THE EMERGING HUMAN RIGHTS REVOLUTION: THE BEGINNING OF THE FIFTH HISTORICAL PROCESS IN THE CONSOLIDATION OF HUMAN RIGHTS

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Abstract: Emerging human rights are destined to modify, improve and transform a number of already traditional concepts so as to achieve greater guarantees and protection for the rights of individuals and collectivities. One of the big changes that will be brought about by the concept and conception of emerging human rights is that, following on from the processes of positivization, generalization, internationalization and specification, they represent the *beginning of the fifth historical process in the consolidation of human rights*, namely the **process of interaction**. A number of breakthroughs have already been achieved, such as the recognition of emerging biocultural rights in the recently adopted Nagoya Protocol on access to genetic resources and shared benefits.

Keywords: Emerging Human Rights; Universal Declaration of Emerging Human Rights; Process of Consolidation of Human Rights; Interaction; Emerging Biocultural Rights.

Summary: I.INTRODUCTION: NEW REALITIES, NEW RIGHTS; II.THE UNIVERSAL DECLARATION OF EMERGING HUMAN RIGHTS: STRUCTURE AND RIGHTS RECOGNIZED; III.THE FOUNDATION OF EMERGING HUMAN RIGHTS; IV. EMERGING HUMAN RIGHTS FOR THE COSMOPOLITAN CITIZEN; V.THE EMERGING HUMAN RIGHTS REVOLUTION; V.I.The fifth great historical process in the area of human rights: the process of interaction; V.2.The different interactions in the area of human rights; VI.THE DEMAND FOR EMERGING BIOCULTURAL RIGHTS AS AN EXAMPLE; VII.FINAL CONSIDERATIONS; VIII.REFERENCES.

I. INTRODUCTION: NEW REALITIES, NEW RIGHTS.

Since the adoption of the **Universal Declaration of Human Rights** in 1948, international society as a whole and many national societies have undergone far-reaching political, social, ideological, cultural, economic, technological and scientific changes that have brought new challenges and have drawn attention to the need for **new rights** to be recognized (PÉREZ LUÑO, A.-E., 2006: 13). Thus the **concept of emerging human rights** that we aim to explore here is a response to the dynamism of contemporary international society and international law which is designed to provide a solution to these new challenges and needs. The concept arises because recognition of the rights inherent to the human being is a process which is constantly evolving and being revised, and which moves forward according to the needs and the demands of any particular

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time and place. This is a consequence of considering human rights as the *non-static construction of an ethical theory applicable to the human condition and human nature*. The possible foundations of this ethical theory are centred on the values underlying each type of right (BARBIERI, J., 2008: 18). These rights have an origin and a historical development; as a result, their proclamation is not definitive, and nor is their evolutionary process at an end.

New problems, or at least new perspectives from which to focus on traditional problems, are constantly being explored. This is merely the expression of the tension that exists in the historical development of rights, the tension that exists between, on the one hand, moral and political problems which justify particular demands and have their origins in the remote past and, on the other, the changing social, cultural and economic circumstances in which these problems arise time and again, always with new profiles and in new guises. If the discourse of rights is conditioned by history, then this is a discourse that must always be open to the future. In this respect, *emerging human rights are the future*; they are destined to usher in great changes, including changes that may affect the concept and foundation of human rights.

We could say that emerging human rights are "a good example of the fact that renewing the discourse that forms the basis of human rights is essential not only for adapting moral demands to new circumstances, but also for justifying new moral aspirations", and that in this respect, "rights need to be effective in changing scenarios from very different standpoints, and change today seems to be developing at a rate never seen before" (ANSUÁTEGUI ROIG, F.-J., 2011: 16)[2].

Emerging human rights are therefore a *renovating discourse* because they question, shake up and transform the code of values that we have used up to now, thereby also questioning the concept of human rights that this code of values gave rise to.

In addition to this, emerging human rights do not appear simply as possible elements making up a catalogue of human rights to aim for, but also as a space from which to denounce deficiencies in the national and international political-economic system (SAURA ESTAPÀ, J., 2009: 679).

A metaphor might make it easier to understand the idea of emerging human rights. Imagine that today we are like a sailor who, after too much beer, is looking for his wallet by the light of the only streetlamp in the area. After a while, another sailor, a little less affected by the alcohol, goes up to him and asks him what he is doing there and what he is looking for. The first sailor says that he is looking for his wallet. The other sailor looks around and, not seeing it anywhere, tells the first sailor that there is no wallet there. By now this is obvious to the first sailor, who realizes he must have left it behind or that it had disappeared from the table in the pub, where someone had no doubt *found* it. Despite his inebriated state, the sailor knows his wallet is definitely not where he is looking for it, but he also knows that this is the only place for miles around that has any light.

The purpose of this story is to help us reflect on how, for far too many years now, we have been looking for answers in the places where the people who stole our wallet have put their streetlamp. We know that we will find nothing there, but we persist in looking only where we are shown. This obstinacy could explain, for example, why we still insist on drawing up guidelines and codes of conduct for multinational companies, why we speak of corporate social responsibility as cosmetic instead of seeking legally coercive mechanisms to make these companies accountable for human rights violations, why national human rights programmes are drawn up by governments

[2] Although ANSUÁTEGUI ROIG does not refer to them specifically, his thoughts on moral aspirations and changing scenarios can easily be extrapolated to the concept of emerging human rights.

using advice from experts but with no input from civil society (another cosmetic exercise), why making politics out of human rights is confused with making human rights policies, why there is an obsession with justifying limitations of human rights in the interests of greater security, why what were once consolidated rights have now become arbitrarily awarded privileges, why we confuse objectivity with neutrality in human rights issues – and so on and so forth.

This is why the concept of emerging human rights that we are going to defend will mean changing this perspective, because it should enable us to look for the wallet where it was stolen and not in the wrong place, and within specific parameters. So, as you read this study, we ask you to bear our sailor's experience in mind so you can see that the concept of emerging human rights can bring some light to areas which, if certain powers continue to have their way, will remain in darkness.

The aim of this study will be to analyse emerging human rights and their expression in the Universal Declaration of Emerging Human Rights, particularly their structure and the rights recognized (2). We then explore the foundations of emerging human rights (3) and their repercussions for the cosmopolitan citizen (4). Finally we will look at the revolution implied by emerging human rights marking the beginning of the fifth historical process in the consolidation of human rights, the process of interaction (5). As an example, we explore the demand for biocultural rights (6).

II. THE UNIVERSAL DECLARATION OF EMERGING HUMAN RIGHTS: STRUCTURE AND RIGHTS RECOGNIZED.

The dynamic character of emerging human rights means that there is no single text, let alone a definitive one, which completely includes each and every right. However, one resource that can be used for reference is the *Universal Declaration of Emerging Human Rights*[3], the result of a private codification approved at the Universal Forum of Cultures Monterrey 2007, which develops and completes the *Charter of Emerging Human Rights* adopted in Barcelona in 2004.

With the Universal Declaration of Emerging Human Rights, the aim is to generate uniform standards of welfare and quality of life for everyone while at the same time recognizing that there are legitimate differences of a cultural and political nature in the functioning of each of these rights, and a need to strengthen democracy and to reinforce the United Nations system in defence of human rights[4]. The Universal Declaration of Emerging Human Rights also demands that states – but not only states – should play a greater role in safeguarding human rights and basic freedoms, all in the interests of building a *global civil society* based on justice and human rights.

By way of introduction, if we look at the structure of the Universal Declaration of Emerging Human Rights, we can see that there is a series of **values** and **principles** inherent to the notion of human rights that in turn also inspire emerging human rights. Thus the values, with human dignity

[3] The full text of the Universal Declaration of Emerging Human Rights can be found in various languages at http://www.idhc.org/cat/documents/Biblio/DUDHE.pdf

[4] **Universal Declaration of Emerging Human Rights**. General framework: values and principles. *The Declaration of Emerging Human Rights recognizes and is inspired by the spirit and principles of the Universal Declaration of Human Rights of 1948 and by the international and regional instruments adopted to date by the international community; moreover, it takes up and ratifies their dimensions of universality, indivisibility and interdependence and the indispensable articulation between human rights, peace, development and democracy.*

as their foundation[5], are interwoven and interlinked: there is no freedom without equality, freedom and equality are elements of dignity and justice, without peace there is no freedom, and the absence of peace can be the result of an absence of justice or freedom.

However, these values are not static; they take on different meanings depending on the period[6]. The value **"life"** is supplied with the element of "**quality**". **"Equality"** is qualified by the need for distributive justice. **"Solidarity"** unites with values like **"coexistence"**, which is a great deal more than just tolerance[7]. **"Peace"** is linked to **"dialogue"**, **"liberty"** and **"knowledge"**. And as a fundamental, we must not forget **"democracy"**, a value and principle that is essential for protecting and promoting human rights.

Like all other human rights, emerging human rights are also based on a series of **cross-cutting principles**, principles conceived from the spaces of a **plural, inclusive, civil society**. Of these we can highlight:

a) the **principle of coherence**, which promotes and stresses the indivisibility, interdependence and universality of human rights;

b) the **principle of horizontality**, which avoids establishing hierarchies in human rights;

c) the **principles of interdependence and multiculturality**, which recognize individual and collective rights on the same plane of equality, without distinguishing between the two;

d) the **principle of social inclusion**, which not only means guaranteeing access to the opportunities in life that define social citizenship, but also being accepted as a member of that society;

e) the **principle of gender**, which seeks to improve the position of the rights of women and recognizes these rights from both a perspective of positive discrimination and the need to cross-cut them throughout the framework;

f) the **principle of non-discrimination**, through which passes the universal nature of emerging rights and which is also a cross-cutting human right;

g) the **principle of political participation**, which recognizes the political dimension of all human rights and the need to have space for citizen participation in all of them; and

h) the **principle of common responsibility** as a demand for commitment with regard to individuals and society.

Knowing the values and principles that underlie emerging human rights, we can see that there is a series of characteristics that allow us a little more knowledge of these new realities, needs and challenges in the area of human rights in the 21st century. These **characteristics** – which will be described in detail in the course of the study – can be summarized as follows:

[5] **Universal Declaration of Emerging Human Rights**. Values. Dignity. *Human beings have dignity because it is without price. Human beings have dignity because it is an end in itself and not just a means to the ends of other individuals... Since every individual is deserving of the same dignity, it should be understood today as a right and, at the same time, an obligation; the right to see freedom recognized and the obligation to exercise freedom responsibly and without disrespecting the freedom of others.*

[6] **Universal Declaration of Emerging Human Rights**. Values. *Values are not static, or at least the meaning of their terms is not.*

[7] **Universal Declaration of Emerging Human Rights**. Values. Positive Coexistence. *This is a value that goes beyond tolerance, which is too meagre a virtue to be considered a satisfactory democratic value. We tolerate what we do not like or what makes us uncomfortable, what we would like to set at a distance from us. Tolerance leaves us indifferent to other ways of life and does not demand that we integrate them into our world or accept them. What is valuable and necessary today is not only to tolerate the other, but to recognize it as equal and learn to live in positive coexistence with everyone.*

a) Emerging human rights come in response to the **demands of national and international figures who** traditionally **have had little or no influence** on the formulation of international regulations. Their participation will increase the effectiveness of their rights.

b) Emerging human rights are **demands for new rights and partially recognized rights**, i.e. rights included in current national and international regulations which have been reinterpreted or had new content added to them.

c) **Democracy** is the **common thread tying emerging human rights together**. It is hard to imagine any other kind of political regime that would provide better conditions for the development of human rights. There is no guarantee of human rights without democracy, and there can be no democracy without a guarantee of human rights.

d) The relationship between democracy and human rights allows us to see that **interaction** is a basic element when it comes to implementing and conceptualizing emerging human rights, bearing in mind that this characteristic can and must be the starting point of a new historical process, the fifth, in the consolidation of human rights: the **process of interaction.**

e) The conceptualization of emerging human rights also aims to **put an end to divisions in the area of human rights**:

i) **Individual rights as opposed to collective rights:** Individual rights have always been identified as those corresponding to the person as an individual, regardless of their social role. Collective rights, on the other hand, are those corresponding to communities, peoples and specific social groups or collectivities. From the point of view of emerging human rights, any right can have both an individual dimension and a collective dimension, thereby producing an *interaction between individual rights and collective rights*, as we will see later.

ii) **Civil and political rights as opposed to economic, social and cultural rights:** This is a historical division based on ideological differences. It is a difference that is reflected in the different mechanisms for guaranteeing and protecting rights, which are less effective as regards economic, social and cultural rights. These categories of rights used to go hand in hand with what are known as solidarity rights, with no direct guarantee. In this respect, *emerging human rights dispense with the idea of generations of human rights.* In other words they move forward and recognize that human rights (all of them) are factors for economic growth, the real engine behind economic and social development. If we continue with these considerations, it will lead us to realize that the most productive policy from the economic point of view is one that is respectful of rights. This would not only be a way of responding to theories that put a lower value on certain rights, it would also be a way whereby we would take them seriously and stop giving some rights priority over others and establishing categories, learning to speak simply of human rights without adjectives.

