bodies: CAT, CRC, CRPH, CEDAW, HRC
- ∞ A worldwide violation:
 - ∞ All continents
 - ∞ “Developed” Nations / “Developing” Nations

C. Kraus, “« Garçons sous-virilisés » et « filles élevées en garçons »”, *Socio*, vol. 9, 2017



B. Understanding this violation: a French perspective

- ✧ In theory, a good protection of intersex under the law
 - ✧ A general respect for human rights
 - ✧ A strong regulation of medical relationships
 - ✧ An effective penalty system
- ✧ In practice, a massive violation of intersex human rights
 - ✧ Many infra-legislative norms promote directly or indirectly non consented surgeries on intersex
 - ✧ Judicial officers are not pro-active



II. Finding solutions



II. Finding solutions

∞ The paradox of Olympe de Gouges

∞ Overview

∞ Adopting UN special treaties?

∞ Applying existing norms?

United Nations

A/63/PV.70



General Assembly

Sixty-third session

Official Records

70th plenary meeting
Thursday, 18 December 2008, 10 a.m.
New York

President: Mr. D'Escoto Brockmann (Nicaragua)

In the absence of the President, Mr. Tanin (Afghanistan), Vice-President, took the Chair.

The meeting was called to order at 10.30 a.m.

Agenda item 104

Elections to fill vacancies in subsidiary organs and other elections

- (b) Election of seven members of the Organizational Committee of the Peacebuilding Commission

Draft resolution A/63/L.58

The Acting President: The Assembly will now take a decision on draft resolution A/63/L.58, entitled "Election by the General Assembly of seven members of the Organizational Committee of the Peacebuilding

demonstrated maximum flexibility to reach an agreement on the allocation of a seat for members of the Peacebuilding Commission. This arrangement will enable the Peacebuilding Commission to continue its effective work.

I would like to take this opportunity to record the two understandings. The first understanding is that this arrangement is of a provisional nature, applicable for the next two years, 2009 and 2010. Any arrangement beyond 2011 will be reviewed in conjunction with the general review of the Peacebuilding Commission to take place in 2010. The other understanding is that the chairmanship of the country-specific configuration of the Peacebuilding Commission will be determined by the first meeting of the Organizational Committee of the Peacebuilding Commission next year. The provisional rules of procedure of the Peacebuilding Commission state that the Organizational Committee

BISEXUAL



Statement made by Syria on behalf of 59 other States

☞ Legal arguments

- ☞ “[W]e are seriously concerned by the attempt to introduce into the United Nations some notions that have **no legal foundation** in any international human rights instrument.”
- ☞ “[T]he [previous] statement [does], **counter [...] the sovereignty of States and the principle of non-intervention.**”
- ☞ “We also call upon all Member States to refrain from attempting to give priority to the rights of certain individuals, which could result in positive discrimination at the expense of others’ rights and thus **contradict the principle of non-discrimination and equality.**”
- ☞ “We urge all Member States, the United Nations system and non-governmental organizations to continue to devote special attention and resources to **protect the family** as the natural and fundamental group unit of society, in accordance with article 16 of the Universal Declaration of Human Rights.”

☞ Extra-legal arguments

- ☞ “We are even more disturbed at the attempt to **focus on certain persons on the grounds of their sexual interests and behaviour** while ignoring that intolerance and discrimination regrettably exist in various parts of the world, be it on the basis of colour, race, gender or religion, to mention only a few.”
- ☞ “We believe that **people are not inherently vulnerable** but that some individuals are made vulnerable due to the socio-economic setting in which they live.”

(UN document A/63/PV.70, p. 30-32)

A. Adopting UN special treaties?

2. An inefficient process

∞ A low level of protection due to the majority principle

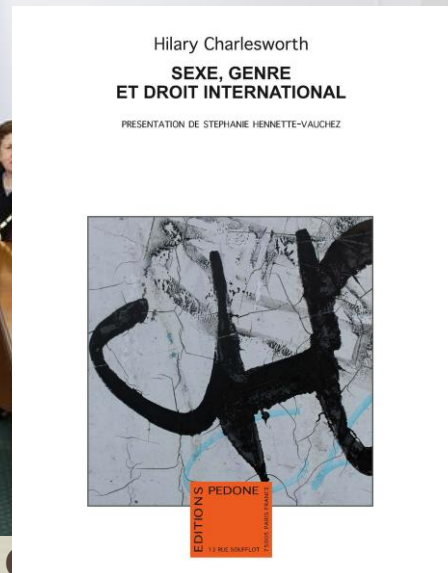
A former active Henri Capitant's member!