Thus emerging human rights rise above the multitude of divisions and aim to make all guarantee mechanisms equally important when it comes to achieving the same effectiveness for all rights: that they be universal, indivisible and interdependent[8].

So we see that emerging human rights can take very different forms, ranging from rights that already have some level of legal recognition to those that are newly formulated and those that extend rights to specific collectivities that have traditionally been unable to enjoy them. Seen from this point of view, a **triple dimension** to emerging human rights needs to be taken into account. In this triple dimension, rights do not appear just as possible components of a catalogue of intended human rights but also as a space from which to reconstruct a *critical theory of human rights* to enable interaction between a multitude of actors and factors.

[8] **Universal Declaration of Emerging Human Rights**. Preamble. *Recalling that human rights are universal, indivisible and interdependent and that this assertion of universality and indivisibility does not exclude legitimate differences of a cultural and political nature in the manifestation of each of these rights as long as the terms set out by the Universal Declaration for all humanity are respected.*

This is because it does not seem reasonable to assume that the longer the list of human rights, the less force they will have as demands, or that the greater the moral or legal strength they are assumed to have, the more limited the list of rights must be. This latter argument has been perhaps the strongest one used to criticize the supposed existence of new rights and their ever-increasing numbers. According to the argument, this upward trend in the expression of new demands will inevitably lead to the trivialization of the rights which are already consolidated as such in our legislation but which have not yet received effective protection. In other words it seems that if human rights are strong moral rights and apply to everyone without exception, there should be only a few that apply to many, rather than many that apply to a few. Like Rodríguez Palop, we do not believe that new rights should be based on the "many rights for few" formula. We believe in the formula that seeks *many rights for all* (RODRÍGUEZ PALOP, M. E., 2010: 12).

Hence the wider scope brought about by emerging human rights is expressed in a **triple dimension** in which we can find the following:

a) Firstly, **new rights**. Although it is true that, as we have already mentioned, various authors have argued that the expanding catalogue of human rights gives rise to a number of problems, it has also been seen that this is not a definitive argument for excluding *a priori* everything that might be presented as new demands or basic needs at any particular moment. Instead we believe that what would prevent the designation of a specific aspiration as a human right would be the difficulties that could arise regarding who it would apply to, its aim, foundation, internal structure, and legal-political recognition. In this respect, as we will see, emerging human rights are claimed for the individual even when exercising them and putting them into practice sometimes depends on a common effort. As examples of new rights we highlight:

i) **The right to a basic income**, which ensures everyone, regardless of age, sex, sexual orientation, civil status or employment status, of the right to live in decent material conditions. The right to an unconditional, regular monetary income paid by the state to each resident member of the national society is recognized.

ii) **The right to die with dignity**, which ensures the right of all people to have their wish not to artificially prolong their life respected, as expressed in a living will or similar document with all due guarantees.

iii) **The right to migration or universal mobility**, which is the right of everyone to leave their country, enter others, and establish their residence in the place they choose.

iv) **Rights related to sexual orientation**, such as the right to personal self-determination and diversity and sexual autonomy, which recognizes the right of everyone to exercise their freedom and sexual orientation, as well as to adopt children, without discrimination.

b) Secondly, the **widening of the content of already-recognized rights**. Thus human rights cannot be exhaustively identified by certain unchanging content. Instead they need to be the support or container that constantly gathers the content of the debt that the state or collective has contracted with each of its members. This debt is historically *variable*, i.e. the legal content of a right is constantly being extended to deal with interests that were not initially anticipated. These rights whose content has been extended would include:

i) **The right to health, health care and medicines.** This right has been given an interpretation intended to go beyond the right to health recognized under Article 25 of the Universal Declaration of Human Rights. It not only ensures the necessary medical assistance and social services, but also access to the best health technologies, a health system of prevention, surveillance and personalized assistance, and essential medicines.

ii) **The right to education.** This is enshrined under Article 26 of the Universal Declaration of Human Rights, which recognizes the right to elementary, basic instruction. As an emerging human right, the aim was to widen the concept and content of this right in order to also extend it to

the right to wisdom and knowledge, to ongoing, inclusive training and to the eradication of illiteracy. In short, the intention is to ensure continuing, quality education, without any type of discrimination, adapted to personal needs and the demands of society.

iii) **The right to security of life**. The aim here was to give a dual meaning to the right to security recognized under Article 25 of the Universal Declaration of Human Rights. The right to security of life not only implies the public powers' obligation to guarantee the security of their citizens; security should also be understood as a minimum for life, a guarantee that all human beings have whatever is needed for their survival and well-being (drinking water and sanitation, energy, sufficient basic food, an adequate continuous electricity supply, etc.).

iv) **The right to interculturality.** The right to culture recognized under Article 27 of the Universal Declaration of Human Rights guarantees everyone the right to participate freely in the cultural life of the community. This emerging right aims to develop and extend its content by also guaranteeing reciprocal knowledge and mutual respect between individuals and groups of different origins, languages, religions and cultures. As we will have the opportunity of seeing and developing in more detail, this is also a turning point as opposed to the *necessary interaction between universalism and relativism in human rights*.

v) **The right to the protection of the family community in all its forms.** The union of a man and a woman through marriage as recognized under Article 16 of the Universal Declaration of Human Rights is no longer the only form of family. Nowadays the family can manifest itself in a variety of ways. The aim of this new interpretation is to recognize the right of all human beings to the public authorities' protection of the family, whatever form it may adopt.

c) And thirdly, the **extension of certain rights to collectivities** that have traditionally been unable to enjoy them. Of these we can highlight:

i) **The right to marriage between people of the same sex**. This arises from the extension to everyone, regardless of sexual orientation, of the right to marriage, traditionally recognized solely and exclusively as the union of a man and a woman.

ii) **The right to vote for migrants.** This is a restructuring of the universal right to active and passive suffrage to support the right of everyone of legal age, regardless of nationality, to active and passive voting rights in all the electoral processes and popular consultations that take place where they live or have their permanent residence.

The **structure** of the human rights recognized in the Universal Declaration of Emerging Human Rights is a real *declaration of intentions* because all the rights are founded on **democracy**, understood not only as a value or a principle but as a right, with multiple facets, dimensions and forms of expression – **egalitarian democracy, pluralist democracy, parity democracy, participatory democracy, solidarity in democracy and guaranteeist democracy**. These dimensions serve as a reference framework for the other emerging rights and correspond to each of the six headings that form part of the Universal Declaration of Emerging Human Rights. The result is a catalogue of around fifty emerging human rights, divided into six parts which, as we mentioned earlier, avoid the classical academic distinctions and whose *common thread linking them together is democracy*. We therefore find that:

a) egalitarian democracy includes, among other things, the right to live in decent conditions, including the right to drinking water and sanitation, the right and duty to eradicate hunger and poverty, the right to a basic income, the right to continued, inclusive education, the right to peace, and the right to inhabit the planet and the environment.

b) pluralist democracy includes the right to live in an environment of cultural richness, of reciprocal knowledge and mutual respect between people of different origins, languages, religions and cultures; the right to cultural freedom, to the recognition and protection of the common cultural identity; the right to the honour and self-image of human groups, the right to true, verified information, the right to communication and the right to personal data protection.

c) paritary democracy includes the right to equivalent representation for men and women in all the organs of public participation and management, the right to personal self-determination and sexual diversity, the right to choose one's own personal ties, the right to reproductive health, and the right to protection of the family community in all its forms.

d) participatory democracy includes the right to actively participate in public affairs and to enjoy democratic administration at all levels of government, the right to the city, the right to universal mobility, the right to be consulted, the right to a home and to residence, the right to accessibility, and the right to the transformation of the marginal city into a city of citizens.

e) solidarity in democracy includes the right to the development and protection of the rights of future generations, the right to science, technology and knowledge, and the right to enjoy certain universal common property such as world cultural heritage, Antarctica, outer space, the ocean depths, the oceans' biological resources and the human genome; and finally

f) guaranteeist democracy includes the right to enjoy a fair international system, the right to truth and justice, the right to resistance, the right and duty to respect human rights, and the right to global democracy.

Considering the above, it is no surprise that incorporating emerging human rights into the human rights catalogue should have strong ethical, economic, political-legal and social implications. They do not simply point to the existence of new needs that have to be met and the urgency with which old needs have to be covered, but also serve to reveal the inadequacies and deficiencies of the current model. Indeed, some of the problems that are put forward to be shaped into rights in the strict sense of the word originate from the very transformation involved in recognizing them. Hence the concept of emerging human rights included in the Universal Declaration of Emerging Human Rights places us partly in the area of *lege ferenda* as opposed to the area of current law or *lege lata*. The key issue here would be to decide whether these emerging human rights are *viable* or whether, on the contrary, they are just *utopian aspirations*, vague ideas that are technically unviable from the positive legal point of view (SAURA ESTAPÀ, J., 2009: 65). The answer is provided by Courtis when he considers that utopias – and often legal texts too – are reactions against a state of affairs believed to be unsatisfactory. They therefore speak of a recognizable but modified world and implicitly criticize the civilization on which their formulation was based, while at the same time they represent an attempt to discover the potentialities that were overlooked by the existing social institutions or hidden under the cloak of past uses and customs (COURTIS, Ch., 2010: 65). Our understanding is that these criticisms and potentialities underlie the notion of emerging human rights.

We believe that the term "human rights" should include not only those rights that have been legally recognized and guaranteed to a satisfactory level, but also those that have been legally recognized yet lack sufficient guarantees and whose moral demands have still not been legally recognized, but which are backed by strong, important reasons of a moral and political nature that make their positivization particularly desirable. Indeed this is what it is hoped will occur. Hence our legal texts should find room for various *new rights and reformulated rights*, presented as a reflection of the aspirations and demands of a great many collectivities which, generally speaking, have begun to question the established political, economic and social system.

Together with its essential utopian dimension, which is one of the cornerstones of its meaning, this is a real, defined emancipation project that moulds itself on historical forms of freedom, which is another cornerstone of the concept. Deprived of their utopian dimension, human rights would lose their function of legitimizing the law (CARRILLO SALCEDO, J. A., 2010: 27). However, outside experience and history, they would lose the very features of humanity.

The aim must be to determine which of the emerging demands are deserving of attention, examine them, and then consider their possible incorporation into the human rights discourse.

Basically it seems that the content of emerging human rights needs to be studied in order to clarify whether this is simply a set of proposals or conditions that make it possible to effectively implement all the other consolidated rights, of whether perhaps they should be considered as synthesis rights, possibly in any case lacking conceptual autonomy, or whether, on the contrary, they are a *something truly new that could change the human rights universe*. As regards the last assumption, it would be interesting to set up a hypothesis about the way in which such a change would come about and its eventual impact on our moral, political and legal discourse.

The transformation of a moral demand (basic or fundamental) into a human right (basic or fundamental) is an operation that is developed primarily in the area of ideological foundation and later creates a concept. This concept, or in this case the "human right", has to go through a rigorous examination made up of two tests: a) the test of whether it is an unavoidable but historical moral demand, and b) the test of whether it has overwhelming reasons in its favour. The first test is related to the universality of human rights. However, the addition of historicity reminds us that important moral demands, which are behind human rights, are not unalterable, and therefore neither is it possible for a legislated human rights law to exist once and for all and for ever.

The rationality test enables us to distinguish between human needs and interests of normal importance and human needs and interests of extraordinary importance, the latter being the ones destined to become fundamental moral demands, the basis of human rights, and here we consider that these include emerging human rights.

Now that we have explored the concept of emerging human rights and the structure and content of the Universal Declaration of Emerging Human Rights, it is time to look at the foundation of this new category of rights. Defining the foundation of emerging human rights will enable our sailor to understand the reason behind the urgent need to look for his wallet, but not underneath the streetlamp placed there by the people who may have taken it.

III. THE FOUNDATION OF EMERGING HUMAN RIGHTS.

Given that emerging human rights, as we have already said, respond to the dynamism of contemporary international society and international law in order to meet the new challenges and needs of the 21st century, these are the areas in which we will have to look for their foundation.

If we go back to the third historical process that took place in the consolidation of human rights (after positivization and generalization), i.e. the **process of internationalization**, we can see that the Charter of the United Nations is the first international legal instrument of this nature that refers specifically to the human rights and fundamental freedoms of everyone. This reference to human rights is reflected in the articles of the Charter as:

a) A **purpose** of the United Nations, consisting of achieving international cooperation by "*promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion";*

b) An **obligation** of the member states, which "*have the duty to take joint and separate action in co-operation with the United Nations"* to achieve this purpose; and,

c) A **function** of the organization, "*which shall promote the universal respect for the rights and fundamental freedoms of all"*.

However, the Charter of the United Nations does not provide a definition of human rights and neither does it determine their content (ABELLÁN HONRUBIA, V., 2012: 27). This was specified in the Universal Declaration of Human Rights of 1948, which constitutes the beginning of

the internationalization of human rights and establishes as its most significant international consequences that:

a) Democratic society ruled by law, the right to justice and the establishment of a *social and international order* in which human rights and fundamental freedoms can fully be realized are the basis on which progressive development of human rights and fundamental freedoms is founded.

b) This first specification of the content of human rights in an international legal text set out as articles also implies that their nature has evolved: from being perceived as a "*moral value*" underlying the purposes and functions of the United Nations, human rights move to become a *legal value* in the form of elements that are part of the process in which international legal regulations take shape.

c) It is just one more step, a logical consequence of the previous one, to understand that the development of human rights is to be found within the framework of the progressive development of international law.

However, the fact that the Universal Declaration of Human Rights was approved does not necessarily mean that the issue of the foundation of human rights has been resolved. Firstly, this is because the fact that the Declaration was approved does not necessarily imply agreement as to why it was approved; secondly, because the catalogue of rights has been steadily growing since 1948; and thirdly, because from both the theoretical and practical points of view, this question continues to be the subject of debate and is a long way from being settled.

Nevertheless, we see how from the Universal Declaration onwards a specific branch of international law becomes established, *international human rights law*, through which fundamental human rights are recognized, international legal guarantees are put in place so they can be exercised, and new rights are formulated in response to the new risks and demands of international society. The intention is to set up an "international legal order" in which human rights can be fully realized.

To summarize, we can say that the Universal Declaration of Human Rights goes beyond the framework of recognizing the human rights enshrined in nation state constitutions and legislation by including in its **Article 28** a new right: *Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized*.

From this perspective it appears that we can recognize the foundation of emerging human rights in this very Article 28 of the Universal Declaration of Human Rights because it goes beyond the catalogue of human rights recognized in state constitutions and legislation and is the seed for developing and guaranteeing those rights in the international order (ABELLÁN HONRUBIA, V., 1998: 443).

The central theme of this article is the connection established between the "human person" and the "international order". This is a connection that revolves around two ideas: firstly, the effective exercise of these rights is linked to the establishment of a "*social and international order*" which makes them possible, and the actual establishment of that order is considered to be a fundamental human right; and secondly, the notion of a "social order" is tackled from a world perspective, this "social order" which has to make the exercise of human rights possible and which is not just restricted to the state framework in which the individual develops his or her public or private life, but is also to be found on the international plane.

With this approach one might wonder what the expression "social and international order" contained in Article 28 actually means, i.e., what notion of "international order" underlies the Universal Declaration of Human Rights. It is therefore revealing that the Declaration should

introduce the qualifier "social", a term that in principle covers all aspects of coexistence (political relationships, economic relationships, legal relationships, etc.). For this reason we understand that the "*social and international order*" that Article 28 refers to must include the *international legal order* (international law as a system of regulations that govern relations between states), the *international political order* (the patterns of behaviour followed by states in their international relations), the *international economic order* (the way the production and distribution of the world's wealth is organized), and also an *international moral order* (the values that inspire and legitimize the law, politics and the economy in the international area).

Hence, Article 28, apart from creating a favourable atmosphere for the establishment of international mechanisms for human rights protection, **constitutes the legal foundation for the formulation of new human rights**. Indeed, in an interdependent world in which problems and risks are global in scope, the conception of human rights is extended to reach a new frontier: to respond to the needs and insufficiencies created at world level. These are rights that are characterized by their specifically international dimension, and guaranteeing their exercise does not depend on one state but on the joint effort of all: states, public and private organizations, and individuals.

Seen from this perspective, the question now is to see how and in what way international practice has been shaping the projection of human rights in the various different areas of this social and international order. The projection of human rights in the international legal order extends to the promotion of new rights aimed at responding to the needs and deficiencies that have come about at an international level and whose guarantee of exercise does not depend on a single state but is the concern of international society (SAURA ESTAPÀ, J., 2009: 684). In short, it can be seen how, through international practice, a progressive widening of the notion and legal content of human rights has been established, thereby forming a proper atmosphere for the progressive development of international law. It is a case of setting up an international legal order in which human rights can be fully realized and can also evolve.

If we can locate the foundation of *emerging human rights* in *Article 28 of the Universal Declaration of Human Rights*, we can also say that this social and international order proclaimed in the Declaration calls for the establishment of a **cosmopolitan citizenry** to take on the rights and obligations that spring from the notion of emerging human rights. It is this cosmopolitan citizenry that keeps our sailor alert and stops him from searching under the lit streetlamps put there by those who do not believe that human rights really constitute an emancipatory, cosmopolitan, humanistic project.

IV. EMERGING HUMAN RIGHTS FOR THE COSMOPOLITAN CITIZEN.

If we consider that human rights today represent the "historical expression of the idea of justice", then this fight for justice is also the fight against exclusion in human rights transferred to the international order. It is for this reason that we consider it necessary to reaffirm and defend the concept of **cosmopolitan citizenry**. Given that the traditional concept of citizenry is not sustainable – because, being an inclusive concept, its meaning has been perverted to justify the exclusion of certain groups – we can argue for a new notion of citizenry and rights that does not revolve around the nation state but which is open to all. If we want to take human rights seriously, we have to disassociate them from the traditional condition of citizenry. Indeed, we consider that the ideal of a **cosmopolitan citizenry** is *morally superior* to any other and can be found reflected in emerging human rights.

The challenge faced by this cosmopolitan citizenry is to integrate groups that are socially *excluded* through the conviction that the creation of an optimal political society – or, as expressed in terms typical of utopian thinking, an *ideal society* – necessarily requires the *real and effective*

inclusion of these collectivities, and through the consideration of *human rights* as the appropriate tools for achieving this integration (RAMIRO AVILÉS, M. Á./CUENCA GÓMEZ, P., 2010: 10).

This cosmopolitan citizenry is not an unattainable ideal given that the utopian spirit can be found in past, present and future demands for the extension of human rights to groups of people "who were, are or will be excluded", i.e. all those collectivities that traditionally have not enjoyed the basic rights recognized for the majority and that have not taken an active part in the process of determining the government of society because they lack political representativeness. Along the lines of utopian thought, these demands actually adopt a *critical* attitude as regards *societies of the present* (RAMIRO AVILÉS, M. Á., 2002: 23), an attitude based precisely on a coherent defence of the ethical values and proposals that make up the discourse of human rights. This discourse considers that the main function of these instruments is to guarantee the equal development of a decent human life, and it demands, therefore, that the discrimination that certain groups and collectivities have suffered in the past and still suffer today as regards the recognition and satisfaction of human rights be overcome. Needless to say, this is one of the dimensions of the rights recognized in the Universal Declaration of Emerging Human Rights. It draws attention to the obvious contradiction that exists between the theoretical discourse that proclaims rights as universal, based on the equal worth of human beings, and a social, economic, political and legal reality that limits entitlement to rights and/or their effective enjoyment to a subject with particular characteristics (male, adult, heterosexual, etc.). This is a reality that establishes categories of human beings that are excluded or discriminated against (women, children, immigrants, people without economic resources, people in situations of dependence, the disabled, homosexuals, etc.) and which can therefore be described in terms of inequality. It is a situation that emerging human rights aim to correct.

It is in this design for a *cosmopolitan society* that the humanist, universal, rational, democratic thinking inherent in the discourse of modernity (LLANO ALONSO, F. H., 2012: 210) and the discourse of emerging human rights has regained its full meaning – as an axiological counterpoint to cultural fundamentalisms and relativisms. It is therefore unavoidable that there be a commitment to making effective the defence of human rights on which cosmopolitan democracy is based, within a transnational setting. This is the objective towards which the humanist-cosmopolitan project will be steered.

The cosmopolitan citizen will rely on social movements to bring about change in the societies of the present, understanding social movements as collective behaviours that develop within a set of cultural positions but which, at the same time, stand in opposition to the control model and social use of current values and represent an alternative to more ingrained forms of social life[9]. We will later take a more detailed look at the interaction that takes place between the state and social movements under the new dynamics of human rights and which should find its corollary in the content of emerging human rights[10].

We are faced with an inescapable fact: large sectors of humanity are marginalized from fully enjoying the rights and freedoms proclaimed in the UDHR. In many aspects the Universal

[9] **Universal Declaration of Emerging Human Rights**. General framework: values and principles. *This is a Declaration that springs from the global civil society and should be considered as part of a consuetudinary regulatory process, although it should also be considered, for individuals and states, as a new ethical imperative for the 21st century.*

[10] **Universal Declaration of Emerging Human Rights**. General framework: values and principles. *All human beings - free, equal and endowed with dignity - are deserving of more rights than those already recognized, protected and guaranteed. The Declaration of Emerging Human Rights originated from within global civil society at the beginning of the 21st century with the aim of contributing to the design of a new horizon of rights to serve to guide the social and cultural movements of communities and peoples and, at the same time, to be included in contemporary societies, in institutions, in public policies and on the agendas of those who govern, in order to promote and create the conditions for a new relationship between the global civil society and power.*

Declaration of Human Rights is still just a *beautiful broken promise* for the large sectors of humanity that have yet to be freed from domination, fear, hunger and ignorance. Indeed one of the aims of emerging human rights is to correct this humiliating situation.

The purpose of the **cosmopolitan citizen** is therefore to inhabit an *inclusive society* in which all human beings can access and enjoy human rights in conditions of equality. In other words the cosmopolitan citizen also shares many of the struggles and strategies that fall under the conception of emerging human rights, which aim to become a key instrument for the reform and transformation of society[11]. However, there is still a long way to go before we can reliably verify the achievement of true world citizen status and the existence of an authentic, cosmopolitan, social *ethos* (MALDONADO, C. E., 2010: 16). Nevertheless, the consolidation of the concept of emerging human rights can serve to give meaning to these humanist-cosmopolitan ideals. We should not forget that the discourse of the new rights is the discourse of men and women of our time, the discourse of their demands and frustrations, their needs and hopes. Emerging human rights make it easier to build a *democratic citizenry* of a universalist nature, conceptually disassociated from the pretext of nationality and projected beyond the narrow frontiers of the nation state. Thus the protection of emerging human rights calls for the establishment of infra- and super-state procedures given that the repercussions of their violation far exceed the frontiers of the state and, even more so, those of the nation state[12]. In fact the political articulation of this idea requires that democratic procedures and responses are organized at different levels of government, which does not mean that the nation state need necessarily be demolished, but that it does need to be surpassed (DE SOUSA SANTOS, B., 2003: 458). In short, the aim is for the state to be freed from the territorial trap and the equating of state and society so that a system of coordinates can be created to extend from end to end of the globalization-localization axes.

The intention is to invent a future with world citizens, able to get to know each other and come to agreements via virtual social networks of growing importance and a capacity to mobilize, who will urgently propose and decide on solutions to the various problems posed, becoming an important part of democracy in action on a local and planetary scale[13].

The instrument of this transformation can and should be the Universal Declaration of Emerging Human Rights because, by promoting the rights of a global citizenry, it makes the enjoyment of emerging human rights something that is not the product of the random fact of being born in a particular state; it thus addresses the problems of inequality and the variability caused by underdevelopment with an appeal to democracy and international justice, to solidarity and to the collective protection of the international community in favour of human groups[14]. In their brief careers, these groups have opened spaces such as Barcelona (2004) and Monterrey (2007) in which we can dream of being world citizens with emerging rights that we can claim from states, trade

[11] **Universal Declaration of Emerging Human Rights**. General framework: values and principles. *We are therefore confronted with the need to globalize solidarity, to develop alternative projects, to build new alliances, to create the conditions for new forms of resistance, to effectively guarantee new proposals for international democracy, sustainable development and peace, and to conceive, from the standpoint of civil society, the human rights of the 21st century.*

[12] **Universal Declaration of Emerging Human Rights**. General framework: values and principles. *The notion of the nation state on which the foundations are laid for the doctrine of human rights has changed. We are witnessing not only the weakening of the nation state but the strengthening of the transnational market and of financial figures who, through companies or multinational alliances and financial consortia, define economic policies that impact the entire planet.*

[13] **Universal Declaration of Emerging Human Rights**. General framework: values and principles. *... the Declaration of Emerging Human Rights originates from the experience and the voices of global civil society at the beginning of the 21st century.*

[14] **Universal Declaration of Emerging Human Rights**. General framework: values and principles. *The Declaration of Emerging Human Rights is a response to the processes of globalization, the partial and unequal nature of which excludes wide sectors of the world population from its benefits, particularly in underdeveloped countries but also in developed countries, designing a scenario of poverty, violence and exclusion as the framework for global relations.*

unions, transnational companies and individuals, within a framework of international cooperation, justice and democracy, which legitimizes resistance to oppression and delegitimizes force and violence[15].