The risk of withdrawal of other UN bodies regarding intersex protection

H. Charlesworth, "Gender Mainstreaming and Human Rights", *Harvard Human Rights Journal*, 18, 2005, p. 1-18



27 July 2018, Decision of the Bulgarian's Supreme Court



convention

B. Applying existing norms?

1. The vector: the universality principle

∞ An unchallenged principle

∞ A principle reaffirmed during the World conference on human rights



∞ A principle reaffirmed in the previous 2008 statement against LGBT rights

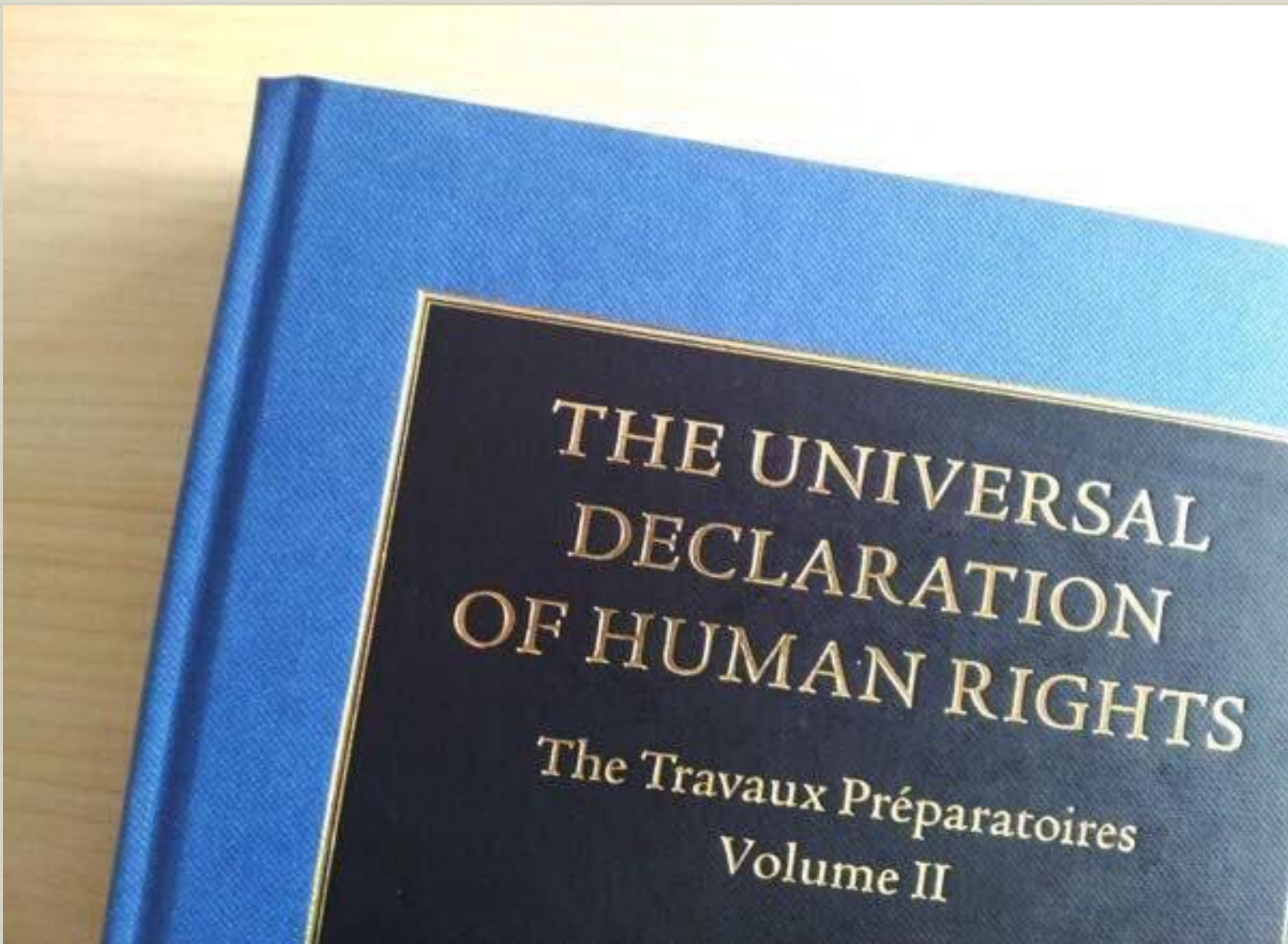
On 10 December 2008, the human rights family celebrated the sixtieth anniversary of the adoption of the Universal Declaration of Human Rights, and once again made an unequivocal commitment to the principles enshrined therein.

On this august occasion, we reiterated that all human rights are universal.

The World Conference on Human Rights [...] reaffirming their commitment to the purposes and principles contained in the Charter of the United Nations and the Universal Declaration of Human Rights, Emphasizing that the Universal Declaration of Human Rights, which constitutes a common standard of achievement for all peoples and all nations, is the source of inspiration and has been the basis for the United Nations [...],

1. The universal nature of these rights [...] is beyond question.

Mr. Hallak, on behalf of 59 States

The image shows the front cover of a book. The cover is blue with a dark blue rectangular area in the center. The text on the cover is gold-colored. The main title is 'THE UNIVERSAL DECLARATION OF HUMAN RIGHTS' in all caps. Below it, in a smaller font, is 'The Travaux Préparatoires' and 'Volume II'.

THE UNIVERSAL
DECLARATION
OF HUMAN RIGHTS

The Travaux Préparatoires
Volume II



Not to exclude intersex whose situation was never discussed

B. Applying existing norms

2. Existing manifestation of this application

☞ In the UN

☞ Campaign of the OHCHR on LGBTI rights: “free and equal” (since 2011)

☞ Report of the OHCHR on *Discrimination and violence against individuals based on their sexual orientation and gender identity*, 2015 (A/HRC/29/23)

☞ Outside the UN?

☞ Before the ECHR?

“The right to self-determination has not been separately and expressly included in the Convention, but is at the basis of several of the rights laid down therein, especially the right to liberty under Article 5 and the right to respect for private life under Article 8. Moreover, it is a vital element of the “inherent dignity” which, according to the Preamble to the Universal Declaration of Human Rights, constitutes the foundation of freedom, justice and peace in the world.”

ECHR, *Sheffield and Horsham v. The United Kingdom*, 30 july 1998, Dissenting opinion of Judge Van Dijk





Thank you for your
attention!