Having analysed the concept of cosmopolitan citizenry in which the notion of emerging human rights resides, we believe that we are now in a position to address the revolution that this novel idea may present for the world of ideas, conceptions and theories in the area of human rights. We think that emerging human rights can and must be the starting point of the fifth historical process in the consolidation of human rights: the **process of interaction**. It appears that our sailor is getting more and more of the elements that he needs in order to look for his wallet in the place it actually disappeared.

V. THE EMERGING HUMAN RIGHTS REVOLUTION.

The big changes that will be brought about by the concept and conception of emerging human rights will include their being considered the *beginning of the fifth historical process in the consolidation of human rights*, namely the **process of interaction**. We will analyse this process next and then look at the different types of interaction that exist.

V.1. The fifth great historical process in the area of human rights: the process of interaction

It is usual to refer to four great historical processes in the consolidation of human rights: positivization, generalization, internationalization and specification. The **process of positivization** expresses how rights moved from the world of demands to the world of law. This step saw the appearance of a conception of rights that considered the law to be a fundamental tool, a conception of rights also associated with the principles present in the idea of law typical of the 17th and 18th centuries, one of which was the principle of formal equality. The **process of generalization** originates with the extension of the enjoyment of rights to collectivities and individuals whose rights were not realized. Originally it expressed a reaction to declarations that spoke of equality but in unequal contexts, i.e. "unequal equality". It therefore implies a conception of rights that opens the door to real equality. The **process of internationalization** arises with the appearance of rights in the area of international law, thereby implying a position for rights that went beyond the frontier of states and incorporated the idea of universality. Finally, the **process of specification**, which we see in the second half of the 20th century, manifested itself in the appearance of declarations of rights for specific collectivities, thus incorporating the idea of difference into the concept of rights[16].

[15] **Universal Declaration of Emerging Human Rights**. Preamble. *We, the citizens of the world, members of civil society committed to human rights, forming part of the universal political community, assembled on the occasion of the Universal Forum of Cultures in Barcelona 2004 and Monterrey 2007, and inspired by the values of respect for the dignity of the human being, freedom, justice, equality and solidarity, and the right to an existence that allows the development of uniform standards of wellbeing and quality of life for all.*

[16] Specifying the holders of rights therefore consists of conferring rights on specific subjects. Hence women's rights, children's rights, rights for the disabled and rights for cultural minorities or indigenous peoples are not universal as regards entitlement in the usual sense of the word. This is because in these cases universality as such is not claimed for all human beings but only for those that fall within certain circumstances. However, this is not strictly speaking a refutation of the feature of universality in human rights. It does not mean that rights with specific holders are no longer human rights because they are not universal, and neither does it mean with the existence of specific rights that the feature of universality is no longer characteristic of human rights. The reason for this is that these rights with specific holders are universal as far as the holders are concerned because they apply to *everyone* that belongs to the class of individuals specified: all women, all children, all indigenous peoples, etc. They are universal (for that class of individuals) because their holders are all of them without exception. The feature of universality as regards holders is therefore given by the fact that the holders are all individuals belonging to the group defined by the right, without exception, and not because this group is necessarily identified with humanity. Naturally many human rights continue to stipulate all human beings as holders, but the feature of universality does not demand it.

As we will try to explain, we believe that with the conceptualization of emerging human rights comes the beginning of a new historical process in the consolidation of human rights in the 21st century: the **process of interaction**[17].

To put it another way we argue that, in the 21st century, in order to move forward beyond the great advances that have already been achieved in the history of humanity in the area of human rights, what we need to do is promote and strengthen the existing structures and, in particular, commit ourselves to a genuine and not just theoretical complementarity that will allow the various concepts, categories, approaches and areas of action that coexist in the world of human rights to operate reciprocally. Strictly speaking, emerging human rights are the starting point of this fifth historical process in the consolidation of human rights: the **process of interaction**.

To explain how necessary it is to influence this interaction process and, in passing, to help our sailor in his search, it might be useful to consider a metaphor used by Sánchez Rubio to illustrate the division and lack of feedback that exist between different branches of law and between legal knowledge and other sciences and see how this affects the area of human rights (SÁNCHEZ RUBIO, D., 2011: 21). We think that the same metaphor can be used to us to explain why interaction – which is present throughout the entire concept of emerging human rights – needs to be conceived as the cornerstone on which to build, rebuild, reform or cement human rights so as to have a **holistic vision of their reality in the 21st century**.

The story he tells is as follows:

"*In a village in India, five blind, wise old men were arguing about what an elephant was. They had never been able to touch one and had never come across such an animal in all their lives, so they asked the people of the village to bring them one. When it was put in front of them, each wise man touched a part of its body. One felt the tail and said that the elephant was like a rope; another felt its ear and said it was like a blanket; the third felt its ribs and said it was like a wall; the fourth felt its leg and said it was like a column; and finally the fifth felt its trunk and said it was like a snake*".

Let us now imagine that the world of human rights is the elephant. The way we have always interpreted it is from the point of view of simplicity; we tend to separate all the different parts that make up the world of human rights and divide it into segments, breaking down its complex, plural reality. There is no longer a communication between its different elements. An illustration is the lack of dialogue, connections and relationships – with some exceptions – between the academic world and the social world which is the framework for human rights. Also the lack of dialogue between the different legal branches of the law, the lack of understanding between the inappropriately-named generations of human rights, the lack of complementarity between the national and international areas as regards human rights protection, the limited relationship between the penalization and prevention aspects in the area of human rights, and so on and so forth. In short, we are faced with a splitting-up of the different perspectives, knowledge, traditions, theories and conceptions that are present in the area of human rights, *established by blind wise men who think they know the truth and the solution to everything*.

In the area of human rights, the focus has been on the creation of specialists in specific sectors, ignoring the generalist dimension needed to provide a holistic conception that will enable

[17] Interaction being understood as the action that is exercised reciprocally between two or more objects, agents, forces, functions, etc.

us to correctly shape the various angles and perspectives generated around the *wonderful* world of human rights.

This specialization, this compartmentalization of the separate pieces, has often prevented us from seeing the connections between them. These connections are made more powerful from the standpoint of the concept of emerging human rights, and this is why we believe we have already entered what we have termed the *fifth historical process in the area of human rights: the process of interaction.*

This leads us to the need to look at all the interactions that may currently exist, and to develop and promote reciprocal action between them.

V.2. The different interactions in the area of human rights.

When analysing emerging human rights, we can see that the way they are conceptualized encourages various processes of interaction – at least fourteen of them – which we list later.

V.2.1. The interaction between the concept and foundation, the history and the legal theory.

Following Ansuátegui Roig, we see that when it comes to designing a theory of rights in the legal area, we need to identify *three essential dimensions* that are *non-exclusive, but necessary all the same*: the concept and foundation, the history and the legal theory. These three dimensions are all interrelated. And not only the concept of "right" is historical; so is its "foundation", in the sense that the moral reflection from which rights are justified has gradually taken shape over the course of history and is conditioned by it. The juridification of rights also comes about contextually, conditioned by historical circumstances (ANSUÁTEGUI ROIG, F.J., 2010: 41-43). Strictly speaking, the separation between concept and foundation in human rights is not necessarily clear. Indeed for some they are problems that are very closely related: the foundation determines the concept and therefore any concept is conditioned by the foundation. For others a distinction can be made between the two. This usually means linking any discourse on the concept to the legal field, and any discourse on the foundation to the field of ethics. Definitively separating the concept and the foundation of rights requires the use of an idea of rights that is somewhat removed from the way it functions in the social and legal area (ASÍS ROIG, R, 2011: 17-18). As we can see, this need for interaction between different dimensions related to human rights is by no means a straightforward issue.

We can also determine whether or not this interaction exists between the models or theories of this foundation of human rights. Generally speaking there are already four classical models (VERGÉS RAMÍREZ, S., 1997: 5-35), which can briefly be characterized in the following terms:

a) The **legal foundation** of human rights, according to which human rights are an essentially legal or jurisdictional matter in the sense of who applies the law. There are two main facets to this model: one that states that human rights are, or coincide with, or are identified with fundamental rights, while the other very different facet maintains that human rights are specific cases of positive rights (PÉREZ LUÑO, A.-E., 2006: 219).

b) The **ethical foundation** of human rights, which basically involves two arguments: one states that human rights are based on, or owe their existence to, a particular ethic, while the other maintains that human rights are essentially moral rights.

c) The **historical-philosophical foundation** of human rights is based on concepts, categories, outlines and logical reasoning from different authors in the history of philosophy.

d) The **natural law foundation** of human rights centres its analysis on the category of the human person and sees these rights as natural to the human being because of the simple fact of existing.

With all this variety, it is safe to say that there is no extensive dialogue between these models, although convergences between them are possible, e.g. between the legal and natural law models or between the ethical and natural law models.

In this attempt at interaction, *recourse to history* will tend to take on a very important role given that taking history into account to create the catalogue of human rights highlights the need to distinguish between aspirations that seem to be reasonably worthy of protection and guarantee and others that do not, either because they do not need it, because they can be satisfied using other, more suitable ways, or because they do not deserve it. It is clear that when adopting a historical perspective to study human rights (or a group of rights among these rights), assuming that recourse to history is essential for explaining their origin and development does not call for a linear conception of the historical process, only the thesis that it is feasible *that new rights may appear in response to the appearance of new needs*. History is not and cannot be a reason that justifies, only one that explains; history does not provide a justification of the scientific or moral validity of any right, but it is essential when it comes to explaining its origin, its evolution and its main features. It is important to stress that adhering to a historical vision of rights and drawing up a catalogue open to new demands does not necessarily mean that these demands must be included.

In our view, this historical perspective shows that the recently created concept of emerging human rights can give an adequate response to the appearance of new needs or the reformulation of pre-existing needs.

V.2.2. The interaction between the components of the three-dimensional conception of law and, therefore, of the conception of human rights (value, regulation and social reality)

The foundation of human rights has evolved from a dualist conception of human rights (centred on the moral values that justify them and the valid legal regulations that govern them) to a conception based on three elements (REALE,M., 1997: 6-58). This is the **three-dimensional conception** as we see it.

The first element is a legitimate **moral aspiration** aimed at providing autonomy and personal independence, rooted in the ideas of freedom and equality with features of concepts such as solidarity[18] and legal security, and constructed through rational reflection on the history of the modern world. It is essential that this legitimate moral aspiration is *generalizable* from the point of view of its contents.

The second element is based on the fact that human rights would constitute a **subsystem within the legal system**, namely, human rights law. This means that the legitimate moral aspiration can technically be incorporated into a regulation, that it can bind the relevant corresponding persons to the legal obligations involved in order for the law to be effective, that it can be given a legal guarantee or protection and, naturally, that it is a subjective right involving freedom, authority or immunity and certain specific holders.

[18] This is also recognized in the **Universal Declaration of Emerging Human Rights** when it establishes that: Values. Solidarity. *If equality is a value to be developed mainly by the political institutions in whose hands lie the policies of distributive justice, solidarity is a value that should be developed by the individual.*

The third element is that human rights are a **social reality**, i.e., acting on social life and therefore conditioned in their existence by extrajudicial factors of a social, economic or cultural nature that favour, hinder or prevent their effectiveness.

Including these three elements – moral need, legal positivization and social effectiveness – in the notion of human rights is a theoretical option that prudence and realism deem suitable and appropriate.

Hence the integrated view of rights, according to Peces-Barba, requires that they also be seen as social realities (PECES-BARBA, G., 2007: 155-173). In this sense it can be claimed that, in order to speak of a human right, not only its ethical justification and incorporation into the law is required, but also a real possibility of satisfying its content in the real world. This is why human rights are attributed a minimum content, a nucleus of certainty, supported by a teleological element in which they are presented as the normative expression of the values of dignity, freedom and equality, as the vehicle which over the last few centuries has aimed to carry certain important aspirations from the world of morality to the field of legality. This content is also supported by a functional element in which rights take on a quality that legitimizes power. They are constructed upon fundamental rules in order to measure the justification of the forms of political organization and therefore serve to make these forms of political organization deserving of the voluntary obedience of the citizens (PRIETO SANCHÍS, L., 1993: 92-93). These elements, which aim to make human rights recognizable, provide an argument for a concept with three aspects – **ethical** (because of their direct connection to values), **politico-social** (because they are criteria for the legitimacy of power and the social reality) and **legal** (they are the normative expression of values) – and so a *functional* definition of them is adopted.

In order to avoid misunderstandings, we need to make it clear that we are not denying the importance of legislation, of constitutional democracies and of state systems that guarantee human rights. There is absolutely no doubt that the legal-positive dimension must be defended. These are human achievements that must be consolidated and strengthened, without succumbing to Eurocentrism or Westernism, but they are not the sole, exclusive form of guarantee against the various excesses of power, and neither are they the only guarantors of human rights. We repeat: although the legal dimension of human rights is important and necessary, it is not the only one. For that reason we need to look beyond to other elements and not limit their protection and guarantee to this single dimension (SÁNCHEZ RUBIO, D., 2011: 112).

Thus we understand that all these three dimensions are present and interact in the formulation of emerging human rights.

V.2.3. The interaction between the different branches of law

We can show from different perspectives that there has been a lack of joint action to achieve stronger guarantees of human rights carried out in a coordinated fashion between different branches of law in the academic world. We only have to observe the dialogue, bonds and relationships that develop between different subjects and disciplines in Faculties of Law, or those that come about between the various branches of legal knowledge and other sciences or between humanistic sciences and the rest. It is strange to see how exchanges between specialists in human rights and civil and mercantile law specialists are conspicuous in their absence, and how

communication and feedback between criminal lawyers and constitutionalists grinds to a halt when it comes to involving philosophers or historians of law or international law specialists[19].

Among other reasons, this situation is due to the predominance of a logical-formal Cartesian culture that reduces, separates and abstracts the legal world into different planes:

a) It **reduces** law to state law, ignoring its other non-state expressions (and thus the idea of legal pluralism); it sees law as merely a set of regulations or an institution, a weighty inheritance from positivism. Hence legal knowledge is also reduced to pure logic-analytics and regulations, ignoring the connections between the legal, the ethical and the political both inside and outside the law.

b) It **separates**, with no capacity for self-criticism, the public and the private, with serious consequences for the implementation of certain human rights policies. It also separates the legal from the political, from the relationships of power and from the ethical, silencing the structures of asymmetrical and unequal relationships between human beings, often increasing existing inequalities.

c) Finally, it **abstracts** the legal world from the socio-cultural context in which it exists and which conditions it. It abstracts at such levels that we legal scholars believe that our own ideas, categories, concepts and theories are the ones that generate the facts, neglecting the fact that theories in the area of human rights are constructed on the basis of personal experience and cannot be created in the abstract, as if they were laboratory experiments.

It is not simply the case that law is related to economics, ethics and politics, but that within the legal there are elements of economics, politics, culture, ethics and gender. Hence the legal field is a science in constant creation, a dynamic law, mutable, given new meaning, a dynamic process made up of institutions, regulations, actors and subjects, actions, procedures and socio-historically constructed values (SÁNCHEZ RUBIO, D., 2012: 29). As legal scholars we have to know why and for whom legal systems are created, interpreted and used, and how they protect or confront inequalities.

Another challenge for the legal culture lies in the incorporation of a vision that takes legal pluralism into account. New sources of law, new subjects and actors at all spatial levels (local, regional, national, global) and new rights rethink the uniqueness and the hegemony of state law that make it insufficient and deficient. An example can be found in the claims regarding the currency and applicability of indigenous law – perfectly compatible and complementary to state law – now being made in several Latin American states.

So the legal culture needs to assimilate and incorporate the pluralist view of law for two basic reasons: a) because it allows a better interpretation of the complexity of current events that the context of globalization is bringing to the legal world, and b) because in its emancipating version, both state and non-state law can be an instrument in the service of the lest protected and most vulnerable collectivities[20].

In their conception and application Emerging human rights have a pluralist view that understands that law is not an end in itself but regulates, and in some aspects conditions, the functioning of a society, by provided legal protection for all the old and new needs of all individuals and groups inside a society.

[19] The same can be said of the need for interaction between different disciplines such as law, economics, psychology, fine arts, architecture, etc.

[20] For example, we understand that international law, for a long time the instrument of colonialism, has evolved over the last few decades to become a close collaborator in the struggle of indigenous peoples all over the world to survive and develop on their ancestral or traditional lands.

The interaction between different branches of law is intended to strengthen the pluralist view of human rights and focus more attention on vulnerable collectivities which have been systematically ignored.

V.2.4. The interaction between human rights and duties

This interaction highlights the correlation between rights and duties, two sides of the same coin. However, most academic studies have centred their attention on just one of the sides: rights.

In this situation, we need to start writing the book of duties because one person's right supposes another person's duty (CAPELLA, J.-R., 2013: 39-57/CAPELLA, J.-R., 1993: 135-153). Rights cannot exist without corresponding duties. Furthermore, the content of a right is the duty of others to satisfy it[21].

Today, more than ever, we need to defend the theory that duties are an *essential content* of rights. If a law establishes a right but does not determine the corresponding duties or specify the subjects obliged to fulfil them, that right is devoid of content.

Strictly speaking, the concept of right is constructed on the basis of the notion of duty and not the reverse. Someone has a right if and only if everyone else – including institutions – has duties in connection with that right (i.e. duties in connection with whatever is hopefully being protected with any particular notion of right). Consequently we can state that unknown factors about rights need to be resolved in the area of duties, of obligations, because the duties that form the content of each right are duties that somebody has to carry out: the other human beings in a society and most certainly its institutions, the public powers above all, and also – and it is fundamental to insist on this – private institutions[22].

In developing this argument, we can see that the public powers often recognize rights unthinkingly or even frivolously, without gauging the scope or the consequences of their action. This means that if they recognize a right but do not establish the legal duties to make it possible in the social conditions of any given moment, that right will be legally null and void.

This is important because it draws attention to one of the characteristics of rights. They may be half-empty: that is, their recognition might not be accompanied by a large enough number of duties to properly guarantee them. This is a situation that often remains hidden by the right's nominal legal recognition. We could catalogue these legal deficiencies as bringing about the creation of "half rights" and "half duties".

In other words, legal-normative recognition is just one step on the path of a possible new right. Thus when it is obtained, the new individual or collective right becomes a legitimized aspiration. However, this is just a single step given that, if at the proper time the laws developing the legal content of this right do not establish the respective duties, this right remains *empty*. In the same way, if only some but not all of the duties are established, the new right will be *half empty*.

We should also stress that this is the framework preferred by most public powers for supporting discourses aimed at transforming the legal content of new or already consolidated rights

[21] Although the reverse is not necessarily true: duties can exist without the corresponding rights.
[22] This is why the first duty of public institutions is to guarantee that private human beings and non-public institutions fulfil their duties as regards whatever is protected as a right.

into privileges, which they grant in a manner that is arbitrary and in certain situations even discriminatory. Hence empty or half-empty rights are created under the appearance of privileges – which makes it easier to overlook their non-execution, since privileges are alien to the world of human rights.

This view also undermines the efforts of civil society movements because they tend to content themselves with the legal-normative recognition of rights; they fail to realize that in the legal field the corresponding duties are above all state-legislated ones, which may never even materialize.

So if the social movements behind a new right disband or run out of steam, leaving it up to the state to impose the corresponding duties for a right that has been legally recognized, then the defence of that right is restricted to the legal field and can only be pursued by actors determined through specialized mediators. Ignoring the fact that rights are nothing without the legal duties that form their content has weakened the world of rights despite the huge amount of academic work available on the subject.

In short, duties and rights, in certain areas, are the object of constant conflict between their respective subjects. This conflict is not decided by the legal sanction of rights because, without duties, rights are ineffective. From all the above we need to extract a fundamental lesson: social movements cannot rest on their laurels, as they did in the past, every time they see one of their aspirations recognized in the form of a right. This would certainly have serious consequences for the effective enjoyment of that right or freedom (CAPELLA, J.-R., 2013: 57).

So the lesson to be learnt from the interaction between rights and duties is that social mobilization should not be deactivated after the legal recognition of a right. It should remain actively vigilant. If not, everything that has been achieved may be lost.

V.2.5. The interaction between democracy and human rights

This interaction takes up the challenge set in the final declaration of the 1993Vienna Conference on Human Rights by establishing an indissoluble link between democracy and human rights.

Democracy and the rule of law are seen as the way of guaranteeing the protection and effective exercise of human rights[23]. Going a little more deeply, we must remember that democracy is not only a form of government, i.e., a political regime on whose foundations the legitimacy of power and the requirements for exercising that power are established. Democracy is more than this because it also involves a **system of values** which guide human coexistence and define a democratic society as one with a system of characteristic substantive principles.

Thus in the Universal Declaration of Emerging Human Rights, democracy appears as the common thread forming the connection between almost fifty recognized rights, divided, as we saw earlier, into six parts corresponding to the different dimensions of democracy. It is also specified in Article 9 of the Universal Declaration of Emerging Human Rights – Heading VI, on the right to guaranteeist democracy – which establishes that *"All human beings and every community have a right to law, to democracy and to international justice*" and, continuing in paragraph 3, "the right to democracy and to democratic culture, *which implies the right to live in a free democratic society, in*

[23] **Universal Declaration of Emerging Human Rights**. Preamble. *Affirming the need to expand and strengthen democracy in all its dimensions...*

which the rule of law and human rights are respected, and to be administered by an efficient, transparent public administration that is accountable for its management". This connects with paragraph 8, which specifies "the right to global democracy, *which implies the right of every human being, community and people to an international, democratic system based on the respect for the principles and rules of international law and governed by a United Nations Organization that will put into effect the rights and freedoms set out in this Declaration and in other international instruments for the protection of human rights*". In this regard, the legal system, especially in a democratic state, has to generate the mechanisms to guarantee discussion of the new demands that the historical process produces. The vital link that must exist between changes in society and changes in the theory and practice of human rights cannot be dismissed, and neither can the link or interaction between democracy and human rights.

Undoubtedly it is also important that there to be no split between *political democracy*, which implies abstention on the part of the state, and *social democracy*, which requires positive provisions from the state. From this it can be inferred that *political democracy and social democracy are indivisible and interrelated.* This coordination is one of the essential premises of any social and democratic rule of law – overcoming the dichotomy that existed before – and forms the basis of the concept of emerging human rights.

It is impossible nowadays to consider the idea of a just society without recognition and protection of fundamental human rights, and the same is true of democracy: human rights develop and become stronger in the framework of political, social and economic democracy. However, it is also true that rights serve to provide a foundation for democracy. Human rights are part of the essence of democracy, and therefore there needs to be open and informed discussion about their foundations and possibilities.

So it is *difficult to imagine a political regime other than democracy that could provide more suitable conditions for the development of human rights*, because democracy is only seen to exist if it includes the recognition, guarantee and protection of human rights. Democracy is the political model in which the guarantee of human rights is inscribed. We believe that emerging human rights have their raison d'être in the promotion of greater interaction between democracy and human rights.

V.2.6. The interaction between universalism and particularism in human rights.

This interaction is reflected in **Article 5** of the Universal Declaration of Emerging Human Rights when it refers to the **right to pluralist democracy:** *"Every human being and every community has the right to the respect of the individual and collective identity and the right to cultural diversity".*

This fundamental human right includes, among other things, the "**right to interculturality**, *which guarantees the right to live in an environment of cultural richness, of reciprocal knowledge and mutual respect between individuals and groups of different origins, languages, religions and cultures. All languages, religions and cultures must be protected equally".*

The analysis of interculturality strikes us as an **enigma** that has to be solved because it can uncover several realities in the area of human rights that are very present in the societies of the 21st century. A number of voices state that human rights are rather like a suit and tie tailored for a particular body with no allowances being made for the existence of other body types (indigenous, female, black, homosexual, agricultural, industrial, non-home owners, etc.). Hence in their broadest

version, human rights are like a suit that was and is the right size for one group, but which is too small to cover the claims and demands of other groups or social movements (SÁNCHEZ RUBIO, D., 2011: 83).

The commitment to interculturality therefore means dealing seriously with the **interaction between universalism and relativism in the area of human rights**. This means understanding the need to find a balance between homogenizing universalism and radical relativism because the interaction between these two ways of perceiving human rights helps us to find an **analogical hermeneutic** able to take cultural differences into account without losing sight of the universal regulatory ideal. We think that this form of seeing and interpreting human rights is present in the logic that permeates emerging human rights.

The interculturality of both internal and international society raised doubts about many of the moral dogmatisms that based human rights on *unconditionally true truths* or *unarguable ethical values* (PUREZA, J. M., 2002: 115). Therefore *interculturality can be both a starting point and an arrival point in the area of human rights*: the existence of a real event or situation such as the presence of various cultures in the same state in the heart of international society means that this event or situation has to be reflected in the legal system intended to safeguard the dignity of the human being. Interculturality makes it obvious that all cultural groups, *all human groups, are in continuous interaction and interrelation, and that their world views, customs and languages are constantly changing*.

Hence it becomes necessary to *think that possible antagonism, without cancelling mutual dependence, is the surest road to progress*. The pairing of human rights and cultural diversity sets us safely onto this road (VIDAL-BENEYTO, J., 2006: 89). Human rights are the resource that gives universality to justice in society, but they live off the content and richness provided by cultural plurality. Human rights serve as a boundary to cultural pluralism, but cultural pluralism is the area in which they are realized (BEUCHOT, M., 2005: 32).

It can be seen then that **the dilemma between universalism and particularism, between absolutism and relativism, is a false one**. One can achieve a **moderate universalism** and a **relative relativism** which leave room for cultural diversities without losing the strength of universality that is required for rights to become human rights.

These are privileged settings that are already being deconstructed. They are *spaces for the construction and deconstruction of identities*. This is when we find ourselves with a true intercultural dialogue which, by respecting cultural pluralism and diversity, will enable us to build a society that is national and international, intercultural, in which human rights are fully respected and valued. It is a question of developing an intercultural dialogue on human dignity that may eventually lead to a ***hybrid* conception of human rights** (DE SOUSA SANTOS, B., 2003: 107), a conception which, instead of resorting to false universalisms and radical relativisms, *may learn to make human rights policies instead of making politics out of human rights*.

Taking into account the two interactions just mentioned (democracy/human rights and universalism/particularisms), we believe that **democracy** is the ideal framework for the development and consolidation of human rights within a setting of interculturality. There is undoubtedly an interaction between these concepts – *democracy, human rights and interculturality* – because, firstly, democracy is a concept that feeds on and develops with the various contributions of human rights, and secondly, the decline of democracy would basically bring with it a reduction in human rights and fundamental freedoms in an intercultural setting. In this context, human rights can only be fully guaranteed and fully effective if the socio-political setting in which they are to be

applied is governed by democratic parameters that take cultural pluralism into account. This is why we are sure that this cultural pluralism permeates the *Universal Declaration of Emerging Human Rights*.

V.2.7. The interaction between different generations of human rights

In the classroom we usually explain that human rights emerged for the first time in the transition to modernity and were composed of freedoms of a markedly individualistic nature (rights of defence that call for the non-interference of public powers in the private sphere) and the extension of political participation to social groups initially excluded from the area of power. The foundation for this generation of rights is the value of freedom, understood as non-interference and interpreted in a more positive way as autonomy. This individualist design underwent a process of erosion in the social struggles of the 19th century which made it clear that there was a need to extend the catalogue of freedoms with a second generation of rights (economic, social and cultural), the exercise of which would call for an active or interventionist policy on the part of the state.

The legal and political recognition of claims which, like these, are a response to demands for equality, in fact came about with the change from the liberal state to the social rule of law. Finally, in more recent times a new generation of rights has emerged to complement the previous one, which is founded on the value of solidarity (RODRÍGUEZ PALOP, M. E., 2010: 10-20). This is known as the third generation of rights.

However, the generation of human rights is not a merely chronological and linear process. Neither should it be forgotten when considering this problem that the emergence of a new generation of human rights does not mean the wholesale substitution of one catalogue of rights by another. Sometimes it means that new rights appear in response to historical needs, while at other times it means the restructuring or redefinition of previous rights to adapt them to the new contexts in which they have to be applied.

The idea of human rights as first, second and third-generation rights serves to strengthen an excessively Eurocentric, linear stereotype which, although it has its potentialities and positive elements, ends up establishing an excessively neutral culture restricted to a single hegemonic form of human being: the one developed by the west on its journey towards bourgeois liberal modernity.

There is something in this generational view that does not really bring together all the richness and plurality of social struggles which, for various reasons, are either overcome and incorporated into the western social *ethos* or silenced, rejected and made invisible. This perspective questions the current configuration of human rights and the generational view for not taking into account conditions of existence and the demands of many people (oppressed majorities) who do not form part of the modern stereotype.

Thus, as we can see, the appearance of different types of rights is not linear and sequential, but the result of *complex historical processes*. Therefore, if the generational succession of rights cannot completely explain how rights evolve, we can consider where their potentialities may or may not lie. The most "damaging" effect of the generational view is that it brings with it an implicit (or not so implicit) justification of not only the temporal but, more importantly, the structural, moral and political priority of some rights over others. Structural because it assumes that first-generation rights are rights of autonomy, while second-generation rights are rights of provision. We already know that in real life this division is problematic. However, possibly the most important thing is that the assertion of temporal priority leads to a particular moral and political justification. In other words it establishes that first-generation rights, i.e., civil and political rights, are the most important

ones. This in fact accepts that, because they were the first to be positivized, this must have been due to their greater moral and political relevance; they urgently needed to be recognized and guaranteed, and anything to do with other types of rights, which were not as relevant, important or urgent, was left until later.

Asserting the greater relevance of certain rights because their historical appearance preceded others implies an excessively ordered and structured understanding of human rights history. The key factors that allow us to understand why some rights are recognized before others do not actually respond to reasons of priority or moral urgency. The history of rights is the history of doctrines, demands, revolutions, wars, crises and moral conquests, i.e., opportunities that have made certain advances possible at certain times but not at others. Hence the conception of the history of rights as a succession of generations or categories tends to remove or consider as less important the multiplicity of ways, scopes and subjects linked to the demandability of particular rights. The result would be an over-formalistic history of rights that did not take into account its failures, its exclusive or discriminatory successes or its setbacks[24].

As regards all the above, we must insist that a free democratic society should always be sensitive and open to the appearance of new needs to serve as the basis for new rights[25]. It is here that we should place e the foundation of emerging human rights, which defend an integrated, holistic view in which all possible categories of human rights interact with each other. They are not just another category of rights but, as a result of the interaction they advocate, they form an all-embracing view of human rights[26].

V.2.8. The interaction between the six dimensions of rights

Various dimensions can be found in the legal content of a single human right which must be guaranteed by the holders of the obligations, respected by the holders of the responsibilities, and available to be claimed by the holders of the right.

These dimensions and the interaction between them will enable us to identify the legal content of a human right and the degree to which this content is or is not fulfilled in terms of its practical implementation. These dimensions, which as we have mentioned **interact** with each other in order to achieve the full guarantee of a human right, are:

a) The **availability** of the right, which makes it available to all the population under the jurisdiction of a state;

b) The **accessibility** of the right, which establishes that it exists and is technically available, but also easily accessed by the whole population of the state;

[24] On the contrary, what the different "histories" of rights show is that, far from being the product of a harmonious and inevitable evolution, they were the result of conflicts over the abolition of privileges and the transfer of power and resources from some sectors to others. We could look at the question of the logical priority of some rights over others (for example, civil and political rights over economic, social and cultural rights), but in this case we would need to speak of the logical priority of economic, social and cultural rights. In fact the needs that tend to be satisfied by economic, social and cultural rights are those without which it would be difficult to imagine the full development of individuals: food, housing, work and health, for example. Asserting the logical priority of economic, social and cultural rights would mean asserting that only when we have those needs covered will we be in a position to exercise our freedoms.

[25] Universal Declaration of Emerging Human Rights. Principles. Principle of coherence. *This is conceived from a holistic approach that promotes and claims the indivisibility, interdependence and universality of human rights. This Declaration does not belong to just another generation of human rights, because it also conceives these rights from a historicist focus that promotes their integrity, without reference to generations.*

[26] We therefore reject the idea that emerging human rights could be considered a new streetlamp providing light for our sailor in his search for his wallet.

c) The **acceptability** of the right. It is recommended that this category be taken into account because the population will have to accept the way it is implemented in order for it to be enjoyed (the perspective of gender is particularly important in this dimension);

d) The **quality** of the right. As the acceptability of the right is difficult to measure, it is recommended that this category be taken into account and investigated further in order to implement a particular human right according to minimum standards of quality, both national and international;

e) The **sustainability** of the right, in order to ensure that its enjoyment and benefit to the community can endure over time; and

f) The **participation** in the right, because individuals and communities must have the opportunity to participate in the human rights implementation processes. In this respect, participation could be the key to the success of the consolidation of a human right, by increasing the appropriation of the content on behalf of the beneficiaries and ensuring that real needs will be satisfied.

We believe that the interaction between the six dimensions or categories of human rights will allow us to assess the degree to which national and international policies in the area of human rights are fulfilled. Not only will we be able to perceive violations of any of these dimensions due to acts of negligence on the part of the public authorities, but we will also be able to evaluate any omissions that may be made by the same authorities as regards any of the dimensions established for the right. We can demand fulfilment of a right from the six different perspectives, but all of them are central when it comes to guaranteeing it. In this regard, we believe that the legal content of each emerging human right includes or should include these six interrelated dimensions.

V.2.9. The interaction between the national and international levels in the protection of human rights and fundamental freedoms

The interaction between the national and international human rights protection systems takes place on a number of different fronts[27]:

Firstly, through the **adaptation of national legislation to comply with international treaties in the area of human rights** when these have been ratified by the state. We should be aware that the international agreement will establish a minimum standard that the state has to satisfy, but there is nothing to prevent national legislation from going beyond this.

Secondly, it is important to remember that **international human rights law derives from but is not dependent on internal law**. It may be that not all the human rights recognized and guaranteed in certain internal areas have been internationalized, and similarly, it may be the case that certain rights are established on the international stage but have yet to be fully accommodated in national legislation.

Thirdly, we should not forget that **the first international judge** responsible for applying national and international law in the area of human rights **is the internal judge**. This is why the interaction between national and international regulations needs to be very clear to those in charge of monitoring the effectiveness of laws governing human rights so that, among other things, they can avoid overloading the regional human rights protection process.

[27] **Universal Declaration of Emerging Human Rights**. Principles. Principle of horizontality. *Emerging rights arise in a horizontal way without hierarchies. This principle also claims the international, regional and local levels as articulated spaces for the necessary protection and promotion of human rights.*

And fourthly, we should also draw attention to the possible **interactions between regional human rights protection systems**. It is important to establish that the supports and aspirations of different regional human rights protection systems are or should be mutual, via a process of *pollination* (ALCAIDE FERNÁNDEZ, J., 2007: 308) of all these systems by a process whereby the pistils located in any region can be fertilized by the pollen produced in other regions. Seen from this angle, mutual knowledge and recognition is the only possible way forward and it may be that the real situations in different regions do not differ from each other today as much as they did decades ago. Sometimes the prospect of institutional reform in regional human rights protection systems allows us to deal with difficult issues – such as universality and cultural diversity, or relativism or imperialism – because it means we have to address the challenges stemming from the debate on human rights in our times: to rethink and look again for a genuinely universal language in which the various regions, cultures and civilizations can get to know and understand each other, progressing along the road of human coexistence and dignity: a road that demands a commitment to those human rights inspired by the values inherent in human dignity and not simply a commitment between different cultures and civilizations.

The efficient existence of these regional systems would undoubtedly contribute to guaranteeing the enjoyment of human rights. For this reason, for decades now the United Nations has encouraged the establishment and consolidation of regional and sub-regional arrangements for the promotion and protection of human rights, either through the General Assembly[28], the Declaration and the Action Programme adopted after the 1993 Vienna Conference[29] or through the Secretariat General [30], for example. Naturally the design and institutional reforms of regional human rights protection systems are aimed at making these systems more effective and strengthening universal human rights regulations in order to consolidate the true universality of human rights and their enjoyment. However, no reform can lose sight of the fact that **regional systems, like the universal system, are no more than subsidiaries of the national human rights protection system**, and that the success of institutional reforms in the future will to a large extent depend on improving and perfecting the national system.

Although emerging human rights have their foundation in the dynamism characteristic of international society, their effective implementation – the result of the interaction between the national and international planes – will be the responsibility of the internal authorities in charge of their promotion, recognition and protection.

V.2.10. The interaction between the categories of individual and collective rights.

It is important to determine the internal structure of emerging human rights, their entitlement, the object of their protection and their moral foundation, because it is not enough just to want to change things; if the aim is to enter the area of human rights, a particular physiognomy also needs to be acquired. At first sight, certainly, it would appear that the holder of these rights would necessarily have to be a vague, indeterminate group, which may or may not be organized from the legal point of view around certain common interests. People who adopt this perspective usually

[28] General Assembly Resolution 32/127 of 16 December 1977 and subsequent Assembly resolutions on this matter, including 59/196 of 20 December 2004.

[29] Approved by the World Conference on Human Rights on 25 June 1993. Both the Declaration and the Programme stressed, among other things, the need to look into the possibility of establishingregional and sub-regional arrangements for the promotion and protection of human rights, and recommended that more resources should be provided in order to strengthen existing regional arrangements within the framework of the technical cooperation programme in the area of human rights of the Office of the United Nations High Commissioner for Human Rights.

[30] For example, the Secretary General's Report on regional arrangements for the promotion and protection of human rights (E/CN.4/2005/104).

describe some of the new rights as *collective rights*, directing their focus onto the problems they present as a category of rights and to the challenge they pose in comparison to rights with individual entitlement. We believe that this view may create confusion; in our view, when people speak of collective rights, they are not always referring to the same reality.

The fact is that in view of the difficulties involved, it seems more advisable to structure entitlement to emerging human rights around the individual, assuming that the aim of the rights is to enable each individual to take advantage of and enjoy the existence and preservation of a particular collective good. This position will not necessarily lead us to some form of radical individualism nor to exclude from our horizon the safeguard that collective interests need and deserve, because individual interests can be and usually are shared by all the members of a group and because, as a result, there is no denying that such a group enjoys a certain identity, or that such an entity can be deserving of protection.

In fact the new (reformulated) human rights are indeed individual rights. When they are described as *collective rights* is that a mistake is made and entitlement to a right is identified instead, along with the object of its protection and the conditions for its exercise[31].

To put it another way, the new and the reformulated rights focus on the individual (whether or not in their position as a member of a group), but because they are aimed at protecting what is considered to be a common good, it is advisable, and in some cases inevitable, that they are demanded and exercised collectively.

Hence in the debate on entitlement to rights and freedoms there is a bipolar tension between the efforts directed towards extending and strengthening the rights of the individual to political participation, which have underpinned the current growth in relevance of the concept of *citizenship*, and the efforts aimed at establishing collective, diffuse forms of entitlement. From this perspective, the basic feature that marks the origin of human rights in modern times, and specifically the origin of emerging human rights, is one of proposing certain powers and faculties that should be recognized in all individual subjects without exclusion. Therefore the great legal-political novelty is that entitlement to the active legal positions, i.e., the rights, has been extended to each and every person, as a consequence of formulating the concept of human rights. Such a concept is therefore built on the basis of the joint and indivisible recognition of *individuality* and *universality*.

However, this does not mean that there is an increase in the number of subjects entitled to human rights, because the holder of such rights will *only* and *always* be the individual person. The change works at the level of the budgets and objectives that mark the boundaries for the exercise of this entitlement. With the inaccurately named first-generation rights, the subject who is the holder of the human rights is the *isolated person* in the personal area, and these rights are to satisfy needs that are also individual. With the inaccurately named second-generation rights the holder of the rights will be the person *situated* in the contexts inhabited by the groups or community bodies in which he develops his existence as a social being, depending on the achievement of interests that surpass mere individuality to aim towards collective goals of an economic, social and cultural nature. The holder of third-generation human rights (another misnomer) is now the person who is *interconnected*, with planet-wide networks of information and communication.

[31] **Universal Declaration of Emerging Human Rights**. Principles. Principle of interdependence and multiculturality. *This principle recognizes individual and collective rights on the same level of equality and seeks to go beyond the debate between these categories and also that between individual and social rights. It therefore recognizes individuals as well as peoples and communities as collective subjects of rights. There is no justification for maintaining the classic bipartition between these rights. All human rights are individual and, at the same time, all have a collective dimension.*

Considering all the above, we can conclude that the holder of the emerging human rights, resulting from the interaction between individual and collective rights, will be the *isolated person*, the *situated person* and the *interconnected person* because we are referring to the same person who acts, sometimes individually, sometimes collectively, in the face of a social reality that is in constant evolution.

V.2.11. The interaction between "expensive" and "cheap" rights

The radical distinction between expensive rights and cheap rights can be criticized from at least two points of view. Firstly, it does not reflect reality. We could indeed admit that some rights are more expensive than others, but it would be difficult to admit that there is such a thing as a cheap right. The fact is that all rights are expensive. From the moment they are taken seriously, accepting them with all their moral value, political implications and legal effectiveness calls for an institutional and organizational framework without which rights are just theoretical proclamations, since constitutional democracy is costly. In short, it is a simplistic consideration that sees certain rights as exclusively generating positive obligations.

Secondly, the distinction between cheap and expensive rights is made on a political and self-interested level by those who are more likely to give preference to some rights over others. The onerous nature of certain rights would be an argument, or rather an excuse, when decisions have to be made about rationalization and budget objectives, and therefore also when it comes to creating conditions, using a reasoning that seeks to find normative justifications on the basis of real facts. However, this is a false premise (ANSUÁTEGUI ROIG, F.J., 2010: 60).

Economic dimensions create difficult contexts and are elements that may enable us to prioritize access to social provisions for the most disadvantaged over those who are in a position to satisfy their own needs by themselves. It is therefore not a question of denying that rights policies are dependent on budgets, but that dependence on budgets is a factor that must be taken into account when dealing with problems of distribution in contexts of relative scarcity and must not be used as an excuse for failing to satisfy rights. Moreover, once we have rejected the distinction between cheap rights and expensive rights and recognize that all rights have a cost, this excuse can be opposed in the process of satisfying and guaranteeing any right, not only of those considered costly *a priori*[32].

Hence, no priorities are established between emerging human rights with respect to the cost of their implementation, because it is believed that public policies in the area of human rights should not seek economic profits. Since the conception of emerging human rights, it has been argued that all rights should be guaranteed equally without applying quantitative criteria before providing them.

V.2.12. The interaction between punitive and preventive considerations in the area of human rights

It is odd to see how civil and political rights associated with the principle of freedom have a higher degree of theoretical reflection, greater legal effectiveness and stronger guarantee systems than certain other rights – for instance, economic, social and cultural rights associated with the principle of equality and rights in connection with the impact of new technologies or associated with the principle of solidarity. Rather than registering improvements, the legal and structural status

[32] We should not forget that the state is not and cannot be a mercantile company. Hence economic growth (which is merely one dimension of wellbeing) is not a basic aim of the state, and neither is it an argument to support its legitimacy. The purpose of the institution of state authority is to guarantee rights and freedoms, not to achieve a healthy balance between public income and expenditure.

of human rights has become more uncertain. To avoid this, we hold that the stronger the human rights culture, the fewer the cases that have to be settled in the courts (SÁNCHEZ RUBIO, D., 2011: 83).

The hitherto reigning culture in human rights issues has separated the pre-violation dimension from the post-violation dimension, and has concerned itself only with the latter, i.e., with deciding which human rights should be upheld through the legal process once they have been violated. For example, until recent times, it was believed that the state that provided the most guarantees for human rights was the one whose courts dealt with the most claims following their violation.

This simplistic, narrow view of human rights focuses on the post-violation dimension and is based on a statewide paradigm that ignores the preventive dimension, i.e., the dimension that exists before rights are violated. It is important to look beyond this restricted view and to broaden the way human rights are conceived. Hence it might be seen that the state that provides the strongest guarantee of human rights would be the one that does not require its legal apparatus to deal constantly with the guarantee of human rights across its territory.

Thus an important facet of human rights is the way they are institutionalized and legally recognized on both a national and international scale. In addition to regulatory recognition, the efficiency and effectiveness of human rights are usually the main resource used to guarantee them. The existence of courts of justice to hear cases and the rule of law with which to protect human rights are both important achievements: however, focusing our ideas on these elements alone, assigning them more significance than is necessary, has harmful effects for most of humanity.

It is strange that we often circumscribe human rights to demand or legal claims presented in the courts of justice only after they have been violated. By doing this we tend to defend a post-violation conception of human rights and ignore or take little notice of the pre-violation conception. Human rights seem only to exist once they have been violated, and it does not seem to matter to us which dimension of their reality is constructed or destroyed before we resort to the state (SÁNCHEZ RUBIO, D, 2011: 107).

Hence, in order to make human rights effective, human actions and the social sensitivity to recognize them should refer to the pre-violation dimension, which has nothing to do with the legal and state dimension. There is a non-legal effectiveness that is closely connected to sociocultural sensitivity, degrees of acceptance and the way human rights are assimilated, given new meaning, and understood.

It is not simply a case of raising awareness and fomenting a legal culture of protection, but also of developing a human rights culture in general, one that is an essential part and accentuates the pre-violation dimension from which rights are constructed or destroyed and put together or taken apart. The wider the scope of this human rights culture – incorporating inclusive and continued education – the fewer the claims that will need to pass through the courts.

Thus we understand that emerging human rights belong to a human rights culture that strengthens preventive action at the same time as it penalizes non-compliance and involves interaction between the preventive and the post-violation dimensions[33].

[33] We could say that not only do emerging human rights help our sailor in the search for his missing wallet; they also provide protection so that in future his wallet will always be in a safe place.

V.2.13. The interaction between theory and practice in human rights

It is widely accepted that the theory and practice of human rights are two very different things. It sometimes seems as if human rights were nothing more than a problem of acquiring knowledge about regulations, laws, institutions and their guarantee mechanisms. Seen in this way, we can see exactly how this result came about: by encouraging a civic culture that is weak, fragile and piecemeal. This *separation between theory and practice* that is considered natural and beyond discussion is one of the reasons that justify indolence and passivity when it comes to constructing and teaching subjects related to human rights.

The matter becomes even more serious because the limited human rights culture which exists – and is excessively rigid – turns out to be so very small, inadequate and strict that, voluntarily or not, it ends up reinforcing and hegemonizing the separation between what is said in the area of human rights and what is actually done.

Human rights refer to at least five elements: a) social struggle, b) philosophical reflection or the theoretical/doctrinal dimension, c) legal-positive and institutional recognition, d) legal efficiency and effectiveness, and e) sociocultural sensitivity.

The regulatory and institutional dimension, the theoretical-philosophical dimension and legal-state efficiency tend to be clearly visible. However, fundamental areas like social struggle, non-legal efficiency and non-state legal efficiency tend to be ignored, even though they are essential to gaining a better understanding of human rights and putting them into practice more consistently. On the theoretical plane, human rights tend to be associated with and known through what a particular doctrine has told us throughout history and continues to tell us today. The problem lies not in the enlightening reflections on them brought to us by specialists, but in thinking that it is they, the specialists, who create them, forgetting the fact that human rights are the result of socio-historic processes generated by social actors. Of course, those who know the most about human rights are the activists and the victims of rights violations.

Separating theory and practice in the area of human rights can highlight a disillusioning dimension that appears in the moment in which human rights become consolidated upon discourses and theories, institutions and structural systems which, socio-culturally and socio-materially, make them unfeasible due to the asymmetries and unequal hierarchies that support them (SÁNCHEZ RUBIO, D., 2011: 11).

From this perspective, we sustain that the constant interaction between theory and practice as regards human rights is essential for their effective implementation. Both perspectives have been present from the beginning in the formulation of emerging human rights.

V.2.14. The interaction between the state and civil society in the creation of policies in the area of human rights

Civil society is the social basis of the democratic state. It reflects the continuous needs of the individual as a member of the group with regard to adopting and applying the values and regulations that should govern his or her behaviour as regards mutual coexistence and relationships with democratic institutions. The concept of civil society, which has become popular in political science over the last few decades, can be defined as the area of organized social life that is voluntary, self-generated, and self-sufficient; it is not just independent of the state but in opposition or resistance to it.

Power is now not only concentrated in the state but penetrates and spreads throughout the everyday practices, thoughts and value judgments of civil society. As a result, it is no longer possible to indiscriminately sanctify the communicative actions that take place in civil society (MELUCCI, A., 2001: 116). The aims of this organizational diversity range from those who want to exert social control over the public power (for instance, human rights organizations) to those who seek to improve quality of life (for instance, trade unions), taking in political parties (who want to run the country by reaching the machinery of government) and churches (which are organized to practise a faith).

Although, as we have pointed out, civil society is not made up only of NGOs, we can certainly say that the promotion, respect and consolidation of human rights and fundamental freedoms have to a large extent been channelled by these organizations. They play a fundamental role given that some of them have a greater impact on the internal and international scene than many small and medium-sized states. They constitute a critical mass that neither states nor international law can ignore. Their number is increasing every day, and their participation in big international conferences is deemed essential.

Hence, human rights have become one of the most obvious commitments of non-governmental international organizations. However, the recent explosion in the number of NGOs defending human rights should not overshadow everything that has been taken on since the mid-19th century by what would later become known as "international civil society" (MARTHOZ, J.P., 2004: 801).

Today the network of NGOs connects thousands of local, regional, national and global organizations. The defence of human rights that NGOs undertake reflects the willingness of citizens to participate in formulating proposals for the development of values that are essential in any democratic society. They have been able to respond competently to ministry decisions, mobilize the mass media and influence decision-makers by making proposals for credible alternative solutions. It would be difficult to deny that NGOs and the human rights movement have achieved great victories over the last five decades.

Human rights NGOs have more recently become known for their function in spreading information. Their reports are considered authoritative because they are the result of a methodology that combines the techniques of academic research and investigative journalism. The new human rights movement has benefited from the unparalleled development of new information and communication technologies. NGOs have managed to create a discourse that states cannot easily discredit. Their development is unstoppable, not only as regards their number but as regards their areas of action as well. The evolution of national and international society and the emergence of new issues have also been related to the NGOs' fight to defend human rights.

It is noteworthy that civil society has also been directly involved in two recent developments in the area of human rights. In Europe, civil society had a great impact on the process of drafting the *European Charter for Safeguarding Human Rights in the City*. This Charter, which commits cities to safeguarding human rights, is a grassroots charter that sets out the rights and obligations of city inhabitants and municipal administrations. It is an inter-administrative agreement of transnational scope resulting from a cooperation project undertaken jointly by a number of cities and adopted in Saint-Denis in 2000. The role of civil society in demanding human rights has also been fundamental in the reformulation of the rights and freedoms recognized in the Universal Declaration of Human Rights and in the incorporation of new rights arising from humanity's new needs that have been given shape in the *Universal Declaration of Emerging Human Rights*, which is what concerns us here. Thus while the Universal Declaration of Human Rights is a resolution

solemnly adopted by the United Nations as a founding document of a humanist ethic of the 20th century and the "common ideal to be achieved" from an individualistic, liberal perspective, the Universal Declaration of Emerging Human Rights arises from the experience and the voices of global civil society at the start of the 21st century[34]. Its aim is to **fulfil the cosmopolitan, emancipatory project of modernity**, i.e. the cultural inheritance of the Enlightenment that has been unrealized until the present. We can therefore see that, in the 21st century, **states and civil society must interact** and work together to create public policies that ensure that human rights and fundamental freedoms are guaranteed. Emerging human rights can be a useful tool for jointly channelling the efforts of states and civil society.

A third recent example of this interaction between civil society and states in certain struggles in the area of human rights can be seen in the negotiations for the adoption of the *Nagoya Protocol of 2010 on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity*. Indigenous peoples and local communities – civil society – joined forces with certain states to appoint the experts who formed the work programme on access and benefit-sharing, with the end result being the achievement of effective protection in this international treaty on **emerging rights to genetic resources** or **emerging biocultural rights**.

In the following section we present a brief analysis of this achievement which, we believe makes it possible to contextualize the aspirations of emerging human rights and transform them into specific actions. The Nagoya Protocol came into force on 12 October 2014.

V. THE DEMAND FOR EMERGING BIOCULTURAL HUMAN RIGHTS AS AN EXAMPLE

The triple dimension inherent to emerging human rights is clearly embodied in the conceptualization of **biocultural emerging rights**. First, because they are new rights; second they can constitute an extension of rights that already have some sort of legal recognition (right to security of life, right to health, right to medical care and to medicines, right to interculturality, etc.); and third, they can also mean the extension of certain rights to collectivities that traditionally have not been able to enjoy them, such as indigenous peoples and local communities.

To be precise, we should state that biocultural rights are group or collective rights, but different from the general category of rights usually misclassified as "third-generation" rights, because of their explicit connection with conservation and the sustainable use of biological diversity. Strictly speaking, their conceptualization can be attributed to three main reasons:

Firstly, the justification of biocultural rights has less to do with group rights than with the crises arising from the loss of biological diversity and its impact on food, health and economic security. Secondly, biocultural rights trace their origins back to the so-called "third generation" of "collective rights", but unlike them they imply a definite questioning of the concept of nation-state and the exercise of sovereignty over the territory; they demand that natural resources should not belong only to the state but also, and mainly, to the established communities that preserve them. And thirdly, biocultural rights were proposed in the international negotiations on the environment as a defence against "biopiracy", with communities demanding that the state protect them from companies stealing their knowledge and resources.

[34] **Universal Declaration of Emerging Human Rights**. General framework: values and principles. *This Declaration includes a new conception of citizen participation and conceives emerging rights as citizen rights. The aim is to overcome the political deficit and the powerlessness between the changes desired and the current uncertain conditions for achieving them.*

Of the more obvious objectives that emerging human rights pursue, on the one hand we should mention the aim of protecting a way of life – the life typical of indigenous peoples and local communities – and on the other hand, the ideal of reducing the distance and healing the various types of rifts that exist between biodiverse states and biotechnological states (BAVIKATTE, K./ROBINSON, D. F., 2011: 13).

In recent years international law has not been immune to the efforts of indigenous peoples to ensure a future in which they can maintain their distinctive characteristics and live their lives freely along with the rest of humanity. Today we can see that contemporary international law has a set of regulations and procedures that are of benefit to the demands of indigenous peoples. Among them, apart from the well-known ones such as Convention 169 of the International Labour Organization and the UN Declaration on the Rights of Indigenous Peoples, the aspirations of the indigenous communities have also found a haven in the Convention on Biological Diversity and most especially in the Nagoya Protocol.

This is why, considering the grey areas in the Convention on Biological Diversity, the struggle of indigenous peoples and local communities consisted of seeing their legitimate aspirations reflected in work aimed at correcting the imbalances that exist as regards the protection of genetic resources in the area of national societies and international society. The participation of these indigenous peoples and local communities was crucial in the meetings that preceded the adoption of the Nagoya Protocol.

Apart from strengthening compliance with national frameworks governing access to genetic resources, already anticipated by the Convention on Biological Diversity, the area in which the Nagoya Protocol *is truly innovative in its regulations is in the coverage it provides for the* traditional knowledge *associated with these genetic resources*. Thus the Protocol establishes the obligation to obtain prior informed consent or the approval and participation of the indigenous and local communities whenever there is access to the traditional knowledge associated with genetic resources, and also to negotiate mutually agreed conditions with these communities. States thereby commit themselves to establishing measurements of compliance to ensure that these obligations are duly observed by users.

It may seem as if the Nagoya Protocol takes a number of steps backwards in relation to the standards established by the Declaration on the Rights of Indigenous Peoples, but it also introduces a number of significant advances as regards the rights of communities over their traditional knowledge and their genetic resources. It is clear that the document is a compromise between different interests and points of view. The final text adopted is ambiguous and remains silent on certain important points – the regulation of by-products, the retroactivity of its measures, the disclosure of origin on applications for intellectual property rights, etc. – but at the same time it does establish some minimum international ground rules that may help to effectively guarantee forms of access to genetic resources and a real sharing of benefits. Although the challenges faced by the Nagoya Protocol are serious ones, we cannot doubt that the celebration of its achievements will include the promotion, protection and guarantee of the biological emerging rights inherent to indigenous peoples and local communities.

We should consider the adoption and the coming into force of the Nagoya Protocol as the result of the struggle by collectivities systematically excluded from the enjoyment of human rights and also the result of its approximation to the holistic concept of emerging human rights – in this case in the shape of biocultural human rights.

VII. FINAL CONSIDERATIONS

As a kind of epilogue – which may also be of use to our sailor in tracking down his missing wallet – we would point out the following aspects as final considerations:

1.- The concept of emerging human rights appears because recognizing the rights inherent to the human being is a process that is permanently evolving and updating itself, moving forward according to the needs and demands of each time and place. This is a result of considering human rights as the non-static construction of an ethical theory applicable to the human condition and human nature. This ethical theory has possible foundations centred on the latest values that lie behind each type of right. These rights have a genesis and a historical development; they are not definitively proclaimed, and neither has their evolutionary process come to an end. Emerging human rights constitute a *renovating discourse* because they question, stir up and transform the code of values that we have used until now. Hence they also question the concept of human rights that this code caused to appear.

2.- The dynamic nature of emerging human rights means that there is no single text, let alone a definitive one, that could encompass each and every one. Nevertheless, one instrument of reference is the *Universal Declaration of Emerging Human Rights*, the result of private codification and approved at the 2007 Monterrey Conference held as part of the Universal World Forum of Cultures, which develops and finalizes the *Charter of Emerging Human Rights* adopted in Barcelona in 2004. Looking at the structure of the Universal Declaration of Emerging Human Rights we can appreciate that there is a series of **values** and **principles** inherent to the notion of human rights that in turn also inspire emerging human rights. As the values are not static, we understand that they take on different nuances depending on the era. And like other human rights, emerging human rights are also based on a series of **cross-cutting principles**, conceived from the spaces of **plural, inclusive, civil society**.

Emerging human rights can take very different forms, ranging from those that already have some kind of legal recognition to those that consist of new formulations and even the extension of rights to specific collectivities that traditionally have been unable to enjoy them. Seen like this, a **triple dimension** of emerging human rights needs to be taken into account. In this triple dimension, rights do not appear just as possible elements making up a catalogue of human rights to aim for, but also as a space from which to denounce deficiencies in the national and especially international politico-economic systems.

Meanwhile the **structure** of human rights recognized in the Universal Declaration of Emerging Human Rights is a real *declaration of intentions* because it bases all rights on **democracy**, understood not only as a value or principle but also as a right, with multiple facets, dimensions or forms of expression – **egalitarian democracy, pluralist democracy, parity democracy, participatory democracy, solidarity in democracy and guaranteeist democracy** – dimensions that serve as a frame of reference for the other emerging human rights and which correspond to each of the six headings that make up the Universal Declaration of Emerging Human Rights. The result is a catalogue of around fifty emerging human rights, divided into six parts that avoid classical academic distinctions and have *democracy as the common thread that binds everything together*.

3.- We can recognize the foundation of emerging human rights in Article 28 of the Universal Declaration of Human Rights as it spills over beyond the catalogue of human rights recognized in constitutions and state legislation and is the seed for the development and guarantee of these rights at an international level. As well as advocating the establishment of international mechanisms to protect human rights, Article 28 **is the legal foundation for the formulation of**

new human rights whose content and exercise are specifically international. Indeed, in an interdependent world in which problems and risks have global significance, the conception of human rights is extended to reach a new limit: to respond to needs and deficiencies created at global level.

4.- If we can place the foundation of emerging human rights in *Article 28 of the Universal Declaration of Human Rights*, it would be reasonable to assert that the international social order that it proclaims requires the consolidation of a **cosmopolitan citizenry** to take on the rights and obligations stemming from the notion of emerging human rights. Given that the traditional concept of citizenry does not hold – since from being an inclusive concept, its meaning has been perverted to justify the exclusion of certain collectivities – we can advocate a new notion of citizenry and rights that does not revolve around the nation state but is truly open to everyone. If we want to take human rights seriously, we have to sever their ties with the traditional condition of citizenry. More than that, we believe that the ideal of a **cosmopolitan citizenry** is *morally superior* to any other and finds its reflection in emerging human rights. Hence, the Universal Declaration of Emerging Human Rights, by promoting the rights of a *global citizenry*, makes the enjoyment of emerging human rights independent of the random fact of being born in a particular state. It thereby tackles the variability that results from underdevelopment with an appeal to democracy and international justice, to solidarity and the collective protection of the international community in favour of human groups, which in its short existence has opened spaces such as Barcelona (2004) and Monterrey (2007) in which to dream of a global citizen, the holder of emerging human rights.

5.- Emerging human rights are intended to modify, improve and transform a number of concepts already traditional in the area of human rights so as to achieve greater guarantees and protection of individual and collective rights. One of the big changes that will be brought about by the conception of emerging human rights will be their consideration as the *beginning of the fifth historical process in the consolidation of human rights* after positivization, generalization, internationalization and specification, namely the **process of interaction**. We argue that in the 21st century, in order to go beyond the great advances that have already been made in the history of humanity in the area of human rights, we need to promote and strengthen the existing structures and, more than anything, commit ourselves to real and not just theoretical complementarity to enable the reciprocal activation of the various concepts, categories, approaches, areas of action, etc. that coexist in the world of human rights. Indeed emerging human rights are the starting point of this fifth historical process in the consolidation of human rights: the **process of interaction.** By analysing emerging human rights we have been able to see that their conceptualization involves encouraging various processes of interaction – fourteen at least – which are: 1) the interaction between the concept and foundation, the history and the legal theory; 2) the interaction between the components of the three-dimensional conception of law and, therefore, of the conception of human rights (value, regulation and social reality); 3) the interaction between the different branches of law; 4) the interaction between human rights and duties; 5) the interaction between democracy and human rights; 6) the interaction between universalism and particularism in human rights; 7) the interaction between different generations of human rights; 8) the interaction between the six dimensions of rights; 9) the interaction between the national and international planes in the protection of human rights and fundamental freedoms; 10) the interaction between the categories of individual rights and collective rights; 11) the interaction between expensive rights and cheap rights; 12) the interaction between considerations concerning penalties and prevention in the area of human rights; 13) the interaction between theory and practice in human rights; and 14) the interaction between the state and civil society in the creation of policies in the area of human rights.

6.- Taking all these interactions and this new fifth historical process into account, we have to say that as far as our sailor is concerned, the concept of emerging human rights is not a newly-lit

streetlamp under which he can look for his wallet. This is because it is not a question of a new generation or category of human rights. What we could say is that emerging human rights are like a *torch* that enables the search for the wallet to focus on where it really went missing. To put it another way, the concept of emerging human rights is an omnicomprehensive reformulation of all the existing knowledge and experience in the area of human rights, adapted to deal with new challenges and needs, which should enable us to push aside those who make politics out of human rights and promote the effective creation of human rights policies to cover the needs of everyone in the 21st century.

7.- In short, we firmly believe that, in a world adrift, it is necessary and possible to invent the future. Just as in 1948 the Universal Declaration of Human Rights laid down an ethical frame of reference for mankind, it would now be a good idea for the *Universal Declaration of Emerging Human Rights* to bring together local and global "inventions" so that we can pass on to future generations a world in which democracy and human rights are the central core of the national and international social order and inspire the development of societies inhabited by cosmopolitan citizens. The fight for emerging human rights has already achieved some success. One achievement that will set people talking is the adoption and recent coming into effect of the *Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity* because it is an embodiment of emerging biocultural human rights in an international regulatory text.

In the difficult times in which we live, we do not believe that lack of vision and discouragement should hijack the fight for human rights. Now more than ever it is up to us to invent a future, a new beginning that can be built on emerging human rights because, even in difficult times, human rights are still under construction and we – our minds, our spirits and our actions – must remain open to change.

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